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I. Introduction

Pennsylvania oil and gas law saw a significant number of developments over the past year. The Supreme Court of Pennsylvania, in two notable decisions, affirmed the validity of historical "title wash" tax sales conveying severed oil and gas estates (*Herder Spring Hunting Club*) and also affirmed the application of "estoppel by deed" to oil and gas leases (*Shedden*).

The Pennsylvania Superior Court decided several cases involving disputes over ownership of oil and gas rights. Notably, the court rejected surface owner claims to oil and gas predicated on a defective quiet title action (*Northern Forests II, Inc.*) and determined whether historically

contested deeds reserved or excepted oil and gas interests (*Wright* and *Steiminger*). The superior court also rejected several challenges to oil and gas leases by lessors, including: (1) lessors' attacks upon a lessee's allocation of sale proceeds based upon proportionate shares of wellhead production (*Hall*); (2) lessors' argument that production rights were severable from storage rights (*Loughman*); (3) lessors' argument that operated acreage was severable from unoperated acreage (*Seneca Resources Corp. v. S & T Bank*); and (4) a lessor's argument that a lack of production records was sufficient evidence of nonproduction to support lease termination (*Novosel*).

The long-awaited Chapter 78 regulations on oil and gas operations continued their tortuous path through agency and executive reviews. Currently the unconventional Chapter 78a regulations are on the path to administrative approval, while the proposed conventional regulations have been rejected by the legislature and Governor Wolf.

The commonwealth court (which has jurisdiction over appeals from Pennsylvania state agencies and other governmental actions) continues to deal with the fallout of *Robinson Township v. Commonwealth* including a challenge to the Department of Environmental Protection's enforcement of enjoined parts of Act 13, and the question of the continued validity of the *Payne* test for challenges to environmental laws (*Brockway Borough Municipal Authority*). Other diverse controversies considered by the commonwealth court include a challenge to a "local community rights ordinance" restricting oil and gas operations (*Pennsylvania General Energy Co. v. Grant Township.*) and a decision rejecting a challenge to a twenty-three-year-old tax sale (*Pfeifer*).

There were relatively fewer notable federal Pennsylvania oil and gas decisions as compared to the last few years. The Third Circuit rejected severed oil and gas lessors' claim that production of oil and gas from surface wells constitute a trespass (*McWreath)* while the Middle District Court held that a recorded memorandum of oil and gas lease put a purchaser of the leasehold on inquiry notice as to the existence and terms of the unrecorded lease (*Montrose Hillbillies II, LLP*).

II. Supreme Court Cases

A. Herder Spring Hunting Club v. Keller, 143 A.3d 358, (Pa. 2016).

The Pennsylvania Supreme Court held that a 1935 "title wash" tax sale conveyed both the surface estate and the previously severed oil and gas estate to purchaser.

Plaintiff, the owner of the Eleanor Siddons Warrant covering 460 acres in Centre County, filed an action to quiet title to the oil and gas in and under the tract.[1] Defendants' ancestors, the Kellers, had conveyed the Warrant in 1899, reserving the subsurface rights, including the natural gas. There was no evidence that the Kellers complied with the Act of 1806, which required purchasers of unseated lands to notify the county commissioners of the transfer.[2] The Warrant was subsequently sold at a tax sale in 1935 under the Act of 1815,[3] which provided for the sale of "unseated" lands to satisfy delinquent tax obligations. The Warrant was held by the County Commissioners until 1941, when it was then deeded to a private party, and eventually conveyed to plaintiff in 1959.[4] The 1959 Deed provided that the Warrant was conveyed subject to all exceptions and reservations contained in the chain of title, without specifying the 1899 exception made by the Keller's.[5]

Plaintiff contended that the 1935 tax sale conveyed both the surface and subsurface rights, due to the Keller's' failure to notify the county commissioners of their reserved subsurface estate. Defendants argued the 1935 tax sale conveyed only the surface estate, and that the 1959 Deed estopped plaintiff from claiming the oil and gas estate. The trial court granted summary judgment in favor of the Keller heirs. On appeal, the Pennsylvania Superior Court reversed and remanded for entry of summary judgment in favor of the plaintiff.[6]

The Pennsylvania Supreme Court began its analysis by reviewing the history of unseated tax sales and the applicable statutes. "Unseated" land is land that was not developed with residential or other structures, or developed for mining or agricultural use.[7] The Act of 1815 changed the tax sale law by creating a presumption that tax sales were properly executed, whereas strict proof was formerly required.[8] Compliance with the Act required notice of sale by publication in the name of the original warrantee. The Act also provided for a two year redemption period to protect the

1. Herder Spring Hunting Club v. Keller, 143 A.3d. 358, 360 (Pa. 2016).
2. *Id.*
3. *Id.* (citing 72 P.S. § 6136).
4. *Id.* at 361.
5. *Id.*
6. *See id.* at 361-62; Herder Spring Hunting Club v. Keller, 93 A.3d 465 (Pa. Super. Ct. 2014).
7. *Herder Spring*, 143 A.3d at 363.
8. *Id.* at 365.

interest of the owner and for the county commissioners to take title to land not purchased at the public sale.[9]

An effect of the tax sale law was the process of "title washing," in which the owner of a warrant would let the property be sold for delinquent taxes and then purchase the property, directly or through a straw party, effectively reuniting the surface estate with the subsurface estate that had previously been severed for ownership purposes, but were assessed jointly for tax purposes. This "title washing" process was first recognized in *Powell v. Lantzy*[10] and *Hutchinson v. Kline*[11].[12] The court in *Powell* justified this result on the grounds that the taxes were a burden on both the surface and subsurface estates, and that the surface owner could acquire the subsurface estates through tax sale because the subsurface estate owner had not properly paid the taxes due on the warrant.[13]

The Act of 1806 amended the tax assessment law by creating a duty for any owner of unseated lands to provide the county commissioners with a signed statement describing the land and the name of the original warrantee.[14] The penalty for failing to report this information was four times the original amount of taxes.[15]

The Pennsylvania Supreme Court concluded that if neither the Kellers nor the purchasers in 1899 notified the county commissioners, the tax assessment would cover the entire Siddons Warrant.[16] The court rejected the Keller heirs' claims that the 1936 deed only conveyed the surface estate and that the reserved rights had no value in 1935. The court noted the Keller heirs failed to challenge the tax sale during the two year redemption period, as required by the Act of 1815.[17] Therefore, the court held the 1935 tax sale conveyed the severed subsurface estate formerly held by the Kellers.[18] The court also held that notice by publication under the Act of 1815 did not violate the Keller heirs' due process rights due to the difficulties in ascertaining the ownership of unseated lands and the right to

