

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DAVID E. CAMERON, et al.,	:	
	:	Case No. 2:12-CV-00168
Plaintiffs,	:	
	:	JUDGE ALGENON L. MARBLEY
v.	:	
	:	Magistrate Judge Preston Deavers
HESS CORPORATION, et al.,	:	
	:	
Defendants.	:	

OPINION & ORDER

I. INTRODUCTION

This matter is before the Court on the Parties’ oral resubmission of the Motion by Defendant Hess Ohio Resources, LLC (“Hess”) seeking an Order tolling the terms of the oil and gas lease at issue (the “Cameron Lease”) from the date Hess was served with process in the original Ohio state court lawsuit (Doc. 69). Plaintiff opposes, but does not object to a stay granted from the date of the filing of Hess’s Motion, that is, October 4, 2013, to last through the resolution of this case, including appeal. (*See* Doc. 75 at 6).

For the reasons stated herein, Hess’s Motion is hereby **GRANTED**.

II. BACKGROUND

This case arises out of an oil and gas leases between former Defendant, Mason Dixon Energy¹, (“Mason Dixon”) and David Cameron. In 2008, Mr. Cameron executed a written “Oil and Gas Lease” with Mason Dixon, granting the lessee² the exclusive right to enter to conduct surveys, explore for oil and gas, and to operate and produce from oil and gas wells. Mason Dixon later conveyed all of its right, title and interest, in and to the Lease to Marquette

¹ Plaintiff and Defendant Mason Dixon Energy reached a settlement agreement on November 21, 2013 (Doc. 80). Plaintiff dismissed all claims against Mason Dixon, with prejudice, on December 10 (Doc. 85).

² The use of the term “lessee” refers to Mason, Marquette, or Hess, as appropriate.

Exploration, LLC (“Marquette”), subject to the terms, provisions, covenants, and royalties of the original leases. The lease was subsequently further assigned to Hess.

The Cameron Lease provides for an initial five-year primary term, beginning June 27, 2008. Under the Lease’s “habendum clause,” the lease should continue for as long thereafter as oil and gas is produced from the land by lessee or its successors. (J. Ex. 5, ¶ 2). Under this clause, the lessee also has the option to extend the Lease “for an additional five (5) year(s) from the expiration of the primary term,” and as long thereafter as oil and/or gas continues to be produced, under the same terms and conditions as the primary term. (*Id.*).

Contemporaneously with the Cameron Lease, Mr. Cameron signed an “Order of Payment and Bonus and Rental Agreement” (the “Order of Payment”), which provides that, to the extent any terms in the Order of Payment “conflict with or are inconsistent with” any of the terms of the Lease, the Order of Payment terms “shall control.” (J. Ex. 6, ¶ 2). The Order of Payment contains a “delay rental” provision, which provides that, if operations for drilling are not commenced on or before 12 months from the Lease start date, the lease shall terminate as to both parties. (*Id.*, ¶ 3). This provision takes effect unless the lessee, before expiration, pays to lessor a sum equal to \$100 per net mineral acre of the Lease, which delays operation of this provision for 12 months. (*Id.*). The Order of Payment also states that the lessee has the option to extend the Lease “for an additional term of five (5) year(s) from the expiration of the primary term of this lease,” for a payment of \$500 per net mineral acre. (*Id.*). In parallel with the initial five-year term, the Order of Payment provides that the Lease will terminate after 12 months of the additional term, if no drilling has commenced, unless a delay-rental payment of \$100 per net mineral acre is tendered, which delays termination for an additional 12 months. (*Id.*). The Order

of Payment only explicitly provides for one delay-rental payment during each five-year term; it is silent with regard to whether further delay-rental payments are disallowed.

No drilling activities of any kind have taken place on the Cameron Property. Instead, Hess has tendered delay-rental payments each year, in 2009, 2010, 2011, and 2012. Mr. Cameron endorsed and negotiated each payment, though in 2012 he noted that his signature was done “under protest.” On May 13, 2013, Hess tendered to Plaintiff a payment for \$83,180, intended by Hess to be its payment for the five-year extension of the Lease contemplated in the Order of Payment. Mr. Cameron received this check but did not endorse or negotiate it.

This action commenced on January 27, 2012, in the Court of Common Pleas for Jefferson County, Ohio. (*Complaint*, Doc. 3). On February 23, 2012, Defendants removed to federal court. (Doc. 2). In November, Plaintiff sought, and was granted, leave to file an Amended Complaint (Doc. 30), and on December 12, 2012, Hess answered and filed various counterclaims. (Doc. 32). Plaintiff moved for summary judgment on January 11, 2013 (Doc. 37), and the Hess Defendants responded and moved for summary judgment on their counterclaims on February 22 (Doc. 42). In their cross motions, each party asked the Court to find the Cameron Lease unambiguous in its favor. Thus, Plaintiff urged the Court to find that the lease had terminated under its own terms; Hess argued that lease had not terminated.

