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Katzin v. Central Appalachia Petroleum **2012 PA Super 10, No. 135 MDA 2011**

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Arthur Katzin (“Katzin”) is the owner of land that is subject to an oil and gas lease in favor of Central Appalachian Petroleum which was subsequently assigned to Chesapeake Appalachia, LLC. The lease royalty provision provided for a one-eighth royalty on the production of oil and gas but did not specify what costs may be deducted from the royalty. Katzin filed a complaint for declaratory judgment in the Court of Common Pleas of Bradford County to invalidate the lease under the Pennsylvania Guaranteed Minimum Royalty Act (“PGMRA”). The case was removed to the United States District Court for the Middle District of Pennsylvania which remanded the case back to the Court of Common Pleas. On remand, both parties filed motions for judgment on the pleadings. The trial court entered judgment in favor of Chesapeake and against Katzin. On appeal, Katzin raised the issue of “whether the trial court erred in holding that the instant lease complies with the mandates of the PGMRA.”

The court stated that Katzin conceded that *Kilmer v. Elexco Land Services*, 605 Pa. 413 (2010) allows for the deduction of post production costs from the royalty and the lease still complies with the Guaranteed Minimum Royalty Act. Katzin attempted to

distinguish *Kilmer* by arguing that the lease was vague as to what costs may be deducted from the royalty. The court restated this argument as contending that the lease “*might* pay less than the royalty guaranteed under the PGMRA as the lease is vague regarding allowable deductions.” (emphasis in original) The court stated that Pennsylvania courts have long held that “a promise to do an act necessary to carry out the contract must be implied.” Applying this proposition, the court concluded that the lease “clearly indicates that the parties intended to comply with the mandates of the PGMRA, since it provides for a one-eighth royalty...” and “[i]n construing the lease, we must therefore imply a promise...to comply with the mandates of the PGMRA.” Therefore, the court affirmed the order granting the judgment on the pleadings against Katzin.

In affirming the trial court, the Superior Court did note that while the lease is not invalid under the PGMRA, if royalty “payments under the lease do not satisfy the requirements of the PGMRA” then Katzin could properly bring “a breach of contract action based upon a breach of the implied promise [to comply with the PGMRA].”



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