UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

STEVE EGNOT, et al.,

Plaintiffs,

v.

Case No. 2:12-cv-1008
JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Elizabeth Preston Deavers

TRIAD HUNTER LLC,

Defendant.

OPINION AND ORDER

This matter is before the Court on Defendant's Motion to Dismiss Counts One and Two of the Complaint (ECF No. 7), Defendant's Motion for Summary Judgment on Count Three of the Complaint (ECF No. 19), Defendant's Motion to Amend Answer and Counterclaim (ECF No. 34), and Defendant's Motion for Judgment Tolling The Term of Plaintiffs' Lease (ECF No. 35). For the reasons that follow, the Court **GRANTS** all of Defendant's motions in accordance with this Opinion and Order.

I.

The material facts in this action are undisputed. On October 16, 2008, Plaintiff Cathy Egnot entered into an agreement with Anschutz Exploration Corporation ("Anschutz") titled "Paid Up Oil and Gas Lease" ("Lease"). Compl. Ex. C. The Lease was assigned by Anschutz to Chesapeake AEC Acquisitions, LLC ("Chesapeake"), and from Chesapeake to Defendant Triad Hunter LLC ("Triad" or "Defendant"). Compl. ¶¶ 4, 5. The Lease "grants, leases and lets exclusively to [Triad] all the oil and gas and their constituents, whether hydrocarbon or non-hydrocarbon, underlying the land herein leased," *i.e.*, Plaintiffs' property ("Property"). Compl. Ex. C.

On October 3, 2012, Plaintiffs filed a complaint in Noble County, Ohio, alleging three causes of action, each of which would invalidate the Lease: (1) violation of Ohio Revised Code § 5301.01, which requires certain leases to be acknowledged before a Notary Public ("Notary Claim"), (2) failure to transfer oil and gas rights based on Mr. Egnot's inchoate dower interest in the Property ("Dower Claim"), and (3) breach of contract. On November 2, 2012, Defendant removed the action to this Court.

On November 9, 2012, Defendant filed a Motion to Dismiss Counts One and Two of the Complaint. (ECF Nos. 7, 8.) That motion is fully briefed. (ECF Nos. 10, 11.)

On February 27, 2013, Defendant filed a Motion for Summary Judgment on Count Three of the Complaint. (ECF Nos. 19, 20.) That motion too is fully briefed. (ECF Nos. 26, 29.)

On May 14, 2013, Defendant filed a Motion to Amend Answer and Counterclaim (ECF No. 34) and a Motion for Judgment Tolling the Term of Plaintiffs' Lease (ECF No. 35). Both of those motions are ripe for review. (ECF Nos. 38, 39, 42, 45.)

II.

Defendant moves under Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss the Notary and the Dower Claims.

A. Standard

In evaluating a complaint to determine whether it states a claim upon which relief can be granted, the Court must construe it in favor of the plaintiff, accept the factual allegations contained in it as true, and determine whether the factual allegations present any plausible claim. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–5570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference

that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (clarifying the plausibility standard articulated in *Twombly*). The factual allegations of a pleading "must be enough to raise a right to relief above the speculative level . . . ." *Twombly*, 550 U.S. at 555 (citation omitted).

B. Analysis

1. Notary Claim

There is no dispute that Mrs. Egnot was not present before a notary public when she signed the Lease on October 16, 2008. On October 20, 2008, Mrs. Egnot appeared before a notary public with the Lease and acknowledged to the notary that it was her signature on the Lease. The notary then notarized the Lease, attesting to the fact that Mrs. Egnot acknowledged her signature on the Lease before the notary. Mrs. Egnot now seeks invalidation of the Lease based on the allegation that it was not signed it in front of a notary public, which she posits violates Ohio Revised Code § 5301.01. Section 5301.01 provides in pertinent part that certain leases must be signed by the lessor and "[t]he signing shall be acknowledged by the . . . lessor . . . before a . . . notary public . . ., who shall certify the acknowledgment and subscribe the official's name to the certificate of the acknowledgment." Ohio Rev. Code § 5301.01.