9. *Id.*
10. 34 A. 450 (Pa. 1896).
11. 49 A. 312 (Pa. 1901).
12. *Herder Spring*, 143 A.3d at 366-67.
13. *Id.* at 367.
14. *Id.* at 368.
15. *Id.*
16. *Id.* at 370.
17. *Id.* at 371.
18. *Id.* at 375 (citing Proctor v. Sagamore Big Game Club, 166 F. Supp. 465, 476-477 (W.D. Pa. 1958)).

redeem the property after sale, even under the due process analysis of *Mennonite Board. of Missions v. Adams*, 462 U.S. 791 (1983).[19] Finally, the court held that the 1959 Deed did not reserve any interest, since at the time of transfer the prior reservation had already been extinguished. The Pennsylvania Supreme Court thus ultimately affirmed the superior court's order in favor of the plaintiff.[20]

B. Shedden v. Anadarko E. & P. Co., 136 A.3d 485 (Pa. 2016).

The Pennsylvania Supreme Court affirmed a superior court ruling that estoppel by deed barred lessors from denying that lease of oil and gas rights pertained to oil and gas underlying all of lessors' tract, despite the fact that the lease bonus paid to lessors was only based on one half of the oil and gas acreage underlying lessors' tract.

Landowners leased out the oil and gas under a sixty-two acre parcel in 2006 and warranted title to the oil and gas.[21] Subsequently, landowners and lessee discovered that one half of the oil and gas rights were reserved to third parties in the chain of title, and lessee only paid bonus on thirty-one acres. Thereafter, landowners quieted title to the reserved rights.[22] Landowners filed a declaratory judgment action seeking a determination that the lease covered only one half of oil and gas rights underlying the sixty-two acre tract. The trial court granted summary judgment in favor of the lessee, which was affirmed by the superior court.[23]

On appeal from the superior court, the Pennsylvania Supreme Court found that the lease was not modified by the payment of bonus on only one half of the oil and gas acreage contemplated in the original lease, relying on the lesser interest provision in the lease to conclude the bonus payment was proper under the original terms of the lease.[24] The supreme court also rejected lessors' claim that lessees were required to establish detrimental reliance to apply the doctrine of estoppel by deed to preclude lessor from denying that the lease conveyed title to all the oil and gas under the subject tract:

---

19. *See id.* at 377 (citing City of Philadelphia v. Miller, 49 Pa. 440, 451 (1865)); *see also* Mennonite Bd. of Missions v. Adams, 462 U.S. 791 (1983).

20. *Id.* at.

21. Shedden v. Anadarko E. & P. Co., 136 A.3d 485, 487 (Pa. 2016).

22. *Id.*

23. *Id.* at 488.

24. *Id.* at 490 (citing T.W. Phillips Gas & Oil Co. v. Jedlicka, 42 A.3d 261, 267 (Pa. 2012).

> The principle is that when a person has entered into a solemn engagement by deed, he or she will not be permitted to deny any matter that he or she has asserted therein for a deed is a solemn act to any part of which the law gives effect as the deliberate admission of the maker; to him or her it stands for truth, and in every situation in which he or she may be placed with respect to it, it is true as to him or her. Estoppel by deed promotes the judicious policy of making certain formal documents final and conclusive evidence of their contents.[25]

The court affirmed summary judgment in favor of lessee.[26]

III. Superior Court Cases

A. Northern Forests II, Inc. v. Keta Realty Co., 130 A.3d 19 (Pa. Super. Ct. 2015).

The Pennsylvania Superior Court affirmed a Lycoming Court of Common Pleas decision striking a 1989 default judgment against subsurface owners, holding the surface owners did not acquire severed subsurface interests by adverse possession. The case is illustrative of the danger inherent in relying on default judgments where notice was made by publication and the difficulty surface owners face in prevailing on adverse possession claims to subsurface estates without actual production of the oil and gas.

In *Northern Forests II*, the surface owner filed a quiet title action in 1988 against former subsurface estate owners and subsequently filed a motion for leave to obtain service by publication. Default judgment was entered in the surface owner's favor in 1989.[27] In 2012 and 2013 energy lessees and grantees filed petitions to strike or open the default judgment, claiming the default judgment was void because indispensable parties were not joined in the 1989 action and that counsel's affidavit was insufficient to support notice by publication.[28] The trial court struck the 1989 judgment.[29] The surface owners subsequently amended the complaint, adding counts for

25. *Id.* at 492 (quoting 28 Am. Jur. 2d *Estoppel by Deed or Bond* § 5).
26. *Id.* at 493.
27. N. Forests II, Inc. v. Keta Realty Co., 130 A.3d 19, 25 (Pa. Super. Ct. 2015).
28. *Id.* at 26.
29. *Id.*

adverse possession and declaratory judgment. The trial court granted preliminary objections and dismissed the amended complaint.[30]

On appeal, the superior court concluded the 1989 judgment was jurisdictionally defective because the surface owner failed to join indispensable parties, several subsurface property owners.[31] The court specifically rejected plaintiff's contention that naming "successors and assigns" of former owners was sufficient for due process.[32] The superior court also held the judgment was defective because counsel's affidavit was facially insufficient under Civil Procedure Rule 430 in that it failed to specify what efforts were made to locate defendants.[33] The court rejected arguments that the passage of time should bar the court from striking the judgment: "Unlike fine wine, void judgments in Pennsylvania do not improve with age; void *ab initio*, void for all time."[34]

The superior court also affirmed dismissal of plaintiff's claims of adverse possession, holding that adverse title to oil and gas can only be achieved by actual possession, meaning drilling and production of the minerals.[35] The execution of leases and the defective 1989 judgment were insufficient to maintain an adverse possession claim.[36]

B. Hall v. CNX Gas Co., 137 A.3d 597 (Pa. Super. Ct. 2016).

The Pennsylvania Superior Court rejected lessors' claims that lessee's allocation of royalty from point of sale by proportionate share of production as measured at the wellhead violated lease.

Lessors executed leases in 1998 and 2002 that provided for payment of royalty based upon "one-eighth of the net amount realized by Lessee computed at the wellhead."[37] The Lease also expressly permitted operations in conjunction with adjacent lands and permitted lessee to use production for its operations.[38] Gas was measured at the wellhead and then commingled with gas from other wells prior to sale. Royalty from the point

30. *Id.* at 27.

