

**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.	:	
	:	
HESS CORPORATION, et al.,	:	Magistrate Judge Elizabeth P. Deavers
	:	
Defendants.	:	

OPINION & ORDER

I. INTRODUCTION

This matter is before the Court on the Motion of Defendant Hess Ohio Resources, LLC (“Hess”), requesting an Order tolling the terms of the oil and gas leases at issue in this case, from the date Hess was served with process in the original Ohio state court lawsuit. (Doc. 69). Plaintiffs oppose, but do 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. (Doc. 75 at 6). For the reasons stated herein, Hess’s Motion is hereby **DENIED** without prejudice.

II. PROCEDURAL POSTURE

This case began with a civil Complaint filed in the Court of Common Pleas for Jefferson County, Ohio, on January 27, 2012, regarding two leases, the “Cameron Lease” and the “Griffiths Lease,” seeking various declaratory judgments, damages, and invalidation of the leases. (*Complaint*, Doc. 3). The original Complaint also sought certification for class-action status. (*Id.*). On February 23, 2012, Defendants removed to federal court. (Doc. 2). In November, Plaintiffs sought, and were granted, leave to file an Amended Complaint, which no longer styled itself as a class action. (Doc. 30). On December 12, the Hess Defendants answered and filed various counterclaims. (Doc. 32).

Plaintiffs 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). On March 18, Defendant Mason Dixon Energy filed its own motion for summary judgment. (Doc. 51). On September 24, 2013, the Court granted in part and denied in part Plaintiffs' and Defendants' cross motions for summary judgment. (Doc. 66). The Hess Defendants moved for reconsideration (Doc. 68), which the Court denied (Doc. 72). Little over two weeks later, Plaintiffs moved for reconsideration (Doc. 73), which the Court also denied (Doc. 81). The Motion *sub judice* was filed October 4, 2010. (Doc. 69).

III. BACKGROUND

This case arises out of two oil and gas leases between Defendant Mason Dixon Energy¹ ("Mason Dixon") and Plaintiffs Stephen and Melissa Griffith (the "Griffiths"), and Mason Dixon and Plaintiff David Cameron ("Cameron").² In 2007, the Griffiths purportedly executed a written "Oil and Gas Lease" with Mason Dixon (the "Griffiths Lease"). Approximately one year later, Mason Dixon purportedly executed a written "Oil and Gas Lease" with Cameron (the "Cameron Lease"), whose farm adjoins the Griffiths'. The leases are largely identical, and both grant the lessee the exclusive right to enter to conduct surveys, explore for oil and gas, and to operate and produce from oil and gas wells.

Both leases allow for assignment, and, pursuant to this clause, Mason Dixon conveyed all of its "right, title and interest, in and to" the Griffith and Cameron Leases to Marquette Exploration, LLC ("Marquette"), subject to the terms, provisions, covenants, and royalties of the original leases. The leases were subsequently assigned to Defendant Hess Ohio Resources, LLC ("Hess").

The Griffiths Lease has a "primary term" of five years, scheduled to expire in June 2012. It contains a "habendum clause," providing that the lease should continue for as long thereafter as oil and gas is produced from the land by lessee or its successors, and allowing for the lease to be extended for an

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

² The factual background presented here is largely drawn from the Court's Opinion and Order on the parties' cross motions for summary judgment (Doc. 66).

additional five-year term from the date of 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. The Griffiths Lease also contains a “delay rental” provision, providing that, if operations for drilling are not commenced on or before 12 months from the start date (that is, June 14, 2007), the lease shall terminate as to both parties. This provision takes effect unless the lessee, before expiration, pays to lessors a certain sum of money, which delays operation of this provision for 12 more months, with option to do the same at the expiration of each 12-month period for the duration of the primary term.

No drilling activity of any kind has yet begun on the Griffiths property. The lessee,³ however, has made four annual Delay Rental payments, in 2008, 2009, 2010, and 2011. In addition, in May 2012, the lessee made an extension payment, intended to extend the lease for an additional five years, through June 2017, pursuant to the habendum clause.

The Cameron Lease contains a similar “habendum clause,” which provides for an initial five-year primary term, beginning June 27, 2008, and extending as long as oil and gas is produced from the land by lessee. As with the Griffiths Lease, the lessee has the option to extend the lease for an additional five-year term, and as long thereafter as oil and gas is produced. Contemporaneously with the Cameron Lease, Cameron signed an “Order of Payment and Bonus and Rental Agreement” (the “Order of Payment”), which provides that the Order of Payment terms control over any conflicting terms in the Cameron Lease document itself. The Order of Payment contains a “delay rental” provision similar to the Griffiths Lease, except that it provides only for one delay rental payment during the primary term (not one per year), and also explicitly allows one delay rental payment during the secondary term.