Defendant moves to dismiss this claim, arguing initially that the claim does not state a violation of Ohio Revised Code § 5301.01 because that section does not require a notary to be present when the Lease was executed, but only requires the signer to acknowledge his or her signature before a notary. Further, Defendant contends that, assuming *arguendo* Plaintiffs have sufficiently alleged a violation of § 5301.01, the claim fails because Mrs. Egnot did in fact sign the Lease and the statute is not designed to protect lessors who have suffered no injury under the

statute, and because she cannot use this statute to invalidate an otherwise valid agreement. Defendant's arguments are well taken.

Section 5301.01 requires that a "signing shall be acknowledged by the" lessor in front of a notary public. Ohio Rev. Code § 5301.01. It does not, on its face, require the lessor to sign the document in the presence of a notary. However, even if the Court were to assume that Plaintiff sufficiently alleged a violation of § 5301.01, Ohio law does not permit the invalidation of an oil and gas lease that has been improperly acknowledged in the absence of procurement of the signature by deception or fraud. The Northern District of Ohio recently dealt with this exact issue in *Cole v. EV Properties* L.P., No. 4:12CV1923, 2013 U.S. Dist. LEXIS 53921, at *4 (N.D. Ohio April 16, 2013).

In *Cole*, the plaintiffs sought invalidation of an oil and gas lease based on an alleged violation of § 5301.01. The *Cole* plaintiffs "freely admit[ed] to signing" the lease, but argued that the signatures were invalid because they "never personally appeared nor acknowledged their signatures before a notary." 2013 U.S. Dist. LEXIS 53921, at *4. The *Cole* court held that the oil and gas lease was not invalidated. The court relied on *Citizens National Bank v. Denison*, 165 Ohio St. 89, 95 (1956), in which the Ohio Supreme Court held that "[a] defectively executed conveyance of an interest in land is valid as between the parties thereto, in the absence of fraud." The court distinguished *Delfino v. Paul Davies Chevrolet, Inc.*, 2 Ohio St. 2d 282, 284–85 (1965), a case that considered the lease of a piece of land used for a car dealership. The *Delfino* court held that a the lease on the car lot property was not properly acknowledged before a notary, and was therefore invalid. The Northern District of Ohio explained:

In entering its holding, *Citizens National* cited favorably to *Logan Gas Co. v. Keith*,

> 117 Ohio St. 206, 5 Ohio Law Abs. 422, 158 N.E. 184 (1927). *Logan Gas Co.* dealt specifically with an oil and gas lease that had been improperly acknowledged and held: "A lessor of a lease who admits signing it and who makes no complaint that his signature was procured or induced by deception or fraud, cannot, after delivering to the lessee such lease which has a regular statutory certificate of acknowledgment appended thereto by the officer taking it, claim that the lease is invalid, on the sole ground that the acknowledgment of his signing was procured by telephone." *Id.* at syllabus. *Delfino* makes no mention of *Logan Gas*, a fact that is not surprising given that oil and gas leases are inherently different than the standard lease at issue in *Delfino*. Accordingly, the Court finds Defendants' arguments well taken. The Coles' claim for declaratory judgment fails to state a claim.

Cole, 2013 U.S. Dist. LEXIS 53921, at *6. The Court finds this reasoning persuasive and adopts it here.

Consequently, even if Plaintiffs' failure to sign the lease in the presence of a notary was a defective execution, it was not procured by fraud and is, therefore, valid as between Mrs. Egnot and Triad. Accordingly, the Court **GRANTS** Defendant's Motion to Dismiss as it relates to this claim.

2. Dower Claim

"Dower is a means of providing the surviving spouse with a source of support when the other spouse dies, and Ohio is one of the few states which still retains the concept of dower, albeit in an extremely limited form." *Short v. Conn*, No. 93CA709, 1994 Ohio App. LEXIS 312, at *7 (Ohio Ct. App. Jan. 25, 1994) (citing *State v. Thrower*, 81 Ohio App.3d 15, 19 (Ohio Ct. App. 1991); Galaty, Allaway & Kyle, Modern Real Estate Practice in Ohio at 71-72 (1990)); *see also* Ohio Rev. Code § 2103.02 (Ohio's dower statute). Plaintiffs' Dower Claim is premised upon the allegation that Mr. Egnot's inchoate dower interest in the real property overlying the oil and gas estate at issue in this matter was not released and therefore title was "never properly transferred to Anschutz." Compl. ¶ 20. Plaintiff cites no case to support this position.

