

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

JEANETTE ALLTON,

Plaintiff,

v.

**CHESAPEAKE EXPLORATION, LLC,
*et al.***

Defendants.

Case No. 2:14-cv-1685

Judge Peter C. Economus

MEMORANDUM OPINION AND ORDER

Challenging the validity of an oil and gas lease, Plaintiff Jeanette Allton brought this case against Defendants Chesapeake Exploration, LLC (“Chesapeake”), CNX Gas Company LLC (“CNX”), Hess Ohio Developments, LLC (“Hess”), and Triad Hunter, LLC (“Triad”). This matter is before the Court for consideration of the Motion to Toll the Primary Term of the Lease filed by Defendants CNX and Hess (doc. 23) and joined by Chesapeake and Triad (docs. 24, 25).

I. Background

This action relates to an oil and gas lease (doc. 1-1 at 34, hereinafter referred to as the “Lease”) dated August 20, 2008, between Plaintiff and Anschutz Exploration Corporation (“Anschutz”). As a result of several assignments, the rights granted to Anschutz under the Lease are currently held by Defendants.

The Lease provides for the following term:

3. Lease Term. This Lease shall remain in force for a primary term of five (5) years from August 20, 2008, (the “effective date”) and for as long thereafter as prescribed payments are made, or for as long thereafter as operations are conducted on the Leasehold in search of or production of oil, gas, or their constituents, or for as long as a well capable of production is located on the Leasehold or

lands pooled or unitized therewith, or for as long as extended by provision herein. . . .

4. Extension of Primary Term. Lessee has the option to extend the primary term of this Lease for one additional term of five (5) years . . . Lessee may exercise this option to extend this Lease if on or before the expiration date of the primary term of this Lease, Lessee pays or tenders to the Lessor or to the Lessor's credit an amount equal to the initial consideration given for the execution hereof. Exercise of this option is at Lessee's sole discretion and may be invoked by Lessee where no other alternative of the Lease Term clause extends this Lease beyond the primary term.

(Lease at ¶¶ 4–5.)

An Addendum attached to the Lease provides that “Lessee shall file a surrender of Oil and Gas Lease in Recorders Office of Noble County, Ohio within sixty (60) days of the expiration of Lessee's rights hereunder,” and an attached Order of Payment indicates that the “the initial consideration” was \$5,114.55. (Compl. ¶¶ 19, 20 (citing doc. 1-1 at 38, 39).)

Plaintiff alleges that, while Triad executed an affidavit to extend the Lease and tendered payment of \$852.43, the Lease “terminated by its own terms as of August 20, 2013.” (Compl. ¶¶ 21–27.)

In her complaint filed on August 19, 2014, Plaintiff asserts four claims relating to the Lease: (1) she seeks declaratory judgment that the Lease has expired (compl. ¶¶ 24–32); (2) she seeks to quiet title to the related oil and gas rights (*id.* at ¶¶ 33–36); (3) she alleges that Defendants have breached the Lease by not filing a surrender of lease (*id.* at ¶¶ 37–43); and (4) she alleges that Defendants have maliciously defamed her property by claiming a continued lease interest (*id.* at ¶¶ 44–52).

II. Motion to Toll

Defendants seek an order tolling the primary term of the Lease from the date the Complaint was filed until final disposition of Plaintiff's claims, including exhaustion of any rights of appeal. They assert that Ohio law provides for tolling of the primary term of the lease where lessors have challenged the validity of the lease, thereby interfering with the lessee's development of oil and gas during the primary term.¹ (Doc. 23 at 3 (citing *Three Waters, LLC v. Northwood Energy Corp.*, No. 2012-042 (Ohio Ct. Com. Pl. Monroe Cty. June 12, 2012); *Yoskey v. Eric Petroleum Corp.*, 2012 CV 808 (Ohio Ct. Com. Pl. Columbiana Cty. Oct. 16, 2013)).) Plaintiff responds that the motion is premature because the Court has not yet resolved the underlying validity of the Lease. (Doc. 26 at 1 (citations omitted).)

The Court first reviews the Ohio cases cited by Defendants. In *Three Waters, LLC v. Northwood Energy Corp.*, No. 2012-042 (Ohio Ct. Com. Pl. Monroe Cty. June 12, 2012), the plaintiff challenged the validity of an oil and gas lease during its initial five-year term based on the lack of notarized signatures. *After finding that the lease was valid* between the parties, the Court held that "Plaintiff's action of challenging the validity of the Leases makes Defendant's claim for tolling of the Leases ripe and justiciable at the present time." The court stated that "Plaintiff's filing of this lawsuit has a direct impact on Defendant's ability to exercise its rights under these Leases during the initial five-year term," and found that "Defendant is entitled as [a] matter of law to judgment tolling the five-year term of the Leases from the date of service of Plaintiff's Complaint until final disposition of Plaintiff's claims, including the pendency of any appeal." *Id.*

¹ The Court notes that this case was filed after the end of the primary term of the Lease, and Plaintiff challenges the validity only of the extension of the Lease, not its primary term. Because the Court finds that the motion to toll is premature, it need not address whether Defendants' cited law applies under these circumstances.

