Securities and Exchange Commission v. Nadel et al

Doc. 1269

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

Case No. 8:09-cv-0087-T-26TBM

ARTHUR NADEL, SCOOP CAPITAL, LLC,
SCOOP MANAGEMENT, INC.

Defendants,

v.

SCOOP REAL ESTATE, L.P.,
VALHALLA INVESTMENT PARTNERS, L.P.,
VALWALLA MANAGEMENT, INC.,
VICTORY IRA FUND, LTD,
VICTORY FUND, LTD,
VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT, LLC

Relief Defendants.
_______________________________________/

RESPONSE TO MOTION TO SHOW CAUSE,
AND
MOTION FOR LEAVE TO FILE SUIT FOR DAMAGES AND DECLARATORY RELIEF AGAINST THE RECEIVER INDIVIDUALLY AND IN HIS CAPACITY AS RECEIVER FOR QUEST ENERGY MANAGEMENT GROUP, INC.

TO THE HONORABLE RICHARD A. LAZZARA, UNITED STATES DISTRICT JUDGE:

COMES NOW, JOHN HATCHETT CARNEY, RESPONDENT Pro Se responding to the RECEIVER'S RECEIVER'S VERIFIED (1) EMERGENCY MOTION TO ENJOIN/STAY TEXAS RAILROAD COMMISSION ADMINISTRATIVE PROCEEDING FILED AGAINST RECEIVERSHIP ENTITY QUEST ENERGY MANAGEMENT GROUP, INC.; and (2) MOTION FOR ORDER TO SHOW CAUSE WHY SANCTIONS SHOULD NOT BE IMPOSED AGAINST HATCHETT LEASEHOLDERS AND THEIR

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REPRESENTATIVES FOR FAILURE TO COMPLY WITH THE COURT'S ORDER APPOINTING RECEIVER and would respectfully show to the court the following:

SUMMARY

The Hatchett Family, as lessor, entered a 5 year paid up oil and gas lease on April 15, 2011, with Quest Energy Management Group, Inc. ("Quest). Subsequent to entering the lease a Receiver was appointed for Quest. Receiver, took control of the leased property and due to actions and inactions, allowed the Hatchett Lease to terminate on April 15, 2016, the expiration of the 5th year of the primary term, and no effort was made to extend the lease into the secondary term. The terms of the lease state in paragraph 24 states the following:

Within sixty (60) days of the expiration or termination of this Lease for any reason as to all or any portion of the land herein described, Lessee shall, at its expense, promptly execute and file in the public records in the county in which such land and portion thereof is located, an appropriate release instrument covering all or such portion of said land so released, and to forward a copy of same as so recorded to Lessor. Failure by Lessee to furnish same shall cause Lessee to be liable for Lessor's attorney's fees and costs to prepare and file same of record.

The Lease expired on the terms of the contract on April 15, 2016 and Lessee failed to comply with the terms of the Lease within sixty (60) days by providing a release.

The Lease in paragraph 18 states the following:

Lessee shall, within 120 days from the termination of this lease, remove all surface equipment and facilities or, after said 120 day period at the option of the

surface owner, such equipment and facilities shall be considered abandoned and become owned by the surface owner. It is specifically understood that the wellhead and subsurface casing pipe and equipment shall remain the property of the Lessee.

On the 120th day after the expiration of the lease, the Lessee failed to remove any of the surface equipment.

Notwithstanding the clear loss of all lease rights, by operation of law, the lease can be held by term per contract or production of oil, gas or hydrocarbons in paying quantities. The records indicated the last well was shut in 2013. However, Receiver continues to assert a right to sell the now expired lease. However, the Receiver, availed themselves, of the authority of the RRC to request extensions for time to plug the non-producing wells. The last extension request was made on December 23, 2016, (7) months after the lease expired. The Receiver now objects to the filing of a good faith determination hearing to determine if they are entitled to the extension. Receiver's lack of attention to maintenance issues on the Salt Water Injection Well caused a "blow back" which blew saltwater and oil out onto the ground. In getting this matter under control the operator's crew managed to contain some 90 barrels of crude oil. This oil that was contained came from an injection well, not a production well, and therefore cannot be claimed as production. The Receiver faces serious regulatory issues as a result of its failure to conduct basic well maintenance and management for some time. The Receiver failed to correct basic well maintenance issues and created additional violations of its own, prior to the expiration of the lease. The lease expiration prevents the Receiver from any further operation of the Hatchett wells and thus prevents any

potential sale to a third party as there is nothing to sell. The oil and gas lease has expired and any asset the lease represented has now evaporated with its expiration. However, there still remain 10 wells bores that are in need of plugging and two of these wells are on Respondent's property. These wells need attention now to prevent further damage and not in some undetermined future.