31. *Id.* at 29 (citing Orman v. Mortgage I.T., 118 A.3d 403, 406-407 (Pa. Super. Ct. 2015)).

32. *Id.* at 30.

33. *Id.* at 31 (citing Deer Park Lumber, Inc. v. Major, 559 A.2d 941 (Pa. Super. Ct. 1989)).

34. *Id.* at 34-35 (citing Romberger v. Romberger, 139 A. 159, 160 (1927)).

35. *Id.* at 36 (citing Hoffman v. Arcelormittal Pristine Res., Inc., No. 11CV0322, 2011 WL 1791709 (W.D. Pa. May 10, 2011)).

36. *Id.* at 37.

37. Hall v. CNX Gas Co., 137 A.3d 597, 598 (Pa. Super. Ct. 2016).

38. *Id.* at 599.

of sale was allocated among lessors according to each lessor's proportionate share of gas as measured at the wellhead.

Lessors filed action for breach of contract and sought an accounting. The trial court sustained preliminary objections by the lessee that lessors were not entitled to royalty on lost or used gas.[39] Lessors amended the complaint to allege that pro rata allocation of royalty based upon share of wellhead production was not permitted by lease.[40] The trial court granted summary judgment in favor of the lessees on the amended counts.[41]

On appeal, lessors argued that without language permitting a proportionate allocation of lost and used gas, lessee could deduct from their royalties only the amount of gas actually lost or used as measured from each well.[42] The superior court concluded that no royalty was due on lost or used gas under the terms of the lease. It accordingly held there was no allocation of lost and used gas, and no ambiguity or missing term in the lease.[43]

C. Loughman v. Equitable Gas Co., 134 A.3d 470 (Pa. Super. Ct. 2016).

The Pennsylvania Superior Court held that a lease's storage and production rights were not severable and that accordingly, assignment of production rights did not sever lease.

Oil and gas lessor filed a declaratory judgment action in 2012 seeking a declaration that a 1966 lease had terminated as to production rights.[44] The lease was a dual purpose lease that provided for both production of oil and gas and storage of natural gas. Lessor argued that a 2011 sublease of production rights severed production rights, resulting in their termination for failure to produce oil and gas. The trial court denied lessor's motion for summary judgment and lessor appealed.[45]

On appeal, the superior court noted that the *habendum* clause of the lease provided for the lease's extension by either production or storage:

> To have and to hold the said land and privileges for the said purposes for and during a period of Ten (10) Years from October 7, 1966, **and as long after commencement of operations as**

39. *Id.* at 600.
40. *Id.*
41. *Id.*
42. *Id.* at 601.
43. *Id.* at 604.
44. Loughman v. Equitable Gas Co., 134 A.3d 470, 471 (Pa. Super. Ct. 2016).
45. *Id.* at 472.

> **said land is operated for the exploration or production of gas or oil, *or* as gas or oil is found in paying quantities thereon, *or* stored thereunder *or* as long as said land is used for the storage of gas *or* the protection of gas storage on lands in the general vicinity of said land. The Lessee shall be the sole judge of when and if said land is being used for the storage of gas or the protection of gas storage on lands in the general vicinity of said land.**[46]

By a 2011 sublease, lessee-assignee Equitrans, L.P. subleased to EQT Production Company the production rights under the lease. The sublease expressly provided that it was not intended to sever production and storage rights under the lease.[47]

The superior court recognized that the language of the contract controls its meaning, but that the intent of the parties should be examined if the language of the contract does not clearly address severability.[48] The court concluded that the lease as a whole, and in particular, the use of the disjunctive "or" in the *habendum* clause indicated intent to continue the lease in the event of either storage or production.[49] Moreover, the language of the sublease supported a lack of intent to sever the lease.[50] Therefore, the superior court affirmed the trial court's judgment in favor of the lessees.[51]

D. Seneca Resources Corp. v. S & T Bank, 122 A.3d 374 (Pa. Super. Ct. 2015).

The Pennsylvania Superior Court held that a lease was not severable between operated and non-operated acreage and additionally that there was no implied covenant to develop deep horizons.

Lessee under a 1962 lease of 25,000 acres in Elk and Jefferson Counties (some of which were already being operated at the date of execution) filed a declaratory judgment action after lessor claimed the lease was terminated as to the unoperated acreage on the lease.[52] Lessors filed a motion for summary judgment claiming lessee breached an implied covenant to

46. *Id.* at 473 (emphasis in original).
47. *Id.* at 474.
48. *Id.* at 474-75 (citing Jacobs v. CNG Transmission Corp., 772 A.2d 445, 450 (2001)).
49. *Id.* at 475-76.
50. *Id.* at 476.
51. *Id.*
52. Seneca Res. Corp. v. S & T Bank, 122 A.3d 374, 377 (Pa. Super. Ct. 2015).

develop deep gas horizons. The trial court granted summary judgment in favor of lessee and lessors appealed.[53]

The lease's *habendum* clause provided that the lease should extend after the 40 year primary term "as long thereafter as oil or gas or either of them is stored in, produced or withdrawn from all or any portion of said leased premises by the Lessee, its successors or assigns, subject to payments and cancellation as hereinafter set forth."[54] The lease additionally provided for a one-eighth royalty on production and also for the payment of annual rentals for the unoperated acreage.[55] The court concluded that the language of the lease did not support the severability of the leases unoperated acreage.[56] The court reasoned that neither the leasing clause nor the *habendum* clause made a distinction between operated and unoperated acreage.[57] The lease also provided for the conversion of unoperated acreage to operated acreage without any time limitation.[58]

Under Pennsylvania law, there is an implied covenant to develop resources where the only compensation to the landowner is royalty payments from production.[59] However, the specific agreement of the parties may preclude the application of the doctrine. For example, the doctrine will not apply when the parties have agreed the landowner will be compensated if the lessee does not actively develop the resource.[60]

The court held that the fact there was already production from the premises at the time the lease was executed did not preclude the application of an implied covenant to develop.[61] However, the court held that under the *habendum* clause of the lease, production from any part of the leased premises extended the lease as to all of the leased premises.[62] The court

53. *Id.* at 378.

54. *Id.* at 382.

55. *Id.* at 382-83.

56. *Id.* at 383-84.

57. *Id.* at 383.

58. *Id.* at 384 ("[T]he fact that consideration provisions include royalties, delay rentals, and storage rentals, and that unoperated acreage may be converted to operated acreage at any time, reflect an intent by the parties to enter an agreement to achieve the fullest development of the entire 25,000 acres of the leased premises.").

