

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| CORNWALL MOUNTAIN INVESTMENTS, L.P. and | : | NO. 11 – 00,718 |
| RANGE RESOURCES – APPALACHIA, LLC, | : | |
| Plaintiffs | : | |
| | : | CIVIL ACTION - LAW |
| vs. | : | |
| | : | |
| THOMAS E. PROCTOR HEIRS TRUST, | : | |
| INTERNATIONAL DEVELOPMENT CORP., | : | |
| PENNLCO, LTD., VIRGINIA ENERGY | : | |
| CONSULTANTS, LLC, ATLANTIC HYDROCARBON, | : | |
| LLC, CHIEF EXPLORATION & DEVELOPMENT, LLC, | : | |
| QUEST EASTERN RESOURCE, LLC, EXCO | : | |
| HOLDING (PA), INC., and MARGARET O.F. | : | |
| PROCTOR TRUST, | : | |
| Defendants | : | |
| | : | |
| SOUTHWESTERN ENERGY PRODUCTION | : | |
| COMPANY, | : | |
| Intervenor | : | Motion for Reconsideration |

OPINION AND ORDER

In their Second Amended Complaint, Plaintiffs seek to quiet title to the oil, gas and mineral estate (hereinafter “mineral estate”) in certain land in Lewis and Cogan House Townships.¹ Plaintiffs contend the mineral estate was severed from the surface by a reservation of the rights by Thomas E. Proctor in a conveyance to the Elk Tanning Company in 1894. Plaintiffs further contend that the mineral estate was separately assessed for taxes in 1930 and 1931 and that those taxes were not paid and thus the estate was sold at a tax sale in 1932. In Count I, Plaintiffs claim title to the property by way of Treasurer’s deeds issued following that tax sale.² In Count II, Plaintiffs claim title through adverse possession.

¹ It is undisputed that Plaintiff Cornwall Mountain Investments, LP, owns the surface estate.
² There were five separate deeds issued, respecting Warrants 5753, 5666, 5751 and 5668 in Lewis Township, and Warrant 5666 in Cogan House Township.

In a motion for judgment on the pleadings, Plaintiffs sought judgment on Count I, based on the pleadings which set forth the facts of the tax sale in 1932 and the issuance of the deeds into Cornwall Mountain Club, its predecessor in interest, the fact that the estate was never redeemed and the fact that no action for its recovery was brought within the five-year period after the sale. Those in opposition to the motion raised various objections, all of which the court found without merit. The court therefore granted Plaintiffs' motion in an Order dated August 4, 2014.³

Defendant Margaret O.F. Proctor Trust ("MPT") filed a Motion for Reconsideration on September 2, 2014, and this court granted reconsideration by Order dated September 9, 2014, because MPT's assertion, that the court erred in requiring MPT to offer proof in support of its contentions regarding the validity of the sale, was correct.⁴ The court therefore required the parties to brief the issue of whether defective notice of the 1932 tax sale would render that sale void and, as such, not subject to the statutes of limitations and repose. Plaintiffs argued that the sale may not now be attacked, relying on the Act of 1815 and the six-year statute of limitations set forth at 42 Pa.C.S. Section 5527. In an Order dated October 31, 2014, the court rejected both arguments and reversed the original grant of judgment on the pleadings, as MPT had raised a factual issue which could provide a basis to set aside the sale.

³ The court's Order purported to grant "Plaintiffs' Motion for Partial Summary Judgment." As the motion was for entry of judgment on the pleadings, the reference to partial summary judgment was in error.

⁴ The burden of proof referenced by the court is that applicable to a motion for summary judgment, not a motion for judgment on the pleadings.

On November 26, 2014, Range Resources – Appalachia, LLC (“Range”) filed a motion for reconsideration of the October 31, 2014, Order, arguing that the statute of limitations contained in 42 Pa.C.S. Section 5527 *does* prevent MOP’s attack on the tax sale. The court granted reconsideration on December 3, 2014. Although argument on the motion was delayed by appeals which were subsequently stricken, argument was finally heard March 30, 2015. As indicated in this Court’s 1925A Opinion, issued on January 12, 2015, in response to the appeals, the court believes Range is correct and that the six-year statute of limitations does prevent the court from considering MOP’s deficient notice claim.

According to Poffenberger v. Goldstein, 776 A.2d 1037 (Pa. Commw. 2001), and several cases decided subsequent thereto, the “applicable statute of limitations in Pennsylvania within which to challenge a tax sale, including on constitutional grounds such as lack of notice, is six years.” Lewicki v. Washington County, 2010 U.S. Dist. LEXIS 53319 (W.D. Pa. 2010). *See also*, Tobyhanna Army Depot Federal Credit Union v. Monroe County Tax Claim Bureau, 30 A.3d 1246 (Pa. Commw. 2011)(explaining that a six-year statute of limitations applies to an upset tax sale); and Marra v. Tax Claim Bureau of Lackawanna County, 95 A.3d 951 (Pa. Commw. 2014)(noting that no statute of limitations defense had been raised in the case before it but that in Poffenberger, *supra*, the Court had partially reversed the trial court’s invalidation of a tax sale on the basis of deficiencies in notice because the six-year statute of limitations barred attack on that basis⁵).⁶ Therefore, the attack in this case on a tax sale conducted in 1932 is time-barred.⁷

⁵ As to part of the property, the Commonwealth Court found that by establishing (1) a valid chain of title through recorded deeds and (2) that all taxes had been paid, Plaintiffs showed that the property had been improperly listed

ORDER

AND NOW, this day of March 2015, for the foregoing reasons, the Order of August 4, 2014, is hereby REINSTATED as issued.

BY THE COURT,

Dudley N. Anderson, Judge

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for sale. Thus, the notice issue, which would have implicated the statute of limitations, was not involved as to that part of the property and the trial court had properly, albeit for the wrong reason, set aside the sale.

⁶ Although not a published opinion, in In re: Tax Claim Bureau of Berks County, Upset Sale Held September 24, 2008, 2010 Pa. Commw. Unpub. LEXIS 801 (Pa. Commw. 2010), the Commonwealth Court again reinforces that Poffenberger stands for the proposition that the six-year statute of limitations contained in 42 Pa.C.S. Section 5527(b) applies to an attack on a tax sale alleging lack of notice.

⁷ The court notes MOP's argument that the sale was void because the underlying assessment was invalid, which argument would not be subject to the limitations bar. This argument is not addressed herein because it was already rejected in the Order of August 4, 2014. Reconsideration was granted only with respect to the notice issue. See Order of September 9, 2014.