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,

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

Relief Defendants.

_____/

BRIEF TO THE COURT

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PRO SE

conclusion of the hearing. (3) Motion for Leave to File Suit for Declaratory Relief against the Receiver Individually and in his Capacity as Receiver for Quest Energy Management Group, Inc. was denied. (4) The parties shall submit memoranda no later than April 19, 2017 addressing whether "The Hatchett Lease" did or did not expire on April 15, 2016.

(3) ENDORSED ORDER Granting Motion to Withdraw Attorney Gianluca Morello only as counsel for Receiver. Attorney Gianluca Morello terminated. The Clerk is directed to change the docket accordingly. April 11, 2017

(4) Receiver's Motion for Enlargement of Time to Submit Supplemental Briefing Regarding Hatchett Lease. File April 12, 2017.

(5) ORDER Granting Motion for Enlargement of Time to Submit Supplemental Brief to April 26, 2017.

(6) Receiver's Motion for Enlargement of Time to Submit Supplemental Briefing Regarding Hatchett Lease. File April 26, 2017.

(7) ORDER Granting Motion for Enlargement of Time to Submit Supplemental Brief to May 5, 2017.

III.

STATEMENT OF THE CASE

On March 22, 2017 a hearing was heard before the United States District Court Middle District of Florida Tampa Division and testimony was taken regarding matters before the Court. The testimony showed that the Hatchett Lease covering approximately 4,346.63 mineral acres became available for lease. The minerals were leased under an oil

and gas lease to Quest Energy Management Group, Inc. for a paid up 5 year term on April 15, 2011.

The undisputed testimony was a Receiver was appointed to take over and operate the assets of Quest Energy Management Group, Inc.. The evidence by witness testimony showed that the wells on the Hatchet Lease property were shut in some time in the year 2013 and no production of oil and gas has been produced from the property since that time.

The term of the 5 year lease expired on April 15, 2016 bringing an end to the primary term of the lease. The habendum clause, long held to be valid in the State of Texas, holds that without production in paying quantities (or the commencement of operations to obtain production) at the end of the primary term, the lease terminates. Texas treats the habendum clause as creating a fee simple determinable that terminates automatically upon failure of one or more of the conditions on which it is based. In this case the 5 year primary term on the Hatchett Lease has expired and there is no production form the lease since 2013 when the wells were closed.

IV.

ISSUES PRESENTED

The issue before the Court is whether or not the efforts made by the Receiver meets the second part of the conditions of the habendum clause (or the commencement of operations to obtain production) by which the primary term can be extended into the secondary term to perpetuate the lease.

V.

STATEMENT OF THE FACTS

The receiver has stated in what has been offered and marked as exhibit 2, and attached as an addendum and marked as Exhibit "A" in part as follows:

Following his appointment and pursuant to the Order Appointing Receiver, the Receiver's main goal has been preservation of Quest, and by extension its assets such as the Hatchett Lease, and this included consistent maintenance and upkeep of these assets. This includes the maintenance of the injection wells, water extraction activities, renting rigs to pull tubing for a hydraulic fracturing job and work-overs of several wells in 2015 and 2016. The Receiver also entered into agreement to sell the Quest's gas production from the Hatchett Lease in August of 2015, which included the company's replacement of meters and gas lines on the property. These efforts have not only preserved Quest's value to the potential purchaser but have resulted in the production of salable oil and gas. To date, the Hatchett Lease has produced over 200 barrels of oil and over 11,000 MCF of natural gas, and there are currently 90 barrels of oil on hand and ready to sell.

The Receiver's agents regularly visited and inspected the wells on the Hatchett Lease both before and after the April 2016 on a weekly or bi-weekly basis, and engaged in numerous discussions relating to reworking or drilling of new wells. These discussions resulted in the decision to drill at least one new well on the Hatchett Lease in or around June 2016, and the Receiver's agents subsequently took various actions for several months that were required to drill a new well. These included communication with the Texas Groundwater Advisory Unit, discussions with vendors and suppliers, and obtaining a survey of the land. This also resulted in a filed permit application with the

Texas Railroad Commission to drill the new well. The expenses required for these various efforts were paid by the Receiver, and the Hatchetts were aware of these various efforts. The Receiver's ability to carry out these efforts, however, has been unnecessarily obstructed by the Hatchetts actions as described below.