As with the Griffiths Property, no drilling activities of any kind have taken place on the Cameron Property. The lessee made four payments styled as “delay rental payments” during the period from 2008 to 2012. It did not make a payment to extend the lease for an additional five-year term.

³ The use of the term “lessee” refers to Mason, Marquette, or Hess, as appropriate.

On their cross motions for summary judgment, each party asked the Court to find the lease in question unambiguous in their favor. Thus, Cameron and the Griffiths urged the Court to find that both leases had terminated under their own terms. Hess sought a judgment that both leases had not terminated. The parties asked the Court to assume, for purposes of summary judgment, that the Leases had been executed without defect, and that the lessee had made all relevant delay rental and extension payments.

The Court granted summary judgment in part for the Plaintiffs, and in part for the Defendants. First, the Court found that the Griffiths Lease is unambiguous as a matter of law, and terminated automatically on its own terms as of June 2013. The Court reasoned that delay rental payments were applicable only to the primary term – that is, the initial five-year term – such that, once the lessee opted to extend the lease through the additional term, in June 2012, it had one year within which to start drilling, or the lease would terminate. Because no drilling activity has taken place, the lease expired in June 2013.

With regard to the Cameron Lease, the Court also assumed without deciding, at the parties' request, that there were no defects in the lease documents, and that all required delay rental and extension payments had been made. 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. The Court noted that it was difficult to harmonize the five-year primary term and five-year secondary term in the Cameron Lease—coupled with only one opportunity to make a delay rental payment in each term—with the language in the Order of Payment acknowledging that drilling operations may not have begun by the beginning of the secondary term.

On October 15, and on November 25, the Court rejected motions to reconsider its summary judgment order, filed by Hess and Cameron, respectively. (*See* Doc. 72, 81).

IV. ANALYSIS

Hess asks the Court to toll the leases at issue in this case, from the time of Plaintiffs' filing of the original action in state Court. Hess argues that, since that time, it has been denied its rights under the

leases, even for the undisputed portions thereof, and so the Court should equitably toll the lease period. (Doc. 69 at 3). Plaintiffs oppose the Motion, on the grounds that a stay is not required under Ohio law, especially for a disputed lease, 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 leases that are 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 properties.” (Doc. 69 at 3). Plaintiffs challenge the validity of the leases, and dispute the effect of Hess’s attempt to exercise its right to extend the leases; while these issues remain in dispute, “no productive use of the lease properties may 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 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 public 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 properties,” tolling is necessary. (*Id.* at 5). Because the lessee has a finite period

within which to begin drilling and production, or else the lease will terminate, each day that this lawsuit compels Hess to delay subtracts from the time for which it bargained and paid. (*Id.*).

Plaintiffs oppose. First, they respond 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, Plaintiffs argue that Hess is also too *early*: while Plaintiffs concede 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, they argue 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, Plaintiffs argue, would discourage lessors from bringing meritorious actions to determine the validity of their leases. (*Id.* at 2-3). Plaintiffs expand on their argument by invoking the doctrine of laches. Hess was obliged to raise the tolling issue at the outset of the litigation, or close to that point; its Motion now, argue Plaintiffs, is merely an attempt to “skirt this Court’s [Order]” on summary judgment. (*Id.* at 3). Its delay was unreasonable and prejudicial because granting tolling back to the date of filing would revive the Griffiths and Cameron Leases, which otherwise have already expired. (*Id.* at 4).

Plaintiffs conclude by claiming that, pursuant to the Court’s Order on summary judgment, Hess “has already lost on the merits to the Griffiths, meaning the Griffiths were justified and vindicated in bringing this action.” (*Id.* at 5). With regard to the Cameron Lease, the Court stated in that same Order that there exists “substantial support” for Cameron’s interpretation. (*Id.*) (citing Doc. 66 at 16). Tolling from the start of the litigation would undo the Court’s grant of summary judgment in favor of the Griffiths, Plaintiffs insist, and work a similar prejudice on Cameron. (*Id.* at 5-6). In the alternative, Plaintiffs argue 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

As a threshold matter, the Court notes that it has not yet ruled on the validity of either the Griffiths or Cameron leases. In its Opinion and Order, the Court denied summary judgment with respect

to Count I, and granted summary judgment for Plaintiffs with respect to Count II, of Defendant Hess's Counterclaim (Doc. 66 at 15, 19). With respect to Count VI of Plaintiffs' First Amended Complaint, the Parties specifically requested that the Court forebear from rendering a judgment on the validity of the leases. (*See Plaintiffs' Memorandum in Support of Motion for Summary Judgment*, Doc. 37-1, at 9). Rather, the Court assumed without deciding "that there is no defect in the [leases], and that Hess has made all delay rental and extension payments required under [their] terms," (Doc. 66 at 10, 15) and held that the Griffiths Lease expired under its own terms in June 2013, but the Cameron Lease remains ambiguous as a matter of law, not susceptible to resolution on summary judgment (Doc. 66 at 15, 18-19).