59. *Id.* at 385.

60. *See id.* at 385-86; *see also* Jacobs v. CNG Transmission Corp., 772 A.2d 445, 454-455 (Pa. 2001).

61. *See Seneca Res.*, 122 A.3d 374 at 386 (citing Hill v. Joy, 24 A. 293 (Pa. 1892)); *see also* Delmas Ray Burkett, II Revocable Trust ex rel. Burkett v. Exco Res. (PA), No. 2:11-CV-1394, 2014 WL 585884 (W.D. Pa. Feb. 14, 2014)).

62. *See Seneca Res.*, 122 A.3d 374 at 387.

thus concluded that there was no implied covenant to develop the undeveloped acreage and affirmed the trial court judgment.[63]

E. Wright v. Misty Mountain Farm, 125 A.3d 814 (Pa. Super. Ct. 2015).

The Pennsylvania Superior Court affirmed a Bradford County Court of Common Pleas holding that a 1950 deed did not convey any interest in the oil and gas.[64]

By a 1950 deed, the Bucks conveyed property to the Wrights, subject to the following language:

> Excepting and reserving unto the herein grantors [the Bucks] all rights in oil, gas and minerals on property hereby conveyed with the right of ingress and egress and the further right to build or establish coal tipples, and to remove said minerals with least damage as possible to said lands, *said oil and gas having been leased under Lease dated June 16, 1949, as more fully appears in Bradford County, Pennsylvania, Lease Book 20 at page 57*.
>
> Further, reserving unto the herein grantors the right to maintain, operate and use saw mill on said property *for a period of six months from the date hereof, all property of said saw mill to be fully removed from said premises six months from the date hereof.*[65]

The lease referenced in the 1950 deed terminated by 1971.[66] Patricia Wright (successor to the Wrights) acquired the property in 1996 and subsequently entered into two leases: one in 2001, the second in 2005.[67]

In 2010, the Bucks' estate conveyed the subsurface rights of the property to Misty Mountain Farms, LLC ("Misty Mountain").[68] Wright filed a complaint and an amended complaint seeking a declaratory judgment that Misty Mountain had no ownership rights in the oil, gas or minerals beneath

63. *See Seneca Res.*, 122 A.3d 374 at 387 (citing Caldwell v. Kriebel Res. Co., 72 A.3d 611, 615 (Pa. Super. Ct. 2013)); *see also Delmas Ray Burkett*, No. 2:11-CV-1394, 2014 WL 585884 (W.D. Pa. Feb. 14, 2014).

64. Wright v. Misty Mountain Farm, LLC, 125 A.3d 814, 822 (Pa. Super. Ct. 2015).

65. *Id.* at 817 (emphasis in original).

66. *Id*.

67. *Id*.

68. *Id*.

the surface of the property.[69] Misty Mountain filed a motion for summary judgment, which was granted, and Wright appealed.[70]

First, Wright argued that the law of the case doctrine prohibited the trial court from entering summary judgment against her because the court had previously denied the same argument in Misty Mountain's preliminary objection and motion for judgment on the pleadings.[71] The court held the pretrial ruling denying preliminary objections of Misty Mountain was not the law of the case because a trial judge may always revisit his or her own pretrial rulings without violating law of the case doctrine.[72]

Second, Wright argued summary judgment was improper under the language in the 1950 deed because there was a genuine issue of material fact as to the intent of the parties. Wright argued that the language in the 1950 deed excepted the oil and gas interests only during the term of the 1949 lease and when the lease expired the oil, gas and mineral interests vested with Wright, the grantee.[73]

While the "terms 'exception' and 'reservation' [are often] used interchangeably in deeds,"[74] the intent of the parties actually governs whether the language creates an exception or a reservation. A reservation reserves a grantor's rights in "incorporeal things that do not exist at the time the conveyance is made."[75] If there is an "exception to an exception," title to the thing passes to the grantee.[76] In this case, the saw mill paragraph in the 1950 deed was an exception to an exception, whereby the six month expiration date cut off the grantors rights. In contrast, the oil, gas and minerals paragraph in the 1950 deed was an exception, with no end date.[77] In addition, no words of inheritance are necessary for an exception.[78] Since the grantors already held title to the oil, gas and minerals and never parted with them, the exception language in the 1950 deed did not require words of inheritance.[79]

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69. *Id*.
70. *Id*.
71. *Id.* at 818.
72. *Id.* at 818.
73. *Id*.
74. *Id.* at 819 (quoting Ralston v. Ralston, 55 A.3d 736, 741-42 (Pa.Super.2012)).
75. *Id*. (quoting Ralston v. Ralston, 55 A.3d 736, 741-42 (Pa.Super.2012)).
76. *Id.*at 821.
77. *Id*.
78. *Id.* (citing Silvis v. Peoples Natural Gas Co., 126 A.2d 706 (Pa. 1956)).
79. *Id.* at 822.

F. Novosel v. Seneca Resources, No. 1704 WDA 2014, 2016 WL 237954 (Pa. Super. Ct. Jan. 20, 2016).

The Pennsylvania Superior Court affirmed a trial court holding that a lessor failed to meet her burden of proof in attempting to show oil and gas was not produced in paying quantities on the leased property, based solely upon lack of production records and failure to make royalty payments.

An 1890 oil and gas lease leased two parcels of land for twenty-five years, and "as long thereafter as oil or gas is produced in paying quantities."[80] Three wells were drilled on the first parcel; no well was drilled on the second parcel ("leased property").[81] In 1992, Plaintiff acquired fee simple ownership of the leased property.[82] Lessee's successor-in-interest entered into an operating agreement with co-defendant, who informed plaintiff of its intention to drill on the leased property and requested production records for the three wells from American Refining Group Inc. ("ARG"). However, ARG only held records for the two years prior to the request.[83] Plaintiff considered the lease expired on its own terms and recorded a notification of termination. Defendant began producing from the three wells and drilled nine additional wells. All twelve wells are currently producing.[84]

Plaintiff initiated a motion for partial summary judgment asserting the 1890 lease had expired and no activity had occurred on the leased property.[85] Defendants filed a motion for summary judgment asserting: (i) plaintiff failed to meet her burden of proof that oil and gas were not produced in paying quantities, and (ii) plaintiff's claims were barred by laches and/or the statute of limitations.[86] The Pennsylvania Court of Common Pleas denied plaintiff's motion, granting defendants' motion.[87] Plaintiff appealed and the superior court affirmed.[88]

Plaintiff sought to terminate the lease because she did not receive any royalty payments during the twenty-year period from 1986–2006 and because defendant could not furnish evidence of production records from

80. Novosel v. Seneca Res., No. 1704 WDA 2014, 2016 WL 237954, at *1 (Pa. Super. Ct. Jan. 20, 2016).
81. *Id.*
82. *Id.*
83. *Id.* at *2.
84. *Id.*
85. *Id.* at *1.
86. *Id.*
87. *Id.* at *2.
88. *Id.* at *6.

