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Natural Gas Case Law Brief

Carey v. New Penn Exploration, LLC

3:09-cv-188; 2010 U.S. Dist. LEXIS 52199 (M.D. Pa. Apr. 28, 2010)

Prepared by Michael Magee on June 4, 2010

The plaintiffs, William and Germaine Carey (Careys), owned 61.6 acres in Clarks Summit, PA. In May of 2007, the Careys entered into a “preprinted form Paid-Up Oil and Gas Lease” with New Penn Exploration, LLC (New Penn), the defendant. The Careys filed suit in the Susquehanna County Court of Common Pleas in December, 2008, seeking voidance of the lease agreement. The Careys alleged that New Penn’s agents fraudulently induced them into signing the lease agreement by claiming that the Careys would never receive more than \$50.00/acre, and also that they were induced into signing the agreement after being educated on Pennsylvania’s rule of capture, which might allow New Penn to obtain the gas beneath the Careys’ land by leasing neighboring parcels. The Careys claimed that at least some of the statements made by New Penn’s representatives were false. Additionally, the Careys alleged that the lease agreement violated Pennsylvania’s Guaranteed Minimum Royalty Act. 58 PA. STAT. § 33. The case was removed to the District Court for the Middle District of Pennsylvania, and New Penn filed a motion to dismiss on February 4, 2009.

The issues before the Court were as follows: (1) *should New Penn’s motion to dismiss the Careys’ fraud claim be granted?*, and (2) *should New Penn’s motion to dismiss the Careys’ claim under the Guaranteed Minimum Royalty Act be granted?*

The Court rejected New Penn’s motion to dismiss the Careys’ claim for fraudulent inducement. Federal Rule of Civil Procedure 8(a)(2) requires plaintiffs to give defendants only “fair notice of what the...claim is and the grounds upon which it rests.” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). In Pennsylvania, fraudulent inducement claims require the plaintiff to plead

five elements: (1) a false representation by the defendant (2) made with the necessary scienter, which (3) is material and (4) justifiably relied upon by the plaintiff (5) with the proximate result of damage to the plaintiff. *Piper v. Am. Nat'l Life Ins. Co.*, 228 F. Supp. 2d 553, 558 (M.D. Pa. 2002). New Penn's argument was based on the parol evidence rule. Specifically, New Penn claimed that the Careys could not disclaim the lease using statements outside of the written agreement. The Court rejected this argument and upheld the Careys' claim, because nothing on the record demonstrated that the lease was a fully integrated document for which the parol evidence rule would apply.

The Court granted New Penn's motion to dismiss the Careys' claim under the Guaranteed Minimum Royalty Act. In *Kilmer v. Elexco Land Servs., Inc.*, 990 A.2d 1147 (Pa. Mar. 24, 2010), the Pennsylvania Supreme Court accepted post-production cost deductions as a valid part of royalty payments. *Kilmer* defeated the Careys' claim that post-production costs could not lawfully be subtracted from royalty payments.



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