A profound lack of understanding of Texas Oil and Gas law is manifest and indicates that neither the Receiver or its counsel were qualified to administer this estate. There is no evidence that the Receiver spent any considerable time and expense to resolve these regulatory issues as well as implement a "maintenance and repair plan". What the Receiver and its counsel did was very little and what they did do was grossly negligent and violated the terms of the lease agreement. They still refuse to account for the gas revenues owed as royalty to the mineral owners.

The Receiver made an application with the Railroad Commission for an extension on December 23, 2016 after the lease had terminated, and fraudulently represented that it had plugged or restored to active status 10% of the number of inactive wells operated at the time of the last annual renewal of the operator's organized report. There are no active wells on the Hatchett Lease at this time. The Receiver sought relief from the Texas Rail Road Commission, and Respondent Byron Hatchett, on his own, without any involvement or knowledge of the family asked for a good faith hearing. It was the Receiver who first sought relief from the Texas Railroad Commission, after the lease expired and Respondent, Byron Hatchett simply asked for a hearing to test that misrepresentation. If that act is contemptuous, it was not done with the knowledge or complicity of any of the Hatchett Family members. Respondent

Byron Hatchett never at any time claimed to represent anyone other than himself. He acted in an attempt to be a good steward of what he has inherited and prevent further collateral damage to the surface estate.

PARTIES

The Hatchett Lease has numerous individual and separate parties to it, all of which have to agree to the terms, and sign separately. No member of the family purports to speak for the others. A true and correct copy is attached as Exhibit A.

No one but Bill Hatchett, John H. Carney and Byron Hatchett are alleged to have communicated with the Receiver and only Byron Hatchett has sought any relief from the Texas Railroad Commission, and did not do so in a representative capacity such that any other family member could be vicariously liable for his acts. Bill Hatchett is deceased, and his son Byron Hatchett inherited a portion of his mineral interests. Byron filed the action with the Railroad Commission on his own..

John Carney inherited a portion of the mineral interest of his deceased father and was gifted the minerals owned by Jeanne Carney, his sister and communicated with the Receiver's counsel in his individual capacity and as the sole manager of Hatchett Land & Development Co. LLC, sought an agreed distribution of oil sales revenues and did coordinate the Receiver, but not in a legal representative capacity for any other parties such that his later writings to the Receiver could cause vicarious liability to other family member.

GENERAL DENIAL

I have not ignored or disregarded any of this Court's orders, nor engaged in any contemptuous behavior. I have communicated with the Receiver's counsel only on two occasions, and never as legal counsel or representative for any of the other Hatchett, Carny or Gryska family members or lease interest holders. Respondent discussed the terms of the oil and gas lease and the required release documents required in the lease at the end of the contracted term. The Receiver at that time informed me of his intention to sell the property.

Respondent then contacted the Texas Rail Road Commission regarding the application of an extension without a valid lease and for not plugging or returning to active status 10% of the well since the last requested extension. The RRC advised Respondent to file an "no good faith claim" and have the Operator show how they would have a valid lease and the right to operate a lease and the records of plugging or restoring wells. The RRC advised I should contact the Receiver to find a mutual date for having a hearing. I contacted the Receiver and they refused to give a mutual date but still advised they intended to sell the Hatchett Lease to other operators. Respondent contacted the RRC and they advised if I wanted to continue this action I would have to send in a cover letter informing the RRC there are no mutual agreed dates between the parties and to fill out the formal request form for a hearing to be scheduled by the RRC. Respondent, had also had been researching the issues and proper course of action and based upon his conclusion chose not request the hearing be set by the RRC so as not to be in contempt with this Court and pursue other means to gain relief.

Respondent denies generally each and every allegation of the Movant and demand strict proof thereof by a preponderance of the credible evidence, except where the burden of proof is heightened where the Movant's evidentiary burden is to prove its claims by clear and convincing evidence or beyond a reasonable doubt.

BACKGROUND

The lease on the Hatchett Ranch acquired by Quest (and by the Receiver as Quest) was a 5 year primary term lease, and was made on or about April 15, 2011 and expired on April 15, 2016. All production ceased when the wells were shut in in Receiver shut the wells down, which cut off the gas supply to Bill Hatchett's home. At the time the 5 year primary term expired there was no production to hold the lease into a secondary term. Attached Exhibit "B" is the Inactive Well Query Results for Quest, Operator No. 684615 for Callahan County, Texas representing all of the Hatchett Ranch lease wells. The shut-in dates begin in 2006, with the last being 2013, so upon the expiration of the 5 year primary lease term there was no production to hold the lease. The Reciever was appointed in 2013.

