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3/22/2010

IN THE CIRCUIT COURT OF UPSHUR COUNTY, WEST VIRGINIA

DIVERSIFIED RESOURCES, INC. ,
a West Virginia Corporation and
GEORGE F. FORDHAM, JR.
Plaintiffs,

vs.

CIVIL ACTION NO. 09 - C - 117

BRADLEY R. PHILLIPS and
JANET L. PHILLIPS, his wife,
Defendants.

ORDER

On the 2nd day of February, 2010 came the Petitioners, Diversified Resources, Inc. and George F. Fordham, Jr., in person and by W. T. Weber, III, Esq., their counsel, and came the Defendants Bradley R. Phillips and Janet L. Phillips, in person and by William C. Thurman, Esq., pursuant to the *VERIFIED COMPLAINT FOR DECLARATORY, MONETARY AND INJUNCTIVE RELIEF*, and *PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION*, the *ANSWER TO COMPLAINT FOR DECLARATORY, MONETARY AND INJUNCTIVE RELIEF*, and the Notice of Hearing entered herein on May 9, 2009.

Whereupon, the Court heard the opening statements of the parties by counsel. Thereupon the Plaintiffs, by counsel, adduced the sworn testimony of witnesses George F. Fordham, Jr., Robert "Rusty" Hutson, Mark Hutson, Stephen Losh, PS, R. Dennis Xander and Brad Phillips and the Plaintiffs' Exhibits No. 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 were admitted without objection.

Upon the close of Plaintiffs' evidence the Court made inquiry of Defendants' counsel and in response the Defendants, by counsel, moved that the Court dismiss this action for cause by reason that Plaintiffs had failed to establish a prima facie case to support a temporary or permanent injunction. In response the Plaintiffs, by counsel, opposed said motion.

Whereupon, the Court made the following findings of fact, to-wit:

1. Plaintiff George F. Fordham is the owner of 102.67 acres of oil and gas situate on the waters of Brushy Fork, Buckhannon District, Upshur County, West Virginia underlying surface property of the Defendants Bradley R. Phillips and Janet L. Phillips.
2. Plaintiff Diversified Resources, Inc., a West Virginia corporation, is the assignee (Book

50/page 207) of an "Oil and Gas Lease" dated June 2, 2009 (Lease Book 88/page 690), by and between George F. Fordham and Mountain Link Associates, Inc..

3. Defendants Bradley R. Phillips and Janet L. Phillips reside in Nova Subdivision and own seven (7) tracts therein containing a total of approximately 17 acres, more or less, on the Waters of Brushy Fork, Buckhannon District, Upshur County, West Virginia.
4. In July, 2009 Plaintiffs surveyor entered Defendants Nova Subdivision properties to survey and stake a proposed Marcellus vertical gas well location on Lot B-9, containing 0.42 acres, more or less..
5. Defendants applied for their first water well permit on Lot B-9 of Nova Subdivision on July 27, 2009, and pursuant to a permit from the Upshur County Health Department the first water well was drilled on August 3, 2009.
6. Plaintiffs prepared their *Notice of Application for a Well Work Permit* dated August 17, 2009 and served same upon Defendants on August 21, 2009.
7. Later in August, 2009, the WV DEP Inspector from the Office of Oil and Gas refused to sign off on Plaintiffs' *Application for Gas Well Permit* on Lot B-9, citing the existence of the Defendants' water well located within 200 feet of the proposed Marcellus vertical deep well site.
8. Later in 2009 Defendants drilled two (2) additional water wells on their Nova Subdivision lots pursuant to permits from the Upshur County Health Department.
9. Defendants stated they purchased additional lots adjacent to their residence in 1997 which are not served by a public water system as retirement investments. The lots were staked, platted, mapped and recorded as lots, and the Defendants installed water wells to enhance and protect their investment. Defendants learned that building a dwelling or drilling a water well were the only alternatives available to protect their retirement investment from substantial diminution in value from proposed gas wells.
10. Defendants motives to drill water wells on their lots may have been in part to prohibit drilling of a gas well.
11. Plaintiffs have not included the West Virginia Department of Environmental Protection as a party to this action.

Whereupon the Court concludes as a matter of law that there are both procedural and substantive defects in the evidence presented by the Plaintiffs, to-wit:

1. The West Virginia Department of Environmental Protection is an indispensable party missing in this proceeding;
2. Regardless of their motives the Defendants held lawful permits to drill water wells on their property;
3. This Court can not couch an injunction to require the Defendants to remove a lawfully permitted water well from their property;
4. This Court could not require the West Virginia Department of Environmental Protection to issue a Gas Well Permit at the proposed location;
5. In weighing all the equities of this case and further citing Hendricks v. Stalnaker, 181 W.Va. 31, 380 S.E.2d 198 (1989), the Plaintiffs' motion and complaint should be denied and dismissed.

WHEREUPON, having taken time to consider the pleadings, the testimony of witnesses and the evidence admitted herein, the Court is of the opinion to and does hereby deny the Plaintiffs' *Motion for Preliminary Injunction* and does further dismiss the *Complaint* herein.

It is accordingly so **ORDERED**.

It is further **ORDERED** that the Clerk of this Court shall transmit a certified copy of this Order to counsel of record and that said Order shall be sufficient notice of the action of the Court herein.

ENTER: March 17, 2010

c 3/17/10
Thurman
T. Weber, III



JUDGE OF THE CIRCUIT COURT OF
UPSHUR COUNTY, WEST VIRGINIA

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Approved as to form:



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