On September 24, 2013, the Court denied the Parties’ Motions for summary judgment. (Doc. 66). The Court found that both Parties had presented reasonable interpretations that attempted to harmonize the terms of the Cameron Lease and Order of Payment, and accordingly held that the Cameron Lease was ambiguous as a matter of law.

Hess then sought tolling of the Cameron Lease in a Motion filed October 4, 2010. (Doc. 69). On February 13, 2014, the Court denied Hess’s Motion without prejudice, finding that,

under Ohio law, “tolling is appropriate only after the Court has ruled on the validity of the lease[.]” (Doc. 95 at 8).

On December 13, 2013, the Court granted the Parties’ Joint Motion to Amend the Amended Complaint and Counterclaims (Doc. 92), removing several claims by both Parties. In addition, on April 2, 2014, the Court entered a Stipulation and Agreed Order (Doc. 98) further winnowing the remaining points of dispute. As a result of these Orders, the only claim by Plaintiff remaining for trial was Count VI of the Amended Complaint, which alleged, in short, “that the express terms of the Order of Payment altered the Primary Term of the Cameron Lease from five (5) years down to two (2).” (*Proposed Joint Final Pretrial Order*, Doc. 97 at 2). Plaintiff thus sought a declaration that the Cameron Lease expired on June 26, 2010, or in the alternative on June 26, 2012. (*Id.* at 3). Defendant sought a contrary declaration.

This Court presided over a trial on this issue on April 15-16, 2014. At the close of trial, the Court announced its ruling in favor of Hess, with a written opinion to follow. Accordingly, no further issue remains as to the validity of the Cameron Lease. The only remaining matter in this case is Defendant’s renewed request to toll the lease pending final conclusion of this action including any appeal. (*See* Doc. 98 at 1).

III. ANALYSIS

Hess asks the Court to toll the Cameron Lease from the time of Plaintiff’s filing of the original action in state Court. Hess argues that, since that time, it has been denied its rights under the lease, even for the undisputed portion thereof, and so the Court should equitably toll the lease period. (Doc. 69 at 3). Plaintiff opposes, on the grounds that a stay is not required under Ohio law, and in any case Defendant has waited far too long to request a stay, and has therefore forfeited its equitable right. (Doc. 75).

A. Arguments of the Parties

Hess grounds its argument in equity: Hess was “denied its undisputed rights under the oil and gas lease[] that [is] the subject of this action” because, from the filing of this action, “Hess has been, and still is, unable to drill a well or make any productive use of the leased propert[y].” (Doc. 69 at 3). Plaintiff challenged the validity of the lease, and disputed the effect of Hess’s attempt to exercise its right to extend the leases; while these issues remained in dispute, according to Hess, “no productive use of the lease propert[y] [could] be made.” (*Id.*). “It is hard to imagine,” Hess concludes, “something more inequitable to the lessee.” (*Id.*).

Hess points the Court to several Ohio state and federal court decisions, granting equitable tolling based on Ohio law. *See, e.g., Three Waters, LLC v. Northwood Energy Corp.*, No. 2012-042 (Monroe County C.P. June 12, 2012); *Wiley v. Triad Hunter, LLC*, No. 2:12-cv-00605 (S.D. Ohio June 5, 2013); *Chesapeake Exploration, L.L.C. v. McClain*, No. 2:13-cv-0445 (S.D. Ohio July 30, 2013). Hess further argues that equitable tolling “follows from the well-established rule [in Ohio] that when a lessor’s action prevents or interferes with a lessee’s production during the primary term of the lease, the lessee is entitled to an extension of the term.” (Doc. 69 at 4). Finally, Hess raises the policy concern that, absent tolling, future litigants may be encouraged to file lawsuits during the term of a lease, merely to “deny access to the lessee, and run out the lease clock, thereby denying the lessee part of its undeniable contractual rights.” (*Id.* at 3).

Hess concludes that, because there is “no question” that the pendency of this suit has “interfere[d] with [its] ability to exercise its rights under the lease,” by “prevent[ing] further investment in or production of the leased propert[y],” tolling is necessary. (*Id.* at 5). Since the lessee has a finite period within which to begin drilling and production, each day of the suit subtracted from the time for which Hess bargained and paid. (*Id.*).