1996–2006.[89] The superior court's analysis was guided by the following principle:

> When a party seeks summary judgment, a court shall enter judgment whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense that could be established by additional discovery. . . . In considering the merits of a motion for summary judgment, a court views the record in the light most favorable to the nonmoving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.[90]

To make her case, plaintiff relied solely on the fact she did not receive any royalty payments, acknowledging that she was unaware of any oil and gas operations on the leased property and that she never informed anyone when she acquired a royalty interest in the leased property.[91] It was plaintiff's burden to prove a lack of production.[92] Neither plaintiff nor defendant was able to produce evidence documenting whether production occurred on the leased property. Plaintiff asserted the lack of production records and failure to receive royalty payments as sufficient evidence to find nonproduction. In response, defendant asserted proof of production prior to 1986 and after 2005 prove production took place during the interim. The trial court found gaps in evidence and refused to decide the issue based on speculation.[93] The superior court concurred, holding that plaintiff's evidence of nonproduction was insufficient as a matter of law.[94]

The superior court found the issue regarding laches and the statute of limitations was moot due to its conclusion that plaintiff failed to meet her burden of proof on her claim that oil and gas were not produced in paying quantities from the leased property.[95]

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89. *Id.* at *2.

90. *Id.* at *3 (quoting Swords v. Harleysville Ins. Cos, 883 A.2d 562, 566-67 (Pa. 2005)).

91. *Novosel*, 2016 WL 237954, at *4.

92. *Id.* at *5 (citing T. W. Phillips Gas & Oil Co. v. Jedlicka, 42 A.3d 261, 267 (Pa. 2012)) ("The burden of proof is on the party seeking to terminate an oil and gas lease.").

93. *Id.*

94. *Id.*

95. *Id.* at *6.

G. Steiminger v. Leopold, No. 291 WDA 2015, 2015 WL 5937259 (Pa. Super. Ct. Sept. 29, 2015).

The Pennsylvania Superior Court affirmed the trial court's decision that grantor's retained oil and gas interest in a 1905 deed ("1905 deed") was a reservation that terminated on death of grantor, not an exception.

In 1905, grantors conveyed a 157-acre parcel subject to the following language:

> Should oil or gas be developed on said premises the proceeds derived therefrom as Royalty should be equally divided between the first and second party hereto, and should any Bonus be obtained for oil or Gas privileges the said first party hereto to receive the one third thereof and the said second party the two thirds of same.[96]

In 1986, plaintiffs acquired seventy-two acres originating from the 1905 Deed, and subsequently entered into a lease with Range Resources, who withheld royalty payments due to the uncertain language in the 1905 Deed.[97] Defendants, heirs of grantors, asserted the 1905 Deed entitled them to "one-half of the oil and gas, lease payments, and royalties" underlying the property.[98] Plaintiffs filed a quiet title action to bar defendants from asserting any interest relating to oil and gas development.[99] The Court of Common Pleas of Washington County granted plaintiffs' motion for judgment on the pleadings and entered a final decree granting the action to quiet title, holding that the 1905 language "created a reservation for grantor, and not an exception," which was "extinguished at grantor's death, and did not pass on to Defendants."[100] Defendants appealed, and the superior court affirmed, adopting the trial court's opinion.

The trial court opinion first noted that the terms "except[ed]" and "reserve[ed]" are generally used interchangeably in deeds (although they have distinct meanings), with the intent of the parties controlling their meanings.[101] One key distinction is that a reservation reserves grantor's rights in "incorporeal things that do not exist at the time the conveyance is

96. Steiminger v. Leopold, No. 291-WDA-2015, 2015 WL 5937259, at *2 (Pa. Super. Ct. Sept. 29, 2015).

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.* at *3 (citing Silvis v. Peoples Natural Gas Co., 126 A.2d 706, 708 (Pa. 1956)).

made."[102] If construed as a reservation, the interest ceases at the death of the grantor, "because the thing reserved was not in existence at the time of granting and the thing reserved vests in the grantee."[103] In order for a reservation to pass to grantor's heirs, it must contain words of inheritance.[104] On the other hand, if a clause is construed as an exception, no words of inheritance are necessary, as the right has never been transferred to the grantee.[105] Grantors are vested with fee interest in exceptions, allowing the thing excepted to pass to their heirs.[106]

The court found the grantor's interest in future hypothetical oil and gas proceeds constituted a reservation, because the proceeds did not exist at the time of the 1905 deed.[107] In addition, the 1905 deed included language "excepting and reserving" coal interests.[108] This, for the court, proved grantors knew how to create exceptions, and the absence of which showed they intended to merely reserve an interest in the oil and gas royalties.

Defendants also argued the oil and gas interest passed to them since the 1905 deed did not contain limitation language.[109] However, the court held the language in the 1905 deed is clear: grantors "reserved one-half of any royalty payments from oil or gas development to themselves and reserved one-third of any bonus payments made for oil and gas."[110] Since no words of inheritance were used, this reservation expired at the grantors' death and their heirs inherited nothing.[111]

IV. Commonwealth Court Cases

A. Ch. 78 Regulations */ Pennsylvania Independent Oil & Gas Association v. Commonwealth,* 135 A.3d 1118 (Pa. Commw. Ct. 2015).

One of the biggest storylines in Pennsylvania oil and gas law in 2015 centered on the Environmental Quality Board's ("EQB") final rulemaking amending 25 Pa. Code Chapter 78 and 78a pertaining to environmental protection performance standards at both conventional and unconventional

102. *Id.* at *3 (quoting Ralston v. Ralston, 55 A.3d 736, 742 (Pa. Super. Ct. 2012)).
103. *Id.* (quoting Ralston v. Ralston, 55 A.3d 736, 742 (Pa. Super. Ct. 2012)).
104. *Id.* (citing *Silvis*, 126 A.2d at 708).
105. *Id.*
106. *Id.* (citing *Silvis*, 126 A.2d at 709).
107. *Id.* at *3.
108. *Id.* at *4.
109. *Id.*
110. *Id.*
111. *Id.*

well sites. The Department of Environmental Protection ("DEP") submitted the rulemaking to EQB in January. EQB adopted the rulemaking in February and submitted it to the Independent Regulatory Review Commission for independent review. In June, after the rulemaking received approval from the Independent Regulatory Review Commission, both the Pennsylvania House of Representatives and the Senate approved legislation eliminating the Chapter 78 regulations pertaining to conventional operators. Governor Wolf signed the bill abrogating the Chapter 78 regulations on June 23. As of the date of this writing, the Chapter 78a regulations are still moving forward and are under review at the Attorney General's office.