The Receiver believes these efforts operated to extend the Hatchett Lease beyond the primary term. These efforts had been ongoing when, in October 2016, the Receiver received the 2016 Letter (as defined below) which constructively evicted the receiver and Quest from the Hatchett Lease and prohibited any of Quest's agents from entering the Hatchett Lease. In other words, the Receiver was constructively and wrongful evicted from the Hatchett Lease and but for this wrongful eviction, would have continued carrying on reworking and drilling operations to extend the lease term and preserve Quest's value.

It was shown by testimony that the claims of the Receiver having produced 200 barrels of oil were not correct. The testimony on cross examination of Quest's pumper, Mr. Chad Gray that the 200 barrels of oil produced by Quest was in fact produced before the Receiver took over operations. The oil was in the tanks ready for sale at the time the receiver took over operations and was not produced due to Receiver's actions or efforts. The Hatchett Family with the help of John H. Carney negotiated for the sale of the oil and the royalties were paid to the Mineral Owners. However, the 11,000 MCF of natural gas that was produced was produced by Quest and sold by Quest to the gas gatherer before the Receiver took over the operations. The royalties to the Mineral owners were not paid to the Mineral Owners have never been distributed by either Quest or the Receiver.

The oil and gas lease of the Hatchett Lease, is attached hereto as an addendum and marked as Exhibit "B" states in paragraph 3 states as follows:

(3) This is a paid up lease and subject to the provisions herein contained, this lease shall be for a term of 5 years from this date (called the "primary term") and as long thereafter as oil/or gas is produced from said land thereunder and royalties are fully and timely paid as required herein.

Clearly the terms of the paragraph 3 have not been complied with since the royalties on the 11,000 MCF of natural gas has not been paid since before the Receiver took over operations. The Receiver, as operator is still obligated to pay the royalties owed to the Mineral Owners. This breach of the lease terms is grounds alone to terminate the Hatchett Lease, for failure to make payment in a timely manner.

The oil and gas lease of the Hatchett Lease, in paragraph 5 states as follows:

(5) If at the expiration of the primary term, oil or gas, is not being produced on said land, but Lessee is then engaged in drilling or reworking operations thereon, or shall have completed a dry hole thereon within 60 days prior to the end of the primary term, the lease shall remain in force so long as operations on said well or for drilling or reworking of any additional wells are prosecuted with no cessation of more than 60 consecutive days, and if they result in the production of oil or gas, so long thereafter as oil or gas is produced from the land. If, after the expiration of the primary term of this lease and after oil or gas is produced from said land, the production thereof should cease for any cause, this lease shall not terminate if Lessee commences operations for drilling or reworking within 60 days after the cessation of such production, but shall remain in force and effect so long as such operations are prosecuted with no cessation of more than 60 consecutive days, and if they result in the production of oil or gas, so long thereafter as oil or gas is produced from said land. In the event a well or wells producing oil or gas in paying quantities should be brought in on adjacent land and within 330 feet of and draining the leased premises, Lessee agrees to drill such offset well or wells as a reasonable prudent operator would drill under the same or similar circumstances. Lessee may at any time execute and deliver to the Lessor or place of record a release or releases covering any portion or portions of the above described premises and thereby surrender this lease as to such portions or portions and be relieved of all obligations as to the acreage surrendered.

It is clear from the language of paragraph 5 that at the end of the primary term, oil or gas is not being produced on the Hatchet Lease, but Lessee is then engaged in drilling or reworking operations thereon, the lease can be extended. These operations must be ongoing before the expiration of the primary term. It is well understood in Texas that once the primary term ends and there is no production the lease has terminated. In the present case the lease could have been extended by a new lease or what is referred to as a "top lease". This would be that the new lease would in fact begin the moment the old lease expired. There could have been a ratification of the old lease negotiated with the Mineral Owners, whereby a new bonus payment as consideration would have been paid. The existing wells could have been re-opened and production established or a rig brought in and work-over operations commenced or a drilling rig could have been brought in before the expiration of the primary term and drill actually commenced. However, none of these options were used. The Receiver chose to do nothing. The lease expired and there was no production. The lease automatically terminated. Once terminated all the efforts afterwards cannot resurrect the dead lease.