Defendant argues that this clam fails because dower rights only apply to the transfer of real property, not a license such as the Lease, and even if the Lease did constitute a transfer of real property, Mr. Egnot does not have standing to invalidate the Lease.

With regard to Defendant's first argument, Defendant correctly notes that Ohio courts have not dealt with the topic extensively or consistently. As this Court has recognized however, Ohio courts have generally found that an oil and gas lease is a license rather than a deed of conveyance. *See In re Frederick Petroleum Corp.*, 98 B.R. 762, 766 (S.D. Ohio 1989) (J. Graham) ("Following a review of the Ohio cases, the court concludes that the oil and gas leases in this case are not leases as that term is traditionally used. . . . Ohio courts appear to recognize that such leases create a license to enter upon the land for the purpose of exploring and drilling for oil and gas . . . ."); *see also Back v. Ohio Fuel Gas Co.*, 160 Ohio St. 81, 86 (Ohio 1953) ("The character of the instrument of conveyance reveals that it is other than a grant of real property. Possession of oil and gas, having as they do a migratory character, can be acquired only by severing them from the land under which they lie, and in effect the instrument of conveyance in the instant case is no more than a license to effect such a severance.").

Even if the Lease were to be considered a transfer of real property under Ohio law, this claim would still fail because Mr. Egnot does not have standing to pursue this lawsuit to invalidate the Lease, as Defendant maintains in its second argument. This is because the Property is titled in Mrs. Egnot's name only and Mr. Egnot's dower interest in the property is inchoate until Mrs. Egnot's death. *See Myers v. Village of Alger, Ohio*, 102 F. App'x 931 (6th Cir. 2004) ("Paul Myers lacked standing to pursue the instant litigation because the Myerses's property is titled in Diana Myers's name only and Paul Myers's dower interest in the property, as

Diana Myers's spouse, is inchoate until Diana's death.") (citing *Goodman v. Gerstle*, 158 Ohio St. 353, 358 (1952) (explaining that "[d]uring the lifetime of both spouses, dower is a contingent inchoate right and becomes vested in the surviving spouse only upon the death of the other spouse.").

Thus, the Court finds that Mr. Egnot has no standing to enforce his inchoate dower rights against his wife's lessee and he cannot recover upon rights that he has not yet lost. Any alleged failure to account for Mr. Egnot's inchoate dower interest does not invalidate the contract between Mrs. Egnot and Triad. Accordingly, the Court **GRANTS** Defendants' Motion to Dismiss as it relates to this claim.

III.

Defendant moves for summary judgment on Plaintiffs' breach of contract claim. That claim requires interpretation of a clause titled "Preferential Right to Renew" (referred to throughout as "Paragraph 14"). It reads in full:

> If, at any time during the primary term hereof, or within one (1) year from the expiration, cancellation or termination of this Lease, Lessor receives an acceptable, bona fide third-party offer to lease the Leasehold, in whole or part, Lessor shall promptly provide the Lessee, in writing, of all of the verifiable particulars of such offer. Lessee shall have thirty (30) days from the receipt thereof to advise Lessor, in writing, of its agreement to match said third-party offer as to all terms and consideration; immediately thereafter, Lessor and Lessee shall take all cooperative steps necessary to effectuate the consummation of said transaction and the survival of said transaction through any statutorily mandated right of cancellation thereof. Any lease or option to lease the Leasehold, in whole or part, granted by Lessor in contravention of the purposes of this paragraph shall be deemed null and void.

Compl. ¶ 23, and Ex. C, ECF No. 2.

The Lease is in the primary term and it is Plaintiffs' position that if it receives a bona fide,

third-party offer to lease the Property, Defendant must match the offer as to all terms and consideration, or Plaintiffs may terminate any interest that Defendant has in the leasehold.

Plaintiffs provides evidence that they have received a bona-fide, third-party offer, that they gave notice of this offer to Defendant, and provided Defendant with an opportunity to match the offer. Defendant has declined to match the third party offer. Thus, Plaintiff seeks to terminate the Lease.

A. Standard

Summary judgment is appropriate "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The Court may therefore grant a motion for summary judgment if the nonmoving party who has the burden of proof at trial fails to make a showing sufficient to establish the existence of an element that is essential to that party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)). A genuine issue of material fact exists if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *see also Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (the requirement that a dispute be "genuine" means that there must be more than "some metaphysical doubt as to the material facts"). "The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." *Liberty Lobby, 477 U.S.* at 255 (citing *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 158–59 (1970)).