Through 2015, Pennsylvania's oil and gas jurisprudence was also still coping with the plurality decision handed down by the Supreme Court of Pennsylvania in *Robinson Township v. Commonwealth*, 83 A.3d 901 (Pa. 2013). Invalidating portions of the Oil and Gas Act, the application and import of *Robinson Township* is still being settled. One case of note is *Pennsylvania Independent Oil & Gas Ass'n v. Commonwealth*, 135 A.3d 1118 (Pa. Commw. Ct. 2015). In *Robinson Township*, the Supreme Court of Pennsylvania enjoined enforcement of section 3215(c) as being a part of the decisional process implemented under section 32315(b), which the court held unconstitutional under Pennsylvania's Environmental Rights Amendment. The controversy in *Pennsylvania Independent Oil & Gas Ass'n* centers on a challenge to DEP's purported use of the Public Resources Form and Pennsylvania Natural Diversity Inventory (PNDI) Policy as a way to enforce section 3215(c) of the Oil and Gas Act. At the time of this writing, Pennsylvania Independent Oil & Gas Association survived DEP's preliminary objections to the organization's standing and failure to exhaust administrative remedies. The commonwealth court subsequently rejected the substantive challenge in *Pennsylvania Independent Oil & Gas Ass'n v. Commonwealth*, No. 321 M.D. 2015, 2016 WL 4547217 (Pa. Commw. Ct. Sept. 1, 2016).

B. Brockway Borough Municipal Authority v. Department of Environmental Protection, 131 A.3d 578 (Pa. Commw. Ct. 2016)

The Pennsylvania Commonwealth Court affirmed an order of the Environmental Hearing Board ("EHB") rejecting a municipal authority's challenge to the Department of Environmental Protection's ("DEP") issuance of an oil and gas drilling permit to Flatirons Development Co. [112]

112. Brockway Borough Mun. Auth. v. Dep't of Envtl. Prot., 131 A.3d 578 (Pa. Commw. Ct. 2016).

The case illustrates the application of the *Payne* Test when determining whether an action violates Pennsylvania's Environmental Rights Amendment.[113]

Flatirons Development Co. drilled a horizontal oil and gas well from a well pad located 960 feet from a water well serving Brockway Municipal Authority's public water system.[114] The artesian flow from the water well ceased for twenty-nine hours during drilling of the oil and gas well and turbidity of the water supply increased. A DEP investigation found no evidence of wrongdoing on the part of Flatirons under the Clean Streams Law or the Oil and Gas Act.[115] Subsequently, DEP approved a permit application filed by Flatirons to drill a second horizontal oil and gas well from the same well pad, but with additional requirements and conditions to minimize any potential impact on the water well. Brockway filed a notice of appeal to the EHB, objecting to the issuance of the permit arguing that the second horizontal well will result in violations of the Oil and Gas Act, Clean Streams Law, and the Environmental Rights Amendment.[116] The EHB considered the facts and expert testimony presented by the parties and rejected Brockway's appeal, concluding that Brockway failed to meet its burden of proof.[117] Brockway appealed the EHB decision arguing its conclusions were unsupported by the record evidence.

The commonwealth court affirmed the EHB reiterating that the EHB is the sole finder of fact and has discretion regarding witness credibility, weight of the evidence, and resolution of conflicts of evidence.[118] Notably, the Court reviewed the constitutionality of the permit issuance under the *Payne* Test, which is applied to determine whether or not an action violates the Environmental Rights Amendment. Under *Payne*, the court must weigh the following:

> (1) Was there compliance with all applicable statutes and regulations relevant to the protection of the Commonwealth's public natural resources? (2) Does the record demonstrate a

113. *See* Payne v. Kassab, 312 A.2d 86 (Pa. Commw. Ct. 1973) (providing a three-prong balancing test to determine whether an action violates Pa. Const. art. I, § 27); *see also* Pa. Const. art. I, § 27 ("The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment.").

114. *Brockway*, 131 A.3d at 580.

115. *Id.*; Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 Pa. Stat. Ann. §§ 691.1-691.1001; Oil and Gas Act, 58 Pa. Con. Stat. §§ 3201-3274 (2012).

116. *Brockway*, 131 A.3d at 582-83.

117. *Id.* at 585.

118. *Id.* at 586-87.

> reasonable effort to reduce the environmental incursion to a minimum? (3) Does the environmental harm which will result from the challenged decision or action so clearly outweigh the benefits to be derived therefrom that to proceed would be an abuse of discretion? [119]

The court found that each prong weighed in favor of constitutionality of DEP's issuance of the permit.[120] In arriving at its conclusion, the court noted that Brockway failed to meet the first prong because no violations of the Oil and Gas Act or Clean Streams Law had occurred. Likewise, Brockway failed to meet the second prong because the record demonstrated that DEP made a reasonable effort to minimize any environmental incursion by imposing special conditions on the drilling permit. Finally, the Court stated that Brockway failed to prove or even advance an argument under the third prong.[121]

The Court concluded that, "Because we find that the [EHB's] findings of fact are supported by substantial evidence and its conclusions of law are consonant with those findings, we affirm the [EHB's] adjudication."[122]

C. Pfeifer v. Westmoreland County Tax Claim Bureau, 127 A.3d 848 (Pa. Commw. Ct. 2015).

The Pennsylvania Commonwealth Court affirmed a trial court order granting a cross-motion for summary judgment and dismissing a complaint challenging the validity of a tax sale that occurred 23 years prior to commencement of the challenge.[123] The court refused to equitably toll the statute of limitations on an action to set aside a tax sale agreeing with the trial court that the delay was a result of the Appellants' failure to exercise due diligence.[124] Under the same reasoning, the court rejected Appellants' argument that the running of time for purposes of the doctrine of laches was tolled.[125]