The oil and gas lease of the Hatchett Lease, in paragraph 18 states as follows:

(18) Lessee shall, within 120 days from the date of termination of this lease, remove all surface equipment and facilities or, after the 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 wellhead and subsurface casing pipe and equipment shall remain the property of the Lessee.

The testimony and statements of the Receiver indicate the application and staking of a well location. The time of the 120 days to remove the surface equipment began on the expiration of the primary term on April 15, 2016. The 120 day period would run until August 15, 2016. After this deadline of 120 days the equipment shall be considered

abandoned and become owned by the surface owner. It was this deadline date of the 120 days that triggered the letter of October 2016 regarding trespass. Even then there were 60 days that elapsed past the deadline to allow salvage operations before the notice was executed. The receiver did not attempt to remove any equipment within the 120 day period. In any event, the notice given in October 2016, in no way interfered with the Receiver acting in a timely manner to recover salvage. The time, to commence drilling operations to extend the terms of the lease were long over by that point in time.

The oil and gas lease of the Hatchett Lease, in paragraph 20 states as follows:

(20) "Commencement of operations" for drilling a well to hold this lease is defined as having a rig capable of drilling to the proposed permitted depth of a well on the well location, with all necessary equipment and pits in place, and with subsurface drilling operations ongoing as of the date the lease would otherwise terminate.

The language of the lease terms is very clear and tracks with the established law and custom of Texas, in that the drilling operations but be of a nature to have all the necessary equipment and pits in place, and with subsurface drilling operations ongoing as of the date the lease would otherwise terminate. The permit to stake a location was not even applied for with the Texas railroad Commission until 7 months after the lease had actually expired.

The oil and gas lease of the Hatchett Lease, in paragraph 21 states as follows:

(21) "Non-Production of oil or gas" is defined to mean that: (i) as to oil, production of less than 15 barrels during any 60 day period; and (ii) as to gas, no production during any 60 day period; after the termination of the primary term.

The testimony was that after the Receiver took over operations the wells were closed and no production has been possible since 2013. It is clear there was an elapse of more than 60 days of production that took place after the termination of the primary term.

It is clear from the terms of the Hatchett Lease that operator Quest and the Receiver's actions failed to comply with the necessary actions required to extend the Hatchett Lease beyond the primary term. The planning, discussing, consulting geologist and drilling companies, obtaining a permit and staking a location seven months after the end of the primary term fall short of the action needed to be in compliance with paragraph 20 and failed to place the Hatchett Lease into the second part of the habendum clause.

The oil and gas lease of the Hatchett Lease, in paragraph 24 states as follows:

(24) 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 or 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 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 Hatchett Lease as to all 27 tracts of land expired on April 15, 2016 and more than 60 days have elapsed. The Lessee under the terms of the lease shall provide a release and file it with the county records.

In addition to the facts relating to the terms of the Hatchett Lease on their face as to why the Hatchett Lease has terminated and a release be given the following case law supports the termination of the lease and support Respondents claim the actions taken and efforts made by the Receiver fail to extend the Hatchett Lease beyond the primary term.

It was found in ***Ridge Oil Company, Inc. v. Guinn Investments, Inc.***, 148 S.W. 3d 143 (Tex. S.C. 2004) attached as an addendum hereto and marked as Exhibit "C" [13] Production under the 1937 lease ceased no later than March 3, 1998, when the new leases on the Ridge tract became effective. Guinn alleged in its petition that, before that

date, it had obtained a drilling permit from the Texas Railroad Commission and had conducted bulldozing at the well site on an unspecified date. The summary judgment evidence, however, shows only that a permit to drill was obtained on February 27, 1998, that sometime prior to March 4, 1998 Guinn was "attempting to pay surface damages in the course of "gaining entry" to drill, and that on a date not specified, a wooden stake was driven into the ground to mark the well site. Guinn contends that it was excused by Ridge's conduct from pursuing any further operations and, therefore, that the 1937 lease remains if effect. We disagree.

In the present case the drilling permit and staking of the well site was not conducted until 7 months after the term of the lease expired.