In addition, on December 13, 2013, the Parties filed a Joint Motion to amend their pleadings and dismiss certain claims, which the Court granted. (Doc. 92). Accordingly, the following claims remain:

- Plaintiffs' Count VI, for declaratory judgment regarding the Order of Payment Provision, with regard to the Cameron Lease;
- Defendants' Count I, seeking declaratory judgment in favor of the validity, enforceability, performance of all obligations, and non-expiration of the Cameron Lease;
- Defendants' Count II, seeking the same, with regard to the Griffith's Lease;
- Defendants' Count V, alleging anticipatory breach against Cameron;
- Defendants' Count VII, alleging unjust enrichment against Cameron.

With regard to Defendant's Count II, the Court notes that, in its Opinion and Order, it granted summary judgment in favor of the Griffiths, but, as discussed above, the Parties' briefing only addressed the issue under the assumption that the Lease was valid and enforceable; on those grounds, the Court found that the Lease expired on its own terms in June 2013. (Doc. 66 at 19).

It is inaccurate, therefore, for any party to claim that the enforceability of the leases undergirding this action has been settled. Plaintiffs are incorrect when they argue that Hess has "already lost on the merits to the Griffiths," (Doc. 75 at 5), as much as Defendant is mistaken in its conclusion that "there can

be no dispute that Hess was denied almost two years of rights held to be valid by this Court” (Doc. 78 at 2 n.1). Although Plaintiffs no longer assert claims for unconscionability, improper notary provision, or missing signatory, it appears to the Court from Plaintiffs’ Joint Reply to Defendants’ Amended Counterclaim (Doc. 36) that Plaintiffs continue to deny the validity and enforceability of the Cameron and Griffiths leases (*id.*, ¶¶ 55-56, 65-66), that the lessee performed its obligations under the Leases (*id.*, ¶¶ 57, 67), and that the Leases have not yet expired (*id.*, ¶¶ 58, 68).

In this light, the Court finds that an order tolling the leases at issue in this case would be inappropriate at this time. Rather, the extensive review of Ohio case law provided by the Parties makes clear that tolling is appropriate only after the Court has ruled on the validity of the leases. Thus, in *Wiley v. Triad Hunter LLC*, No. 2:12-CV-00605 (S.D. Ohio June 5, 2013) (Sargus, J.) the Court held that because the plaintiffs’ complaint challenged the validity of certain leases, and because, at the time the defendants first moved for equitable tolling, the underlying merits of the plaintiffs’ claims, and the status of the relevant leases, were still unresolved, tolling would be improper. *Id.* at 3. Instead, the tolling of the lease periods “would be contingent on a finding that the leases are valid and enforceable.” *Id.*⁴

A survey of Ohio case law supports this conclusion. 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” between the parties, and entered judgment in favor of the defendant. *Id.* ¶ 15. On this basis, the court held that the defendant’s claim for tolling was “ripe and justiciable,” and accordingly entered judgment as a matter of law tolling the term of the leases from the date of service of the complaint until final disposition, including appeal. *Id.* ¶¶ 16, 18.

⁴ Three months later, after the Court granted the defendants’ motions for summary judgment, the Court ordered equitable tolling from “the date of service to the date of final disposition” of the plaintiffs’ claims. *Wiley*, No. 2:12-CV-00605 at 18 (S.D. Ohio Sept. 27, 2013). The Court held that, “because the Leases are indeed valid,” tolling was appropriate as a matter of equity. *Id.* at 20.

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 found 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. Critically, however, and in contrast to *Three Waters, Wiley*, and Plaintiffs' action here, no party in *McClain* disputed the validity or formation of the lease in the matter before the Court. Thus, the Court did not need to wait until after resolution of the merits of the case in order to order equitable tolling.

Accordingly, the Court concludes that a decision tolling the leases would be inappropriate at this time. In keeping with the Court's decision in *Wiley*, this denial is without prejudice; if Defendants prevail in this action, the Court will determine whether they are entitled to the equitable relief they seek.

V. CONCLUSION

For the foregoing reasons, Hess's Motion to Toll (Doc. 69) is hereby **DENIED** without prejudice.

IT IS SO ORDERED.

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

DATED: February 3, 2014