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

JANE C. SCHILLLO
Plaintiff

Case No. CVH-2015-0146

vs.

JUDGMENT ENTRY

CHESAPEAKE EXPLORATION, LLC , ET AL.
Defendants

This matter came before the Court on July 24, 2017 for Final Pretrial Conference and Motion Hearing. Plaintiff Jane C. Schillo was present and was represented by Attorney Jeffrey Corcoran and Attorney Charles L. Kidder. Attorney Clay K. Keller was present representing Defendant Chesapeake Exploration LLC and Chesapeake representative Seth Wehr was also present. Attorney Thomas H. Hill was present representing Eric Petroleum.

The Court heard argument on Defendants Motions for Summary Judgment and Plaintiff's Opposition to the same.

Facts

Jane C. Schillo and Eric Petroleum entered into an oil and gas lease on September 3, 2009. Eric Petroleum assigned its "deep lease" rights to Ohio Buckeye Energy LLC which later merged into Chesapeake. Eric Petroleum notified Jane C. Schillo of the assignment by letter dated November 22, 2010.

Chesapeake tendered the 2011 delay rental to the correct address: 710 Knighton Road, Rock Hill, South Carolina 29732 prior to the August 16, 2011 deadline. Jane C. Schillo has lived at 710 Knighton Hill Road address since 1993 and has no other residences.

Chesapeake filed and recorded a Notice of Extension on August 29, 2014. Plaintiff claims said action constitutes slander of title. Defendants claim that no slander occurred and Plaintiff's claims are barred by applicable statute of limitations.

Summary Judgment

Summary Judgment is appropriately granted when (1) No issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Esber Beverage Co. v. Labatt USA Operating Co.*, 138 OHIO St. 3d 71 73 (2013) (quoting *M.H. v. Cuyahoga Falls*, 134 OHIO St. 3d 65, 68 (2012).)

ISSUE ONE: Did Chesapeake breach its contract by not paying delay rentals on time thus voiding the contract?

The lease between Plaintiff and Eric Petroleum in pertinent part reads:

Paragraph 2:

This lease shall continue in full force and the rights hereunder be quietly enjoyed by the lessee for a term of five (5) years and so much longer thereafter as oil and gas or their constituents are produced or are capable of being produced on the premises in paying quantities, in the judgment of the lessee, or as the premises

shall be operated by the lessee in search for oil and gas and as provided in paragraphs 3 and 7 following. Lessee has the option to extend this lease for an additional term of five (5) years from the expiration of the primary term of this lease, said renewal to be under the same terms and conditions as contained in this lease. Lessee, its successors, heirs and assigns may exercise this option to renew if on or before the expiration date of the primary term of this lease, Lessee pays or tenders to the Lessor or to the Lessor's credit, the sum of ten dollars ($10.00) per net mineral acre.

Paragraph 3:

This lease, however shall become null and void and all rights of either party hereunder shall cease and terminate unless, within twelve (12) months from the date hereof, operations for the commencement of a well shall have begun on the premises, or unless the Lessee shall thereafter pay a delay rental of five dollars ($5.00) per acre, per year, payments to be made annually until operations for the commencement of a well shall have begun ...

Paragraph 5:

All money due under this lease shall be paid or tendered to the Lessor by check made payable to the order of and mailed as the SAME AS ABOVE and the said named person shall continue as Lessor's agent to receive any and all sums payable under this lease regardless of changes in ownership in the premises, or in the oil and gas or their constituents, or in the rentals or royalties accruing hereunder until delivery to the Lessee of the notice of change of ownership as hereinafter provided.

Paragraph 9:

The consideration, land rentals or royalties paid and to be paid, as herein provided, are and will be accepted by the Lessor as adequate and full consideration for all the rights herein granted to the Lessee, and further right of drilling or not drilling of the leased premises, whether to offset producing wells on adjacent or adjoining lands or otherwise, as the Lessee may elect.

