

IN THE COURT OF COMMON PLEAS  
HARRISON COUNTY, OHIO  
GENERAL DIVISION

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LESLIE A. JONES  
CLERK OF COURTS  
HARRISON COUNTY, OHIO

CHARLES J. SCHUCHT, et al.

Plaintiffs

CASE NO. CVH 2012-0010

v.

ENTRY

BEDWAY LAND AND MINERALS  
COMPANY, et al.

Defendants

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This matter having come on before this Court upon Defendant Bedway Land and Minerals Company's Motion For Summary Judgment filed January 2, 2014, Defendant Eric Petroleum Corporation's Motion For Summary Judgment filed January 3, 2014, Defendant Chesapeake Exploration, L.L.C.'s Motion For Partial Summary Judgment filed January 3, 2014 and Plaintiff Charles J. Schucht, et al's Motion For Summary Judgment filed March 12, 2014. Responses and Replies were thereafter filed by all parties.

**STATEMENT OF FACTS**

The Plaintiffs herein acquired title to the surface rights in the parcels in question on April 2, 2013 by way of a deed to Charles J. Schucht and Wilma L. Schucht, Trustees of the Schucht Family Trust U/A. Said deed was recorded at Volume 207, Page 1138 of the Harrison County Records. This deed was comprised of two separate parcels at issue herein being 260.2665 acres previously transferred at Volume 10, Page 504 and 266.522 acres previously transferred at Volume 21, Page 451. The total acreage owned by the

Plaintiffs is approximately 526.7885 in Shortcreek Township, Harrison County, Ohio.

The Defendant Bedway Land and Minerals Company (Bedway) received a 7/8 interest in the mineral rights herein, including coal, oil and gas by way of a Quitclaim Deed. The deed regarding the parcel in question was filed December 18, 1984 with William W. Wehr and Mary Ann Wehr as the grantors. Prior to the 1984 Quitclaim Deed, while William W. Wehr and Mary Ann Wehr owned the minerals, a memorandum of lease with a three year primary term was filed by K.S.T. Oil & Gas Co. Inc. The same being filed on May 25, 1983 and recorded at Lease Book 179, Page 359. Said memorandum leased approximately 1383.953 acres (including the Mineral Estate herein).

On December 28, 1989 K.S.T. filed a Release of its interest in the Oil and Gas Lease with said Release recorded at Lease Book 75, Page 152. On June 16, 2005 at Official Record 160, Page 2912, Defendant Bedway filed an oil and gas lease with Mason Dixon Energy, Inc. which covered the Mineral Estate herein. Thereafter, Mason Dixon Energy, LLC, successor in interest to the Lessee Mason Dixon Energy, Inc., assigned its interest in the lease to Burlington Resources Oil & Gas Company L.P. (Burlington Resources) at Official Record Book 21, Page 451. Burlington Resources assigned their interest to Defendant Eric Petroleum on October 1, 2007 who then signed a partial assignment to Ohio Buckeye Energy L.L.C. on July 15, 2010 at Official Record Book 183, Page 2737. On December 22, 2011 Defendant Chesapeake obtained Ohio Buckeye's interest by way of a merger.

Consequently, Plaintiffs own the surface herein and claim the severed minerals pursuant to the 1989 version of the Ohio Dormant Mineral Act. The Defendant Bedway

claims a 7/8 interest in the minerals and Defendants Eric Petroleum and Chesapeake Exploration claim interests by way of an oil and gas lease and subsequent assignments.

### **SUMMARY JUDGMENT STANDARD**

Ohio Rule of Civil Procedure Rule 56 provides that summary judgment is warranted when “it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party’s favor.” Ohio Rule of Civil Procedure 56 (c).

Pursuant to Temple v. Wean United, Inc., 50 Ohio St. 2d 317, 327, 364 N.E. 2d 267, 274 (1977) summary judgment is appropriate when the moving party demonstrates that (1) no genuine issues of material fact remain to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion that is adverse to the party against whom the motion is made.

### **THE CONSTITUTIONALITY OF THE 1989 OHIO DORMANT MINERAL ACT**

The Ohio Dormant Mineral Act was enacted in its original form on March 22, 1989. The act has been characterized as a “use it or lose it” statute. The Ohio Legislature attempted to balance the interests of property owners and the compelling public interest in drilling, producing and marketing the mineral interests of this state. Dormant and

abandoned mineral interests were viewed as of no benefit to the state, while making use of the state's mineral resources was for the public good.

In order to negate the retroactive effect of the Act, the following language was inserted at 5301.56(B)(2).

(2) A mineral interest shall not be abandoned under division (B)(1) of this section... until three years from the effective date of this section.

The oil and gas owners thereby were given 3 years to meet one of the "Savings Events" provisions. A similar statute was enacted in Indiana and provided for a two year grace period. This act was upheld by the United States Supreme Court in Texaco Inc. v. Short, 454 US 516 (1982). In Texaco, it was held that, "There was no constitutional right for a mineral interest owner to receive individual notice that his rights will expire."