In ***Ridge Oil Company, Inc. v. Guinn Investments, Inc.***, 148 S.W. 3d 143 (Tex. S.C. 2004) [14] in part ---- There is no evidence in the record that any activity or "operations" took place on the Guinn tract for this twenty-five day interval. Even assuming that the stake was driven into the well site during this interval, and taking into account the fact that Guinn obtained a drilling permit on February 28, 1998, and was attempting to pay surface damages, this does not raise a fact question as to whether "operations were being carried on" sufficient to sustain the lease.

In this same opinion the Court sited, ***Gulf Oil Corp. v Reid***, in part reads, The lease provided that it would continue beyond the primary term "as long as drilling or reworking operations are being conducted on said land." This Court held that negotiations after the primary term expired were "not... any manual operations on the part of the lessee" and that the term "operations' cannot be extended to include a search on the part of the lessee.

In ***Forney v Ward***, reads in part, A jury found that a well was not begun, and the court of appeals affirmed, apparently concluding a jury could find no well was begun until there was "actual boring into the ground."

In ***Ridge Oil Company, Inc. v. Guinn Investments, Inc.***, the Court concluded, Indeed, Guinn conducted no activities whatsoever. As a matter of law, this did not satisfy the "as long as operations are being carried on" provision.

VI.

SUMMARY

The summation of the law and facts bring us to the conclusion there on only three ways an oil and gas lease can be or remain in effect. The first is by the primary terms of the oil and gas lease itself. In this case a 5 year paid up lease. The second is to extend the term of the lease by holding the lease by the production of oil or gas in paying quantities as per the long held habendum clause. However, the third way is the second part of the habendum clause and that is by (or the commencement of operations to obtain production) at the end of the primary term.

In the case before the Court, in order for the Receiver to have commenced operations under the Hatchett Lease, to perpetuate the lease it would have had to have had on location a drilling rig capable of drilling to the permitted depth with necessary equipment and pits in place, and with subsurface drilling operations ongoing as of the date the lease would otherwise terminate.

The Receiver allowed the primary term of the lease to expire having had three years to pursue operations. The lease expired without having any production from the 7 existing wells on the Hatchett Lease. The receiver failed to commence any operations to

extend the lease by having a drilling rig actually conducting subsurface activities before midnight of the expiration of the primary term. It is clear from case law that discussing, planning, getting water letters and permits, and even staking a location are not the same as drilling. The Hatchett Lease terminated on April 15, 2016.

The Receiver failed to grant a release of the oil and gas lease 60 days after the termination of the lease.

The Receiver failed to salvage the equipment on the surface within the required 120 days and failing to do so the equipment is considered abandoned and became the property of the surface owner.

The royalty payments for the 11,000 MCF of natural gas that was produced by Quest have never been paid by either Quest or the Receiver. These royalties are owed under the terms of the lease and the Mineral Owners are entitled to their payments.

It is customary upon termination of a Texas oil and gas lease that all records, production data, logs, geological work, maps are turned over to the Mineral Owners.

VII.

PRAYER

WHEREFORE, Respondents, pray this Court to make findings that the Hatchett Lease was terminated as of April15, 2016.

To Find the Receiver failed to provide a release of the oil and gas lease and file the same with the County Clerk of Callahan County, Texas 60 days after the date of the termination of the lease and so Order the release be executed by the Receiver, and filed of record to clear any future title questions.

To Find the Receiver failed to salvage the equipment within the 120 days as allowed by the lease and make a finding the equipment is abandoned and belongs to the surface owner upon which it is located.

To Order the Receiver to file a release of the equipment relinquishing all right title and interest in and to all surface equipment found on the Hatchett Lease.

To Order the Receiver to make payment for all the royalties owed on the 11,000 MCF natural gas that have never been paid either by Quest at the time it was produced nor by the Receiver to the Mineral Owners and,

Order the receiver to turn over all records, Texas Railroad Commission information, logs, data, maps and geological records regarding the Hatchett Lease to the Mineral Owners.

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By: Byron W Hatchett
Byron W. Hatchett Pro Se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 4, 2017, I mailed the foregoing to the Clerk of the Court by overnight with FedEx and by U. S. First Class Mail.

I FURTHER CERTIFY that on May 3, 2017, a true and correct copy of the foregoing was provided via U.S. First Class Mail to Jordan D. Maglich, WIAND GUERRA KING P.A. 5505 West Gray Street, Tampa, Florida 33609.

Byron W. Hatchett

Byron W. Hatchett Pro Se Respondent