Paragraph 17:

In the event Lessor considers that Lessee has not complied with any of its obligations hereunder, Lessor shall notify Lessee in writing setting out specifically in what respects Lessee has breached this contract. Lessee shall then have thirty (30) days after receipt of such notice within which to meet or commence to meet all or part of the breaches alleged by Lessor. The service of said notice shall be the precedent to the bringing of any action by Lessor on said lease for any cause, and no such action shall be brought until the lapse of thirty (30) days after service of such notice on Lessee. Neither the service of said notice

nor the doing of any acts by Lessee aimed to meet any or all of the alleged breaches shall be deemed an admission or presumption that Lessee has failed to perform all its obligations hereunder.

Plaintiff contends that Defendants neither payed nor tendered delay rental payments to her as required by lease thus extinguishing Defendant's lease rights.

The undisputed facts show that Defendant Chesapeake timely sent a delay rental payment to Plaintiff in accordance with the lease. Said payment was sent to the Plaintiff's known address which to date has not changed. Plaintiff did not sign for or take possession of the certified mailing.

The interpretation of a written contract is a matter of law. *Arnott v. Arnott*, 132 OHIO St. 3d 401 oil and gas leases are contracts, "and the terms of the contract with the law applicable to such terms must govern the rights and remedies of the parties." *Harris v. Ohio Oil Co.* 57 OHIO St. 118, 129 (1897) "where the terms of an existing contract are clear and unambiguous, the Court cannot, in effect, create a new contract by finding an intent not expressed in the clear language employed by the parties" *Alexander v. Buckeye Pipe Line Co.*; 53 OHIO St. 2nd 241, 246 (1978).

Paragraph five (5) of the lease provides that "all money due or payable under this lease shall be paid or tendered to the lessor by check made payable to the order of and mailed to the same as above..." It is undisputed Chesapeake mailed the payment for delay rental on or before August 16, 2011.

Ohio law recognizes that delay rentals under an oil and gas lease with an "unless clause" are "due" on or before the date specified in the lease. *Meek v. Cooney* (6 OHIO C.D. 553, 1904 WL 1159 @ 1 (Apr. 1904).

Paragraph five (5) explicitly and unambiguously describes how to pay monies due under the lease. Paragraph five (5) states "all money due under this lease shall be paid or tendered to the lessor by check made payable to the order of and mailed as the same as above..."

Defendant Chesapeake followed the express language of the lease in tendering the delay rental to the Plaintiff prior to August 16, 2011 by certified mail. The effect of Plaintiff not retrieving her certified mail does not void the lease. The tender in and of itself renders Plaintiff's claim without merit based upon the express and unambiguous terms of Paragraph five (5).

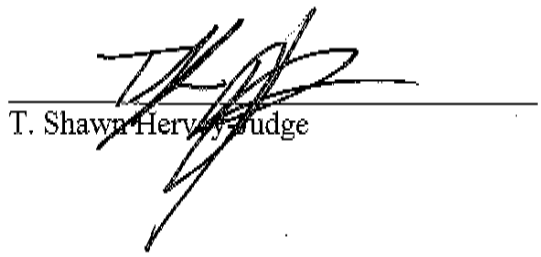
Defendant Chesapeake, by continuing to timely tender delay rentals to Plaintiff have preserved the lease. The question of their acceptance is not determinative of the issue as Plaintiff contends.

It would be moronic to allow leases to expire by simply allowing lessors to ignore tendered payment of delay rentals. This Court declines to encourage lessors' inaction of accepting or receiving payment as bargained for in contract to void the agreement.

ISSUE TWO: Slander of Title

Plaintiff's claim for slander of title is moot as the lease is still valid and in effect.

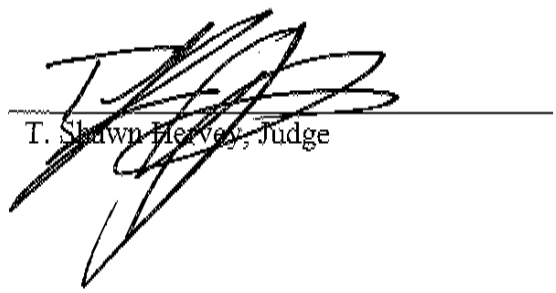
SO ORDERED.



T. Shawn Hervey, Judge

NOTICE: FINAL APPEALABLE ORDER

This is a final appealable order. For each party who is not in default, serve notice to the attorney for each party and to each party who represents himself or herself by regular mail service with certificate of mailing making notation of same upon case docket.



T. Shawn Hervey, Judge

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