Based upon Texaco, this Court finds the 1989 Ohio Dormant Mineral Act to be constitutional.

### **1989 OHIO DORMANT MINERAL ACT V. 2006**

#### **OHIO DORMANT MINERAL ACT**

The Defendants argue that the 2006 version of the Ohio Dormant Mineral Act supersedes the 1989 version, and in effect eliminates the need to analyze the facts herein in relation to the earlier version. The 1989 version states that unless one of the Savings Events have been met within the 20 year look back period, the oil and gas shall be deemed abandoned and vested in the owner of the surface. Revised Code 1.58 (A)(1) and (2) provide that "[t]he reenactment, amendment, or repeal of a statute does not, except as

provided in division (B) of this section: (1) Affect the prior operation of the statute for any prior action taken thereunder, or (2) Affect any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred thereunder...”

A change in the law that deals with substantive rights does not affect such rights even though no action or proceeding has been commenced, unless the amending or repealing act expressly provides that the rights are affected. O’Mara v. Alberto-Culver Co., 6 Ohio Misc. 132, 133, 215 N.E. 2d 735 (Ohio Com. Pl. 1966). “A vested right can be created by common law or statute and is generally understood to be the power to lawfully do certain actions or possess certain things: in essence, it is a property right.” State ex rel. Jordan v. Indus. Comm. 120 Ohio St. 3d 412, 413, 900 N.E. 2d 150 (2008) quoting Washington Cty. Taxpayers Assn. v. Peppel, 78 Ohio App. 3d 146, 155, 604 N.E. 2d 181 (1992). Wendt v. Dickerson 2012 CV 020135 Tuscarawas County Common Pleas Court, decided February 21, 2013.

If no Savings Event has occurred, pursuant to law, the abandonment and vesting have already taken place in the case at bar. This Court finds that the 1989 and the 2006 versions of the Ohio Dormant Mineral Act are both applicable to the case at bar, however; should the mineral interest vest herein pursuant to the 1989 Act, any review under the 2006 version of the Act would become moot. See Walker v. Noon, 2014-Ohio-1499, 7th Dist. Court of Appeals, April 3, 2014.

## THE 1989 VERSION OF THE OHIO DORMANT MINERAL ACT

The Ohio Dormant Mineral Act has been characterized as a “use it or lose it” statute. In order to preserve one’s interest in a severed mineral right one must meet the requirements of ORC 5301.56. In accordance with (B)(1) the mineral interest held by any person, other than the owner of the surface, shall be deemed abandoned and vested in the owner of the surface unless: the interest is in coal or the interest is held by the government. ORC 5301.56 also provides protection if within the preceding 20 years the mineral interest has been the subject of a title transaction, there has been actual production or withdrawal of the minerals, underground gas storage has taken place, a drilling or mining permit has been issued, a claim to preserve the interest has been filed or a separately listed tax parcel has been created for the mineral interest.

In the case at bar the only portions of ORC 5301.56 that are applicable herein deal with whether there was a separately listed tax parcel issued and whether the property in question has been the subject of a title transaction. Applying the requirements of the 1989 Ohio Dormant Mineral Act, we must first look to the years 1992 back to 1969. The act provides for a 20 year look back period from March 22, 1989, but also allows for a three year grace period to March 22, 1992.

The Defendants argue that the 1989 Act is a static 20 years plus the grace period. The Plaintiffs take the position that the look back period is a rolling 20 years. The Defendants rely on Riddell v. Layman, 94 CA 114, 5<sup>th</sup> District, Licking County (1995). Riddell was presented with the question of whether a 1965 deed recorded in 1973 qualified as a title transaction. A “rolling look back period” was not an issue.

ORC 5301.56 (D)(1) provides:

A mineral interest may be preserved indefinitely from being deemed abandoned under division (B)(1) of this section by the occurrence of any of the circumstances described in division (B)(1)(C) of this section, including, but not limited to, successive filings of claims to preserve mineral interests under division (C) of this section.

A static 20 year look back period would have no need for a provision providing for indefinite preservation of mineral interests through successive filings of preservation claims. Based upon the same, this Court finds the 1989 Ohio Dormant Mineral Act to provide for a “rolling look back period.” Also see Shannon v. Householder 12 CV 226 Jefferson County Common Pleas, July 17, 2013.

This Court finds this determination to be consistent with the comments set forth in the Ohio Legislative Service Commission Report relating to the 1989 enactment of R.C. 5301.56. The Commission therein stated:

Under the act, an interest could be preserved indefinitely from deemed abandonment by the occurrence of any of the four listed categories of exceptional circumstances **within each preceding 20 year period.** (Emphasis added).

Ohio Legislative Service Commission, December, 1988, p. 38.