On or about December 23, 2016 the Receiver filed another request for an extension to plug the wells. This request is post lease terms. Attached Exhibit "C".

It is possible Receiver's counsel believes that requesting an extension to plug wells also extends the lease. This is not true and in the event asked to produce what evidence allows him to claim he has extended the terms of the lease he has refused to provide any rational explanation. His response is simply we are going to sell the lease. If the Receiver believes that "blow back" backwash from a saltwater injection well, not permitted as a production well constitutes production, again, the Receiver is mistaken.

If even it was considered production, it would not be close to economic production, or "production in paying qualities". And even if it were production, and in paying qualities, you have to sell it and timely manner and distribute the revenues, while accounting for the gas sales revenues and not withholding payment.

There is virtually no indication of any competent management of the Hatchett Lease during the term of the lease, and the "management" that was done was so grossly negligent, that, as set forth here, Respondent ask this court for Leave to file suit, in Texas where venue would properly lie, or if not, before this Honorable Court. All of the Parties, experts and witnesses reside in Texas, in Callahan County and believe the local Federal District Court could find time to hear a jury trial on the merits.

The question becomes, is it even possible to interfere with the assets of the Receiver is those asset no longer exist?

THE LEASE EXPIRED ON ITS OWN TERMS

The five year lease expired, with no production, and the Receiver requested an extension to plug the wells. The Hatchett Lease contains a habendum clause. In the early 1900s, the modern day oil and gas lease habendum clause was developed where the primary term of the lease was followed by an indefinite secondary term that required the lessee to perform certain activities during both the primary and secondary terms to keep the lease alive.

The habendum clause means what it says, i.e., without production in paying quantities (or the commencement of operations to obtain production) at the end of the primary term, the lease terminates. All jurisdictions, except Oklahoma and Louisiana, treat the habendum clause as creating a fee simple determinable that terminates

automatically upon the failure of one or more of the conditions on which it is based. Equitable remedies, such as waiver and estoppel, are generally not available to avoid termination.

In my individual capacity, I attempted to allow the Receiver's counsel time to review the lease and the facts to come to a conclusion that the lease had terminated and that the Lessee should provide a release document and place same of record. However, the issues and problems remain and the most important is the plugging of wells before some new issue further damages the property.

MOTION FOR LEAVE TO FILE SUIT FOR DAMAGES AND DECLARATORY RELIEF AGAINST THE RECEIVER INDIVIDUALLY AND IN HIS CAPACITY AS RECEIVER FOR QUEST ENERGY MANAGEMENT GROUP, INC.

The Receiver violated the lease agreement, and numerous Texas Oil and dGas Operating Rules, including Rule 8 and made application to extend time to plug wells without a valid lease and without plugging or bring 10% of the existing wells into active status. Receiver has failed to provide the Lessor with a release within the 60 days of the expiration of the lease.

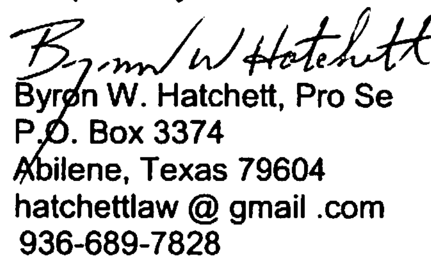
The Receiver breached the lease contract, failed to account for gas sales revenues he's collected despite numerous requests, failed to close the waste pits, failed to timely pay over royalties, and now claims to be able to sell an expired lease and abandoned equipment, refuses to provide a release of his claim of a valid lease and prevents the mineral owners form entering into a transaction with others.

There are substantial liabilities caused by the Receiver's breach if the lease agreement and negligence and negligent operation of the Quest Lease for which Respondents seek leave of this court to pursue such claims in Texas, or alternatively in this Court. The Receiver operating under the Quest Lease is responsible for all well plugging expenses.

CONCLUSION

Respondent respectfully request the Court, based upon the pleadings and argument of counsel, not find the Respondent in contempt and not place sanctions upon Respondent. To award Respondent costs of travel and such other and further relief as Respondent may be entitled to in law and equity and Grant leave of Court to file suit for damages and declaratory Relief in Texas Federal Court where the property is located or in the alternative in this Court.

Respectfully submitted



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