Appellants were the heirs of Lewis and Lucida Thompson, owners of a tract of land who severed the gas rights from the surface by deed in 1902. Those gas rights were sold at an upset sale for nonpayment of taxes in 1990

119. *Id.* at 588-89.
120. *Id.* at 589.
121. *Id.* at 589.
122. *Brockway*, 131 A.3d at 589.
123. Pfeifer v. Westmoreland Cty. Tax Claim Bureau, 127 A.3d 848 (Pa. Commw. Ct. 2015).
124. *Id.* at 851.
125. *Id.* at 854-55.

to Appellees.[126] Appellants learned of their ownership interest in 2011 and 2012, and later learned of the tax sale in 2013. Appellants filed a complaint and motion for summary judgment against the Appellees to set aside the tax sale claiming they did not receive proper notice, arguing the statute of limitations and doctrine of laches were tolled.[127] Appellees filed a cross-motion for summary judgment on the basis that proper notice was given, arguing Appellants' action is barred by the statute of limitations and the doctrine of laches. The Court of Common Pleas of Westmoreland County granted Appellees' motion, dismissing the action.[128] Appellants appealed to the commonwealth court.

Affirming the trial court, the court noted that the cause of action to set aside a tax sale for deficient notice accrues and the statute of limitations begins to run on the date of the tax sale.[129] The tax bureau is required to conduct a "reasonable investigation" to determine the whereabouts of a landowner for purposes of notifying the landowner of a pending tax sale.[130] A "reasonable investigation," is one that "uses ordinary common sense business practices to ascertain addresses."[131] The investigation must go beyond the "mere ceremonial act of notice by certified mail," but "it does not require the equivalent of a title search."[132] Here, the tax bureau published the sale in multiple newspapers in general circulation, mailed by notice by certified mail, return receipt requested to all assessed owners, and posted the notice of sale on the property in the manner required by law.[133] The deed of conveyance memorializing the sale was then duly recorded. The court found that the tax bureau exercised common sense and provided proper notice.

Finding proper notice was provided, the court refused to allow the Appellants' claim to move forward through a tolling of the statute of limitations. Additionally, the court concluded the doctrine of laches barred Appellants' claim. Recognizing that the Appellants did not file a claim until 23 years after the tax sale deed was recorded and notice properly given, the court concluded Appellants "asserted failure to discover the loss was a

126. *Id.* at 850.
127. *Id.*
128. *Id.* at 851.
129. *Id.* (citing Poffenberger v. Goldstein, 776 A.2d 1037 (Pa. Commw. Ct. 2001).
130. *Id.* at 853.
131. *Id.*
132. *Id.*
133. *Id.* at 852.

result of their failure to exercise due diligence."[134] In a concluding note on the policy considerations of its decision, the court noted that "[a]llowing prior owners of tax sale properties to bring challenges to old tax sales would wreak havoc on Pennsylvania's property system."[135] The trial court's order granting Appellees' cross-motion for summary judgment was affirmed and the action dismissed.

V. Federal Cases

A. McWreath v. Range Resources-Appalachia, 645 F. App'x 190 (3d Cir. 2016)

The Third Circuit Court of Appeals affirmed the trial court's grant of summary judgment in favor of oil and gas lessee against lessors' claims of conversion, trespass, and accounting related to wells drilled on surface of leased premises.

Plaintiff lessors, who owned an undivided severed interest in the oil and gas underlying 1,700 acres in Washington County, entered into a lease with a predecessor of defendant in 2007.[136] Defendant entered into leases with the remaining owners and entered into a surface use agreement with the surface owners. In 2013 plaintiffs filed a lawsuit in the Court of Common Pleas of Washington County for trespass, conversion, and an accounting, alleging that the lease did not apply to production from the two wells drilled on the leased acreage.[137] Plaintiffs argued that the 2007 Lease only permitted wells to be located on adjacent parcels. Lessee removed the case to federal district court.[138] The parties filed cross motions for summary judgment and the plaintiffs conceded the dismissal of the trespass and conversion claims, but sought to add a claim to invalidate the lease.[139] The district court ruled in favor of defendant, dismissing plaintiffs' accounting claim and denying leave to amend the complaint.[140]

The lease granted to lessee

> all oil and gas and their constituents, whether hydrocarbon or non-hydrocarbon, underlying the Leasehold, together with such exclusive rights as may be necessary or convenient for [lessee],

134. *Id.* at 855.
135. *Id.*
136. McWreath v. Range Res.-Appalachia, 645 F. App'x 190, 191 (3d Cir. 2016).
137. *Id.* at 192.
138. *Id.*
139. *Id.*
140. *Id.*

> at its election, to explore for, develop, produce, measure and market production from the Leasehold, using methods and techniques which are not restricted to current technology. [141]

The lease also provided that lessee was not granted surface rights:

> Lessor and Lessee acknowledge and agree that Lessee is not granted any right whatsoever to: (i) drill a well on any portion of the surface of the Leasehold; or (ii) install, construct or locate access roads or pipelines on any portion of the surface of the Leasehold. Accordingly, any lands that have been pooled, unitized or combined with all or a portion of the Leasehold in accordance with the terms of this Lease shall bear the burden of all surface development.[142]

Lessor argued they intended to preclude lessee from drilling on the surface estate to reserve their own implied access rights and to restrict the lease to wells set up on adjacent parcels. The Third Circuit rejected these arguments, concluding that the lessors had no implied access rights, due to their grant of all the oil and gas, and that the surface estate represented a "land" pooled or unitized with the lease for purposes of the second sentence.[143] Furthermore, the court held that even if the provision could be interpreted as precluding lessee from drilling on the surface estate, Pennsylvania law would not support the restriction.[144] The restriction would be of no value to the lessors, who had no interest in the surface, because the owners of the surface consented to lessee's use.[145] Therefore, the lease covered production from lessee's wells and lessors were not unleased cotenants entitled to an accounting. The court also held that leave to amend the complaint was properly withheld, due to the fact that plaintiffs did not submit a draft amended complaint and that the amendment would be futile due to the passing of the limitations period for declaratory judgment as to a contract.[146] For the foregoing reasons, the Third Circuit Court of Appeals affirmed the district court's decision.

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141. *Id.* at 193 (emphasis removed).
142. *Id.*at 193-94.
143. *Id.* at 194-95.
144. *Id.* at 195 (citing Vernon Twp. Volunteer Fire Dep't, Inc. v. Connor, 855 A.2d 873, 879 (Pa. 2004)).
145. *Id.*
146. *Id.* at 196.