B. Analysis

Defendant's summary judgment motion moves this Court to resolve the meaning of the "Preferential Right to Renew" clause in Paragraph 14 of the Lease. The parties dispute both

whether the "Preferential Right to Renew" clause is ambiguous and the ultimate effect of the language of the clause. This issue is not one of first impression for this Court. In *Wiley v. Triad Hunter, LLC*, this Court considered and decided this exact issue in an Opinion and Order issued on September 27, 2013. The Court hereby adopts that decision's analysis of Paragraph 14 and its conclusion, which provides:

> Based on the above analysis and conclusions, the Court finds Paragraph 14 of the Leases at issue unambiguous. It grants Triad—and Chesapeake, to the extent that Chesapeake's oil and gas interests are implicated in the Leases at issue—"a right to match a bona fide offer and renew the lease." *Catlett*, 2012 WL 5364259, at *6. If the lessee chooses not to match the offer, the current lease continues until it ends under the terms of the contract. To be sure, Plaintiffs can accept a third-party offer while the current Leases at issue remain valid. Doing so, however cannot deprive Triad "of its *current* rights in the lease." *Id.*; *see also Koonce*, doc. 94-3 at 9. *But see Koonce*, doc. 94-3 at 9 ("provided that the replacement lease cannot be effective before the 'primary term' ends."). Contrary to Plaintiffs' claims, Paragraph 14 says nothing about the Leases terminating, being cancelled, or otherwise ending if the lessee does not match that offer.
>
> In short, Paragraph 14 does not allow Plaintiffs to terminate the valid Leases, and Triad has not breached the contract with respect to the Wileys, the only plaintiffs to receive a third-party offer. For these reasons, and those stated above, the Court grants Triad's and Chesapeake's motions for summary judgment, and denies Plaintiffs' motion for summary judgment.

Wiley v. Triad Hunter, LLC, No. 2:12-cv-605, slip op., at 17–18 (S.D. Ohio Sept. 27, 2013) (Attached as Exhibit to this Opinion and Order).

Accordingly, the Court **GRANTS** Defendants' Motion for Summary Judgment on Count Three of the Complaint. (ECF No. 19.)

IV.

In response to this lawsuit, Defendant moved the Court to issue a judgment tolling the period of the Lease from the date of service to the date of final disposition of Plaintiffs' claims, including any appellate proceedings. Defendant asks to amend its answer and file a counterclaim to address whether the Lease should be tolled. This is the same procedure followed by the defendants in *Wiley v. Triad Hunter, supra*. This Court granted the defendants' motion to file a counterclaim and also granted the defendants' motion to toll the period of the leases at issue in that case through the final disposition of the plaintiff's case before this Court.

Similar to this Court's adoption of Wiley v. Trial Hunter's interpretation of Paragraph 14, the Court again adopts herein its analysis of the tolling issue set forth in that same case, which concluded:

> The Court grants Triad's Motion for Judgment Tolling the Term of Plaintiffs' Leases with respect to the primary terms . . . of the leases at issue. It does so from the date of service to the date of final disposition of Plaintiffs' claims [in this Court].
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> . . . .
>
> In the event of an appeal, the appellate court is in the better position to determine if further tolling is appropriate.

Wiley v. Triad Hunter, LLC, No. 2:12-cv-605, slip op., at 18–19, n.3 (S.D. Ohio Sept. 27, 2013) (Attached as Exhibit to this Opinion and Order).

V.

For the reasons noted above, the Court **GRANTS** Defendant's Motion to Dismiss Counts One and Two of the Complaint (ECF No. 7), Defendant's Motion for Summary Judgment on Count Three of the Complaint (ECF No. 19), Defendant's Motion to Amend Answer and Counterclaim (ECF No. 34), and Defendant's Motion to Judgment Tolling The Term of

Plaintiffs' Lease (ECF No. 35), in accordance with the parameters set forth above. The Clerk is **DIRECTED** to **ENTER JUDGMENT** in accordance with this Opinion and Order.

IT IS SO ORDERED.

9-30-2013
DATE

EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE