

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EARTH CONSERVANCY	:	CIVIL NO. 1:09-CV-02295
	:	
Plaintiff	:	(Judge Jones)
	:	
v.	:	(Magistrate Judge Smyser)
	:	
BLUE COAL CORPORATION and	:	
GLEN NAN, INC.,	:	
	:	
Defendants	:	

REPORT AND RECOMMENDATION

The plaintiff commenced this action by filing a complaint for a declaratory judgment on November 23, 2009.

The plaintiff alleges the following facts in its complaint. The defendants were at one time engaged in the business of anthracite coal production and the sale of surface properties. The defendants were involved in bankruptcy proceedings in the United States Bankruptcy Court for the Middle District of Pennsylvania and the bankruptcy cases of both defendants were consolidated.

In 1993, the plaintiff negotiated an agreement of sale (Agreement of Sale) with the trustee of the defendants' bankruptcy estates to purchase all of the assets of the defendants other than those specifically identified and expressly excluded in the Agreement of Sale. The Agreement of Sale provided that, prior to being discharged as the trustee in the bankruptcy cases, the trustee was to request that the Bankruptcy Court enter an order appointing a representative on behalf of the defendants with the power to execute such additional deeds or bills of sale as may be required to legally transfer and convey to the plaintiff any asset of the defendants discovered following the execution of the Agreement of Sale. By an Order dated July 13, 1994 (Sale Order), the Bankruptcy Court approved the sale of the defendants' assets to the plaintiff and thereafter, in accordance with the Agreement of Sale and the Sale Order, the plaintiff purchased the assets of the defendants.

On July 12, 2000, the Bankruptcy Court entered an Order closing the bankruptcy cases of the defendants and an Order discharging the trustee from the cases. The trustee, however, failed to request in accordance with the Agreement of Sale that

the Bankruptcy Court enter an order appointing a representative on behalf of the defendants with the power to execute such additional deeds or bills of sale as may be required to legally transfer and convey to the plaintiff any asset of the defendants discovered following the execution of the Agreement of Sale.

In 2008, William W. Thomas sent correspondence to the Bankruptcy Court seeking to purchase certain oil, gas and mineral rights purportedly owned by the defendants. The bankruptcy trustee's former counsel sent correspondence to Mr. Thomas explaining the terms of the sale of the defendants' assets to the plaintiff. Mr. Thomas requested a meeting with the Bankruptcy Court and Bankruptcy Judge John J. Thomas held a status conference on March 4, 2009. At the status conference, Judge Thomas stated that he would consider Mr. Thomas' request to purchase the oil, gas and mineral rights should a party in interest file a motion to reopen the bankruptcy cases. No party has filed a motion to reopen the bankruptcy cases and the bankruptcy cases remain closed.

The plaintiff claims that pursuant to the Agreement of Sale it is the sole and absolute owner of the oil, gas and mineral rights sought to be purchased by Mr. Thomas as well as any and all other assets that are owned by the plaintiff by virtue of the Sale Order but that were not specifically identified in the Agreement of Sale and any and all other assets acquired by the defendants with the prior written consent of the plaintiff after the date of the Agreement of Sale through to and including the closing date on the plaintiff's purchase of the assets from the defendants pursuant to the Sale Order (referred to by the plaintiff as Non-Exhibit Assets).

The plaintiff is seeking an order declaring that it is the sole and absolute owner of the oil, gas and mineral rights sought to be purchased by Mr. Thomas as well as the Non-Exhibit Assets. The plaintiff also seeks an order appointing, pursuant to the Agreement of Sale, a representative of the defendants having the power and authority to execute such documents to transfer title on behalf of the defendants so as to enable the representative to transfer and convey all rights, title and

interest that the defendants may have in the oil, gas and mineral rights and the Non-Exhibit Assets to the plaintiff.

By an Order dated December 29, 2009, the undersigned granted the plaintiff's Motion for an Order for Service by Publication, ordered that the defendants appear and plead to the complaint by January 29, 2010 or suffer the entry of a default judgment and ordered that the Order be published once in the Luzerne County Register and the Times Leader, a daily newspaper published in Wilkes-Barre, Pennsylvania.

The defendants failed to file an answer to the complaint or otherwise defend. By an Order dated February 1, 2010, the Clerk of Court entered the default of the defendants.

On February 25, 2010, the plaintiff filed a motion for default judgment and a brief in support of that motion.

Before we address the motion for default judgment, we address the issue of subject-matter jurisdiction. See *Trent Realty Assoc. v. First Federal Savings & Loan Assoc. of Phila.*,

657 F.2d 29, 36 (3d Cir. 1981) ("A federal court is bound to consider its own jurisdiction preliminary to consideration of the merits."). The plaintiff asserts that this court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 since the case involves the interpretation of an order entered by the Bankruptcy Court. *Doc. 1* at ¶4.

28 U.S.C. § 1331 provides that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." This action does not arise under the Constitution, laws or treaties of the United States. Accordingly, this court does not have subject-matter jurisdiction pursuant to 28 U.S.C. § 1331.

The only plausible basis for subject-matter jurisdiction in this case is 28 U.S.C. § 1334(b), which provides that "the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11."

Pursuant to 28 U.S.C. § 157(a), "[e]ach district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district." By Standing Order 84-0203, this court has provided that "any and all cases under Title 11 and any and all proceedings arising under Title 11 or arising in or related to a case under Title 11 are and shall be referred to the Bankruptcy Judges for this district."

Since the only plausible basis for subject-matter jurisdiction in this case is 28 U.S.C. § 1334(b) and since, pursuant to Standing Order 84-0203, such cases are referred to the Bankruptcy Court, it is recommended that this case be referred to the Bankruptcy Court.

/s/ J. Andrew Smyser

J. Andrew Smyser
Magistrate Judge

Dated: March 17, 2010.

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NOTICE

Any party may obtain a review of the Report and Recommendation pursuant to Rule 72.3 of the Rules of Court, M.D.Pa., which provides:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636(b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.