B. Pennsylvania General Energy Co., v. Grant Township, 139 F. Supp. 3d 706 (W.D. Pa. 2015).

A federal magistrate judge in the United States District Court for the Western District of Pennsylvania invalidated portions of a township's "Community Bill of Rights" ordinance (the "Ordinance") that banned the disposal of waste from oil and gas operations and eliminated the legal rights of corporations in Grant Township, Pennsylvania.[147] Before the court were cross motions for judgment on the pleadings.

Pennsylvania General Energy Company, LLC ("PGE") intended to reclassify an oil and gas well located in Grant Township to allow for the injection and disposal of produced fluids.[148] Grant Township responded by adopting an ordinance which "prohibits activities and projects that would violate the [Community] Bill of Rights and which provides for enforcement of the [Community] Bill of Rights."[149] PGE filed an action challenging the constitutionality, validity and enforceability of an ordinance adopted by Grant Township that barred PGE from operating an injection well in the township. Grant Township's ordinance made it unlawful for any corporation to "engage in the depositing of waste from oil and gas extraction" in the Township and invalidated any state or federal permit or license to the contrary.[150] The ordinance created a cause of action for its citizens to enforce the ban and entitled them to collect attorney's fees while stripping corporations that violate the ordinance of all legal rights, including the right to challenge the ordinance.[151] PGE argued these provisions stripped PGE of its constitutional rights and were in direct conflict with Pennsylvania statutes.[152]

Noting that municipalities are a creature of the state and can exercise only such power as may be granted by the legislature, the court invalidated much of the Ordinance as an unauthorized attempt by Grant Township to regulate underground injection wells and create a cause of action in itself without express statutory authority.[153] Moreover, the court ruled the Ordinance violated Pennsylvania law as exclusionary, and was preempted by the Second Class Township Code and the Limited Liability Companies

147. Pennsylvania Gen. Energy Co., v. Grant Twp., 139 F. Supp. 3d 706 (W.D. Pa. 2015).
148. *Id.* at 710.
149. *Id.* at 711.
150. *Id.* at 716.
151. *Id.* at 719.
152. *Id.*
153. *Id.* at 718-20.

Law.[154] By invalidating the challenged portions of the Ordinance under state law, the court did not consider the federal constitutional issues raised by PGE in its complaint.[155]

Finally, the court issued a separate order on the same day that denied Grant Township's motion to dismiss for lack of standing based on the failure of PGE to obtain a DEP permit.[156] DEP had suspended its review of PGE's permit noting the restrictions in Grant Township ordinance and PGE's challenge to its validity.[157] Grant Township's argument hinged entirely on its belief that PGE lacked standing because PGE failed to obtain a DEP permit, therefore, PGE's injury is not caused by the Grant Township Ordinance, but by DEP's inaction.[158] The court denied Grant Township's motion to dismiss noting the paradox that Grant Township's Ordinance halted DEP's permit review and Grant Township's challenge to PGE's standing was based on PGE's failure to obtain that permit.[159] The court concluded that the lack of a DEP permit is irrelevant to the constitutional challenges raised by PGE.[160]

C. Montrose Hillbillies II, LLP v. WPX Energy Keystone, LLP, No. 3:14-CV-2264, 2016 WL 2937504 (M.D. Pa. May 20, 2016)

The Federal District Court for the Middle District of Pennsylvania ruled that a memorandum of lease put purchasers on notice of lease and that lessee properly extended lease by tendering extension payment to former owners, when purchasers failed to give notice of change in ownership, as required under lease.

Plaintiff lessor-assignee brought an action to quiet title to a 77.2-acre parcel in Susquehanna County, asserting that lessee-assignees, under 2007 oil and gas lease, failed to properly extend the lease for an additional five-

154. *Id.* at 720-21.

155. *Id.* at 721.

156. Pennsylvania Gen. Energy Co., v. Grant Twp., No. CA 14-209, 2015 WL 6001550 (W.D. Pa. Oct. 14, 2015).

157. *Id.* at *9 ("As a result of the conflict between your application and the Grant Township Ordinance, and the potential for legal action against [DEP] employees being brought pursuant to this local ordinance, the [DEP] has decided to suspend its review of your permit application pending a court decision concerning the validity of the Grant Township Ordinance.").

158. *Id.*

159. *Id.*

160. *Id.*

year period at the end of the initial five-year primary term of the lease.[161] The original lease was not recorded with the Recorder of Deeds; instead the original parties executed and recorded a memorandum of lease, which only disclosed the existence of the lease, the parties thereto, a description of the property, and the terms of the lease.[162] The original lessor subsequently conveyed the property to plaintiff. The conveyance was made expressly subject to the lease. Subsequently, lessee-assignee tendered an extension payment to the original lessor, and recorded a notice of extension of the lease.

Plaintiff argued that the memorandum of lease was insufficient to put it on notice of the lease and that the tender of the payment to the original lessor was insufficient to extend the lease. They relied upon the duty to record an oil and gas lease under Pennsylvania law.[163]

The district court recognized that under Pennsylvania law a real estate purchaser has a duty to investigate the title of the seller, and found that the plaintiff was put on notice of the existence of the lease by the memorandum of lease, which was recorded pursuant to Pennsylvania law in lieu of recording the entire lease.[164] The plaintiff was also put on notice by the purchase agreement provision that the conveyance was under and subject to the lease.[165]

The district court found that the plaintiff failed to comply with the change in ownership provision of the lease, which required a purchaser of the subject premises to notify the lessee of its purchase of the property. The district court therefore held that the tender of payment to the prior owner of the subject land was sufficient to extend the primary term of the lease.[166] The court granted summary judgment in favor of the lessees.

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161. Montrose Hillbillies II, LLP v. WPX Energy Keystone, LLP, No. 3:14-CV-2264, 2016 WL 2937504 (M.D. Pa. May 20, 2016).

162. *Id.* at *2.

163. *See id.* at *5 (citing Lesnick v. Chartiers Natural Gas Co., 889 A.2d 1282 (Pa. Super. Ct. 2005); *see also* Nolt v. TS Calkins & Assocs., 96 A.3d 1042, 1048 n.5 (Pa. Super. Ct. 2014).

164. *See Id.* at *6 (citing *Nolt*, 96 A.3d at 1048); *see also* 21 P.S. § 357.

165. *Id.* at *7.

166. *Id*. at *8 (citing Danko Holdings v. EXCO Res. (PA), LLC, 57 F. Supp. 3d 389, 398 (M.D. Pa. 2014)).