Plaintiff opposes. First, he responds that Hess is exceedingly late in filing this Motion, having waited some 617 days from the inception of this action to ask for tolling. (Doc. 75 at 2). At the same time, Plaintiff previously argued that Hess was also too *early*: while Plaintiff concedes that the “general rule” in Ohio case law favors equitable tolling of an oil and gas lease the validity of which is challenged by the lessors, he argued that such tolling should come only *after* a the Court has ruled on the validity and enforceability of the leases. (*Id.*). Establishing a bright-line, party-driven rule, Plaintiff argues, would discourage lessors from bringing meritorious actions to determine the validity of their leases. (*Id.* at 2-3).

In the alternative, Plaintiff argues that it would be equitable and fair to all Parties if the Court granted Hess’s Motion to Toll from the date of filing (October 4, 2013) forward. (*Id.* at 6).

B. Law and Analysis

This Court previously concluded that it was inappropriate, under Ohio law, to grant equitable tolling when the validity of the Cameron Lease was still called into question by the allegations of the Parties, and when the Court had not yet ruled on that issue. (Doc. 95 at 7-9). In light of the recent Orders settling the formation, validity, and enforceability of the lease, and in light of the Court’s judgment after trial, however, it is now meet for the Court to rule.

The Parties have directed the Court to several recent cases that speak directly to the issue of tolling in the context of an oil and gas lease in Ohio, the validity of which is challenged by the lessor. In *Three Waters, LLC v. Northwood Energy Corp.*, No. 2012-042 (Monroe County C.P. June 12, 2012), the plaintiff disputed the validity of the leases at issue, arguing that they were void in their entirety because they were not signed in the presence of a notary public. *Id.*, ¶ 4. The court, relying on Ohio Supreme Court precedent, found that the leases were “valid and enforceable” as between the parties, and entered judgment in favor of the defendant. *Id.*, ¶ 15. The court found that the plaintiff’s “action of challenging the validity of the Leases” rendered the

defendant's claim for tolling "ripe and justiciable." *Id.*, ¶ 16. Since the filing of the lawsuit had a "direct impact on [the] [d]efendant's ability to exercise its rights under the Leases during the initial five-year term," the court concluded that the defendant was entitled as a matter of law to judgment tolling the term of the leases from the date of service of the complaint until final disposition, including appeal. *Id.*, ¶ 18.

In *Chesapeake Exploration, L.L.C. v. McClain*, No. 2:13-CV-0445 (S.D. Ohio July 30, 2013) (Frost, J.), the Court also tolled the lease period, in an action for breach of the lease due to withholding of consent to the location of an access road required to develop the oil and gas on the property. *Id.* at 1. The Court held that, although the lessors had not challenged the validity of the lease in the matter *sub judice*, their actions in state court, as well as their expressed desire to prevent the lessee from entering onto the property, were sufficient interference with the lease interest to merit equitable tolling. *Id.* at 6-7. Importantly, the Court concluded that at the "highly preliminary stage" during which the motion for tolling was filed, "[i]t suffice[d] for [the lessee] to show that the [lessors] ha[d] challenged the validity of the Lease and that such a challenge has prevented [the lessee] from developing its leasehold interest." *Id.* at 7-8.

Finally, in *Wiley v. Triad Hunter LLC*, No. 2:12-CV-00605 (S.D. Ohio) (Sargus, J.), the Court considered tolling in the context of a lawsuit seeking to declare certain oil and gas leases null and void and canceling the attempted assignment from the original lessee to the defendant. In response to the suit, the defendant moved for an order tolling the period of the leases from the date of service until final disposition, including appeals, on the same grounds raised here by Hess. In its initial disposition of the defendant's motion, the Court found that a decision as to tolling would be "premature" when the underlying merits of the plaintiffs' claims remained unresolved, and thus the status of the leases was still in doubt. *Wiley*, Doc. 88 at 3, No. 2:12-

CV-00605 (S.D. Ohio June 5, 2013). The Court concluded that “[a]ny tolling of the lease periods . . . would be contingent on a finding that the leases are valid and enforceable.” *Id.*

Three months later, after denying the plaintiff’s motion seeking summary judgment finding the defendants in material breach and the lease terminable, and instead granting summary judgment for the defendants, the Court revisited the issue. *Wiley*, Doc. 172, No. 2:12-CV-00605 (S.D. Ohio Sept. 27, 2013). The Court found that “relevant Ohio case law,” as well as case law outside Ohio, “favors the equitable tolling of an existing oil and gas lease term where the lessors have challenged the validity of the lease,” for reasons of fairness and equity *Id.* at 19-20. Citing *Three Waters*, the Court explained that the lessee “has already bargained for and paid for a certain term of time for which the Leases are valid. And because the Leases are indeed valid, [the lessee] should not be penalized for the unsuccessful lawsuit of the other party to the Leases.” *Id.* at 20. Accordingly, the Court ordered equitable tolling from “the date of service to the date of final disposition” of the plaintiffs’ claims, including any appeals, in order to “restore the parties to the position they occupied originally. *Id.* (quoting *Jicarilla Apache Tribe v. Andrus*, 687 F.2d 1324, 1341 (10th Cir. 1982)). Holding otherwise, the Court added, “would create the incentive for vexatious litigation by parties unhappy with a currently valid lease.” *Id.*

