

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GEORGE HAYES and :  
SANDRA ANN HAYES his wife, :  
 : CIVIL ACTION NO. 3:09-CV-619  
Plaintiffs, :  
 : (JUDGE CONABOY)  
v. :  
 :  
CHESAPEAKE APPALACHIA, LLC, :  
 :  
Defendant. :

**MEMORANUDM AND ORDER**

Here we decide Defendant Chesapeake Appalachia, LLC's Motion to Compel Arbitration (Doc. 7) filed on April 9, 2009. Defendant Chesapeake Appalachia, LLC's ("Defendant") supporting brief (Doc. 8) accompanied the motion. Plaintiffs filed a document titled "Plaintiff's Reply to Defendant's Motion to Compel Arbitration" (Doc. 11) on April 21, 2009, and Defendant filed Reply Memorandum of Law in Support of Defendant Chesapeake Appalachia, LLC's Motion to Compel Arbitration (Doc. 12) on April 29, 2009.

In the underlying action, Plaintiffs seek to have the Court declare the lease void because the statutorily mandated one-eighth (1/8) royalty payment for gas recovered from their property, see 58 P.S. § 33, should not be subject to deduction of post-production costs. (Doc. 2-2.) Defendant maintains the Lease is valid and it properly provides for a one-eighth (1/8) royalty payment. (Doc. 6 ¶¶ 14-15.)

Defendant argues that the Court should compel arbitration of

this matter and stay this case pending arbitration because the parties' oil and gas lease provides that "in the event of a disagreement between Lessor and Lessee concerning this Lease, performance thereunder, or damages caused by Lessee's operations, the resolution of such disputes shall be determined by arbitration" and the disagreement in this case "clearly constitutes a 'disagreement . . . concerning the Lease.'" (Doc. 8 at 1.)

Defendant provides extensive argument on the validity, scope and enforcement of the arbitration provision, including reliance on a decision of this Court addressing the same issue, *Ulmer v. Chesapeake Appalachia, LLC*, Civ. A. No. 4:08-CV-2062 (M.D. Pa. Jan. 16, 2009), in which Judge John E. Jones, III, concluded the underlying royalty issue was properly submitted to arbitration pursuant to the arbitration provision in the Lease Agreement. (Doc. 8 at 7-8.)

After reviewing the matter pending before us and Judge Jones' *Ulmer* Memorandum and Order, we conclude the issue before us was decided in that opinion and it behooves us to be consistent on the issues raised. As we will discuss briefly below, Plaintiffs raise no argument that persuades us otherwise.

Regarding Plaintiffs' responsive filing in which they assert they raise an issue not addressed in *Ulmer* (Doc. 11 ¶ 4), we first note that the document titled "Plaintiffs' Reply to Defendant's Motion to Compel Arbitration" (Doc. 11) does not comport with Rule

7.6 of the Local Rules of Court of the Middle District of Pennsylvania. A party opposing any pretrial motion is to file a "responsive brief," and any party failing to do so within fifteen (15) days after service of the movant's brief is deemed not to oppose the motion. L.R. 7.6. Here Plaintiffs' four-paragraph document is devoid of adequate responsive argument and presents only sparse legal conclusions in opposition to the motion. The only citation Plaintiffs rely upon is 42 Pa. C.S. § 7361, stating this provision "precludes matters of real estate being heard or decided in arbitration" and "[t]his issue was not addressed by the courts in the *Ulmer* case." (Doc. 11 ¶ 4.)

Rather than deem Defendant's motion unopposed based on the deficiency of Plaintiffs' filing, we will briefly consider the distinction asserted between this case and *Ulmer*, that is, Plaintiffs' contention that here they raise the issue of the statutory prohibition of submitting real estate matters to arbitration (Doc. 11 ¶ 4). This can be construed as a challenge to the arbitration provision itself which is to be determined by the court. See *Ulmer*, Civ. A. No. 4:08-CV-2062 (M.D. Pa. Jan. 16, 2009), at 4 (citing *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444-46 (2006)).

We conclude Plaintiffs' challenge to the arbitration provision in the lease agreement is without merit. As discussed in Defendant's reply brief, the statute upon which Plaintiffs rely,

Pa. C.S. § 7361, addresses compulsory arbitration and contains a provision stating that matters involving title to real property should not be referred to compulsory arbitration. (Doc. 12 at 1-2.) We agree with Defendant that this provision is both inapplicable on its face because here we consider arbitration by written agreement of the parties and the provision does not evidence a "policy on behalf of Pennsylvania to not arbitrate real property disputes." (*Id.* at 2-3.) We are further convinced that Defendant is correct in that a provision in the same subchapter (Subchapter A addressing Statutory Arbitration) addresses the "Validity of agreement to arbitrate," 42 Pa. C.S. § 7303.

A written agreement to subject any existing controversy to arbitration or a provision in a written agreement to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity relating to the validity, enforceability or revocation of any contract.

42 Pa. C.S. § 7303.

As we find no basis upon which to distinguish this case from *Ulmer*, we concur with Judge Jones and conclude this case is properly referred to arbitration as agreed to by the parties. Therefore, for the reasons discussed above, we will grant Defendant Chesapeake Appalachia, LLC's Motion to Compel Arbitration (Doc. 7) and direct the parties to submit the claims raised in this action to arbitration in accordance with the arbitration provision of the

Lease. Further, this action will be stayed pending arbitration,<sup>1</sup> see 42 Pa. C.S. § 7304(d), and the parties will be instructed to file a report as to the status of arbitration.

**NOW, THEREFORE, THIS 15<sup>th</sup> DAY OF MAY 2009, IT IS HEREBY  
ORDERED THAT:**

1. Chesapeake Appalachia, LLC's Motion to Compel Arbitration (Doc. 7) is GRANTED;
2. The parties are directed to submit the claims raised in this action to arbitration in accordance with the arbitration provision of the Lease entered into between them;
3. This action is stayed pending arbitration;
4. The parties shall promptly notify the Court of any resolution of this matter through arbitration or otherwise;
5. The parties are to file a status report on or before August 15, 2009, if the matter has not been resolved by that date.

S/Richard P. Conaboy  
RICHARD P. CONABOY  
United States District Judge

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<sup>1</sup> The stay of this action pending arbitration obviates the need to issue the Case Management Order discussed at the Case Management Conference held on May 14, 2009.