### **APPLICATION OF THE 1989 OHIO DORMANT MINERAL ACT**

The Plaintiffs argue that even if one were to apply the 20 year “rolling” look back period, Bedway, who received the mineral interest on Dec. 18, 1984, would lose any interest on December 18, 2004. The 1984 Quitclaim Deed qualifies as a title transaction and a savings event as required by R.C. 5301.56. Defendant Bedway further argues that a

separately listed tax parcel number was issued for the minerals shortly after they received the Quitclaim Deed in 1984. There is a question as to what that Parcel No., being 26-0000590.000 actually reserves. It relates to 226.18 acres in Shortcreek Township, but there is no reference to what section or sections of the township are affected by the parcel number. Again, the two parcels herein are 260.2665 acres and 266.522 acres. There is no 226.18 acres. Without more specificity, this Court finds Parcel No. 26-0000590.000 to lack the requirements of a savings event per R.C. 5301.56. Even it were more specific it would merely act as one savings event in approximately the same year as the Quitclaim Deed and would require additional savings events within the next twenty years in order to protect Defendant Bedway's mineral interest.

This Court does not find the Parcel No. issue to be determinatively herein, but rather looks to other savings events within the twenty year "rolling" window. On May 25, 1983 Bedway's predecessor in the mineral interest William W. Wehr and Mary Ann Wehr entered into an oil and gas lease with K.S.T. Oil & Gas Co. Inc. The Memorandum of Lease provided for a three year primary term. On December 28, 1989 K.S.T. released their interest in the lease in question. Defendant Eric Petroleum's expert, Rodney C. Yoder, opined that the K.S.T. Lease "covered all of the oil and gas interests located in Shortcreek Township which were subsequently conveyed in 1984 from Wehr to Bedway Land and Minerals Company." See Yoder Supp. Affidavit at para. 18. "Given the nature of interest conveyed by an oil and gas lease, the Court finds that such represents a 'title transaction' as defined by law." Bender v. Morgan Columbiana County Court of Common Pleas Case No. 2012 CV 378 ( Mar. 22, 2013). R.C. 5301.251 provides in pertinent part "in lieu of the recording of a lease, there may be recorded a memorandum



of lease.” Additionally, R.C. 5301.33 in dealing with methods to cancel leases provides that, “Lease as used in this section includes a memorandum of lease provided for by section 5301.251 of the Revised Code.”

The question of a lease and/or a release of an oil and gas lease being a title transaction was addressed in McLaughlin v. CNX Gas Co., N.D. Ohio No. 5:13 CV 1502, 2013 U.S. Dist. LEXIS 174698, \*9 (Dec. 13, 2013). It was held that “even if Defendant’s property interests through the lease are something less than a grant of real property, those interests quite clearly affect title to the mineral rights in the property. As the lease itself was a title transaction, there can be no dispute that the release of rights under that lease qualifies as a title transaction as well.”

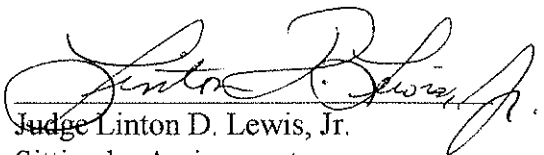
This Court finds that the K.S.T. Lease filed in 1983 and the K.S.T. Release filed in 1989 are title transactions and savings events pursuant to R.C. 5301.56. Looking forward from 1989, in order to protect their severed interest, the Defendants must exhibit another savings event within the next twenty years. On May 3, 2005 Defendant Bedway entered into a lease with Mason Dixon Energy, Inc. which was filed on June 16, 2005. Said lease was subsequently assigned to Defendants Eric Petroleum Corporation and Chesapeake Exploration L.L.C. thus protecting the mineral interest herein.

The severed mineral interest owners have complied with the requirements of the 1989 Ohio Dormant Mineral Act. The surface owners have not pursued their claim by following the requirements of the 2006 Ohio Dormant Mineral Act.

## CONCLUSION

This Court considered Plaintiff Charles J. Schucht et al.'s Motion For Summary Judgment, Defendant Bedway's Motion For Summary Judgment, Defendant Eric Petroleum's Motion For Summary Judgment and Chesapeake Exploration's Partial Motion For Summary Judgment. After having considered the same and construing the evidence most strongly in favor of the nonmoving party and having determined that there is no genuine issue as to any material fact and further that reasonable minds can come to but one conclusion and that there is no just reason for delay, this Court grants Defendant Bedway's Motion For Summary Judgment, grants Defendant Eric Petroleum's Motion For Summary Judgment, grants Defendant Chesapeake Exploration's Partial Motion For Summary Judgment and denies Plaintiff Charles J. Schucht et al.'s Motion For Summary Judgment. Costs herein shall be taxed to the Plaintiffs. This is a final appealable order.

**IT IS SO ORDERED.**

  
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Judge Linton D. Lewis, Jr.  
Sitting by Assignment

WITHIN THREE (3) DAYS OF ENTERING THIS JUDGMENT UPON THE JOURNAL, THE CLERK SHALL SERVE NOTICE OF THIS JUDGMENT AND ITS DATE OF ENTRY UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR. SERVICE SHALL BE MADE IN A MANNER PRESCRIBED IN CIVIL RULE 5 (B) AND SHALL BE NOTED IN THE APPEARANCE DOCKET. CIVIL RULE 58.

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