Defendants also cite *Yoskey v. Eric Petroleum Corp.*, 2012 CV 808 (Ohio Ct. Com. Pl. Columbiana Cty. Oct. 16, 2013), in which the court first found that the lease was valid and then granted a motion to toll its primary term. In discussing other cases involving equitable tolling, the *Yoskey* court noted that, “[t]ypically, if a lessor brings an action but does not prevail, as in *Three Waters, LLC*, courts typically find the resulting prejudice to the lessee is cured through an equitable tolling of the term of the lease.” *Id.* This Court notes that, when the *Yoskey* decision was appealed, the appellate court vacated the order tolling the term of the lease, finding that “[r]egardless of whether tolling of the lease term was proper here, the trial court’s decision was expressly based in part on” the trial court’s decision on the merits, which was reversed. *Yoskey v. Eric Petroleum Corp.*, No. 13 CO 42, 2014 WL 4291629, at *1 (Ohio Ct. App. Aug. 29, 2014).

The parties also cite several decisions of this Court. In *Feisley Farms Family, L.P. v. Hess Ohio Resources, LLC*, No. 2:14-cv-146, 2014 WL 4306487 at *4 (S.D. Ohio Aug. 25, 2014) (Sargus, J.), the Court declined to toll the term of a lease, finding that the motion was premature because the underlying merits of the plaintiff’s claims were not yet resolved. In *Egnot v. Triad Hunter, LLC*, No. 2:12-cv-1008, 2013 WL 5487059 (S.D. Ohio Sept. 30, 2013) (Sargus, J.), the Court first found that the lease was valid between the parties and then tolled the term of the lease. In *Wiley v. Triad Hunter, LLC*, No. 2:12-cv-605, Doc. No. 172 (S.D. Ohio Sept. 27, 2013) (Sargus, J.), the Court noted that he had previously denied the defendants’ motion to toll as “premature given that the underlying merits of the case remained unresolved.”² After the Court found the lease valid, however, it then “turn[ed] to the matter of tolling” and found that tolling was equitable based on the reasoning in *Three Waters*. Similarly, in both *Griffith v. Hess Corp.*, No. 2:14-cv-337, 2014 WL 1407953 (S.D. Ohio April 11, 2014) (Marbley, J.), and

² See *Wiley v. Triad Hunter, LLC*, No. 2:12-cv-605, 2013 WL 4041772 (S.D. Ohio Aug. 8, 2013).

Cameron v. Hess Corp., No. 2:12-cv-168, 2014 WL 1653119 (S.D. Ohio April 23, 2014) (Marbley, J.), the Court noted that the Court had “previously concluded that it was inappropriate, under Ohio law, to grant equitable tolling when the validity of the [lease] was still called into question . . . , and when the Court had not yet ruled on that issue.” After the lease’s validity was decided, however, the Court found in each case that “it is now meet for the Court to rule” on the motion to toll.

In *Kelich v. Hess Corp.*, No. 13-cv-140 (S.D. Ohio April 15, 2014) (Watson, J.), the Court granted a motion to toll the term of a lease after having determined that the lease was valid but had automatically terminated at the end of its initial term. He noted that “should the Sixth Circuit overturn the Court’s decision and find that the Lease did not terminate, Hess may very well have already lost the time under the Lease for which it bargained and paid for, which is the very justification under Ohio law for tolling a Lease.”

In *Chesapeake Exploration, L.L.C. v. McClain*, No. 2:13-cv-445, Doc. No. 30 (S.D. Ohio July 30, 2013) (Frost, J.), the plaintiff challenged the validity of a lease during its primary term, based on allegedly invalid execution. Granting the motion to toll “at a highly preliminary stage” of the lawsuit, the Court found that the defendant “need not prove its entire case now,” and “[i]t suffices . . . to show that the [plaintiffs] have challenged the validity of the Lease and that such as challenge has prevented [the defendant] from developing its leasehold interest.”

With the exception of the decisions in *Chesapeake Exploration, L.L.C. v. McClain* and arguably in *Kelich v. Hess Corp.*, all of the above decisions, by both Ohio courts and by this Court, “involved motions to toll that courts decided either in conjunction with, or after deciding the validity of the underlying lease.” (*See* doc. 26 at 2.)

Consistent with the cited Ohio cases and with most of the cited decisions of this Court, the Court finds that it would be inappropriate to toll the term of the Lease at this preliminary stage in the proceedings. The Court therefore **DENIES** Defendants' motion without prejudice.

(Doc. 23.)

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE