

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

SAMUEL W. BELCHER and CHERYL	:	No. 3:09cv506
BELCHER, et al.,	:	
Plaintiffs	:	(Judge Munley)
	:	
v.	:	
	:	
THE KEETON GROUP, et al.,	:	
Defendants	:	

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MEMORANDUM

Before the court is plaintiff’s amended complaint (Doc. 1), which seeks a declaratory judgment from the court that gas leases signed by the various parties to the case are invalid under Pennsylvania law.

Background

This case arises out of oil and natural gas leases entered into between the plaintiffs and defendants in this case. Plaintiffs, who are the lessors, seek a declaratory judgment from this court that the leases are invalid as a matter of Pennsylvania law. The defendants are the lease-holders or their assignees. All of the plaintiffs leased the oil and/or natural gas on their property using leases that contained similar provisions assigning royalty payments. (Amended Complaint (Doc. 20) (hereinafter “Complt.”) at ¶¶ 80-90). The lease that some plaintiffs signed with Defendant Keeton Group, LLC, for example, established that the defendants would pay to the lessors a royalty for gas produced and marketed from their property equal to “one-eighth (1/8th) of the revenue realized by the Lessee for all gas the

constituents thereof produced and marketed from the Leasehold during the preceding month.” (Id. ¶ 85). The lease defines “revenue realized” as “the price received by the Lessee for all oil, gas, and constituents thereof produced and marketed from the Leasehold less any charges for transportation, dehydration, compression, and marketing paid by Lessee to deliver the oil, gas and constituents for sale.” (Id.). Plaintiffs contend that this provision and others like it in the similar leases here in question violate 58 P.S. § 33, which provides that “[a] lease or other such agreement conveying the right to remove or recover oil and natural gas or gas of any other designation from lessor to lessee shall not be valid if such lease does not guarantee the lessor at least one eighth royalty of all oil, natural gas or gas of other designations removed or recovered from the subject real property.” (Id. at § 93 (quoting 58 P.S. § 33)). Plaintiffs’ amended complaint, filed April 9, 2009, seeks a declaration from this court that the leases here in question violate that statute and are void *ab initio*.

Plaintiffs filed their original complaint on March 18, 2009. (See Doc. 1). After being served, the defendants filed a motion to dismiss (Doc. 18) for lack of subject matter jurisdiction, contending that complete diversity did not exist because one of the Defendants, East Resources, was a Pennsylvania corporation and the plaintiffs were Pennsylvania residents. (See Brief in Support (Doc. 19) at 1). Plaintiff filed their amended complaint and removed East Resources as a defendant, apparently as a means of curing this jurisdictional problem. (See Doc. 20).

On April 10, 2009, the above-named defendants filed a motion to stay the proceedings. The motion noted that the case raises an issue—the proper interpretation of the minimum royalty provision in 58 P.S. § 33—that is the subject of a recent decision in the Susquehanna County Court of Common Pleas. That decision is currently the subject of a petition for extraordinary review to the Pennsylvania Supreme Court. Other defendants filed petitions with the court to join in that motion. (See Docs. 29-30, 36). The parties have briefed that issue. Instead of addressing the defendants’ motion, however, the court will address the propriety of ruling on this case at all.

Jurisdiction

This Court has jurisdiction pursuant to the diversity jurisdiction statute, 28 U.S.C. § 1332. The plaintiffs are all citizens of Pennsylvania, and defendants are corporate citizens of other states. The amount in controversy exceeds \$75,000. Because we are sitting in diversity, the substantive law of Pennsylvania applies. Chamberlain v. Giampapa, 210 F.3d 154, 158 (3d Cir. 2000) (citing Erie R.R. v. Tompkins, 304 U.S. 64, 78 (1938)).

Discussion

The Declaratory Judgment Act provides that “[i]n a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, *may* declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be

sought.” 28 U.S.C. § 2201(a) (emphasis added). The United States Supreme Court has declared that “[d]istrict courts possess discretion in determining whether and when to entertain an action under the Declaratory Judgment Act, even when the suit otherwise satisfies subject matter jurisdictional prerequisites.” Wilton v. Seven Falls Co., 515 U.S. 277, 282 (1995). The Third Circuit Court of Appeals has concluded that a court’s decision whether to exercise its discretion to hear an action under the Declaratory Judgment Act “requires some inquiry into the scope of the state court proceeding, the nature of defenses available there, and the claims of all parties in interest can satisfactorily be adjudicated in that proceeding.” Sate Auto Ins. Co. v. Summy, 234 F.3d 131, 133 (3d Cir. 2001). Further, “[a] federal court should also decline to exercise its discretionary jurisdiction when doing so would promote judicial economy by avoiding duplicative and piecemeal litigation.” Id. at 135. These considerations are especially important because “district courts should give serious consideration to the fact that they do not establish state law, but are limited to predicting it.” Id. A court may *sua sponte* exercise its discretion not to hear a case under the Declaratory Judgment Act. Id. at 136.

Here, the plaintiffs ask the court to resolve a question of state law that is not settled, and which is presently the subject of an appeal that would be handled by the highest court in the Commonwealth. Indeed, the basis of defendant’s motion to stay the case is to give the Pennsylvania courts an opportunity to address this issue. Because the court is required to decide the case based on Pennsylvania substantive

law, the Supreme Court's ultimate decision on this matter will guide how the court views this case. See Chamberlain, 210 F.3d at 158. In this matter, there is no Pennsylvania case law directly on point for the question raised by this case: whether the 1/8 royalty requirement is satisfied if post-production costs are subtracted from the royalty payment. "When a state's highest court has not spoken on a subject, we must attempt to predict how that tribunal would rule." U.S. Underwriters Ins. Co. v. Liberty Mut. Ins. Co., 80 F.3d 90, 93 (3d Cir. 1996). The court makes this determination, in part, by providing "due deference" to the state's lower courts and "significant weight" to intermediate appellate courts. Id. The situation is unique here, in that only one case from lower Pennsylvania courts addresses this matter directly¹, and there is a good chance that the Pennsylvania Supreme Court will rule on this matter before the court has an opportunity to predict what that ruling will be. In that unique situation, the court finds judicial efficiency would be better served by allowing Pennsylvania courts to address this matter and apply whatever law ultimately emerges on this issue.

Moreover, the state interest in this matter clearly exceeds the federal interest. If the court were to decide this case, that decision would not involve the application of any federal substantive law, but would instead apply Pennsylvania's principles of

¹See Kilmer v. Exleco, No. 2008-57 (Susquehanna County (Pa.) Ct. Comm. Pleas, March 16, 2009). To the extent that the court would defer to this opinion, plaintiffs would not benefit. The court found that a lease very similar to the leases here in question was valid.

contract and statutory interpretation. Pennsylvania's courts are well-equipped to handle such questions, and have a strong interest in doing so. Moreover, the questions in this case involve the potential value and uses of Pennsylvania's natural resources. The state has a far stronger interest in such issues than the federal courts. Because the questions of this case involve Pennsylvania law and the interests of this matter lie more strongly with the Pennsylvania courts than the federal courts, this court will decline to exercise its jurisdiction to hear the case.

Conclusion

For the reasons stated above, the court will decline to exercise its jurisdiction to hear this declaratory judgment action. An appropriate order follows.

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ORDER

AND NOW, to wit, this 8th day of May 2009, it is hereby **ORDERED** that the instant complaint (Doc. 1) is **DISMISSED**. The Clerk of Court is directed to **CLOSE** the case.

BY THE COURT:

s/ James M. Munley
JUDGE JAMES M. MUNLEY
United States District Court