In light of these precedents, this Court concludes that the lessee’s right to equitable tolling is well-established in Ohio. At the same time, the Court is mindful that proclaiming a bright-line rule in favor of tolling is also not without peril, as such a rule could “discourage lessors from bringing actions to determine the validity of their leases,” including potentially meritorious claims. *Laurchle v. Keeton Group LLC*, 768 F. Supp. 2d 757, 762 (M.D. Pa. 2011) (applying Pennsylvania law). Accordingly, given the equitable nature of this remedy, this Court looks to the balance of equities to determine how much, if any, tolling is proper.

Unlike the Griffiths (*see* Doc. 66 at 10-15), Plaintiff here has not succeeded in pressing his preferred interpretation of the Lease. Moreover, Plaintiff was not victorious in his challenge to the validity and enforceability of the lease itself: these claims, while initially raised by Plaintiff (*see Pls' Joint Reply to Defs' Amd. Counterclaim*, Doc. 36, ¶¶ 65-68), have since been abandoned, with prejudice. (*See Joint Motion*, Doc. 90 at 1) (dismissing Counts II, III, and IV with prejudice); (*see also* Doc. 98) (stipulating that “[t]here is no issue now pending with this Court with respect to whether the Cameron Lease is valid.”).

Furthermore, it is evident that Hess has been “denied almost two years of rights held to be valid by this Court.” (Doc. 78 at 2 n.1). Under the Cameron Lease as interpreted in this Judgment at trial, and in light of the Parties Stipulation and Agreed Order (Doc. 98), Hess’s rights under the lease for the initial five-year term, with option to extend, are beyond question. This lawsuit has deprived Hess of its rights to make use of the land beginning from the suit’s commencement, and continuing now.

Plaintiff’s assertion that Hess waited too long to seek tolling (*see* Doc. 75 at 2-4) is more than a little disingenuous, in light of the fact that his Response also argues that Hess was too *early* in filing its Motion to Toll, since, at that time, the Court had not yet ruled on the validity of the Griffiths Lease (*cf. id.* at 2-3). Plaintiff appears to argue that Hess should have filed its Motion as soon as the litigation began, but also should have expected the Court to deny the Motion at that time, following Judge Sargus’ example in *Wiley*, only to renew its Motion after a merits determination. Equity does not so exalt form over substance. Moreover, Plaintiff can hardly argue that he is surprised to learn that Hess desires, at least, to recover the time of its lease for which it paid, and which this litigation rendered unusable.

Accordingly, tolling is appropriate from the date of service, until final disposition of the case, including any appeal. In its Motion, Hess refers to the date of service of the “original” Complaint as November 23, 2011, referencing *Cameron et al. v. Hess Corp. et al.*, No. 11CV00658 (Jefferson Cty. Ct. Com. Pl.). (See Doc. 69-3). That case, however, was voluntarily dismissed on January 23, 2012. The case *sub judice* began as *Cameron et al. v. Hess Corp. et al.*, No. 12CV00034 (Jefferson Cty. Ct. Com. Pl.), filed January 27, 2012. (Compl., Doc. 3; see also Defs.’ Mot. for Partial Sum. J., Doc. 42 at 8). Service was effectuated on January 30, 2012 (see Doc. 2-1 at 28-33), and the case was subsequently removed to this Court on February 23, 2012. (Notice of Removal, Doc. 2). The Court therefore finds tolling to be appropriate from the date of service in *this* case – that is, January 30, 2012. Compare *McClain*, No. 2:13-CV-0445, at 8 (S.D. Ohio July 30, 2013) (granting tolling only from the date of original filing of the federal court action before the Court).

IV. CONCLUSION

For the foregoing reasons, Hess’s Motion to Toll (Doc. 69) is hereby **GRANTED**. The Cameron Lease shall be tolled from the date of service of the Complaint in Jefferson County Common Pleas Court, **January 30, 2012**, until final disposition, including any appeals.

IT IS SO ORDERED.

/s/ Algenon L. Marbley
ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE

DATED: April 23, 2014