

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT**

**THE LL&E ROYALTY TRUST, by
ROGER D. PARSONS, Trustee,
Plaintiff,**

v.

**Case No. 15-149147-CB
Hon. James M. Alexander**

**QUANTUM RESOURCES MGMT, LLC, ET AL,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on cross motions for summary disposition. Plaintiff's motion is one for partial summary disposition of its Counts V and VI – alleging breaches of certain of the parties' agreements. Defendants' motion seeks dismissal of this action for two reasons: (1) there is a prior action pending between the parties involving the same claims, and (2) the Court does not have personal jurisdiction over these Defendants.¹

The Plaintiff Trust was created on June 28, 1983 under an Agreement between The Louisiana Land and Exploration Company (LL&E) and First National Bank of Houston. Upon Plaintiff's creation, the LL&E conveyed the Net Overriding Royalty Interests in certain oil and gas properties located in Alabama and Florida to Plaintiff. This was done under the terms of a Conveyance of Overriding Royalty Interests Contract. These Royalty Interests are equivalent to net profit interests. The oil and gas royalties are the only assets of the Trust.

¹ Defendants' motion is brought by all named Defendants except Wells Fargo Bank, NA. The Court will also note that Plaintiff has not filed any proof of service indicating service of the Summons and Complaint on Wells Fargo. Plaintiff claims that Wells Fargo is a named Defendant because monies were unlawfully deposited by certain Defendants into a QR Energy Wells Fargo account.

Plaintiff claims that the “principal producing property that the Trust holds a royalty interest is known as the Jay Field.” Plaintiff claims that “[i]t is the Defendants’ failure to pay the Trust its oil and gas royalties from the Jay Field that forms the heart of this litigation.”

From 1983 until 2006, the “Working Interest Owners” of the Jay Oil Field were nonparties ConocoPhillips and ExxonMobile, and the “Operator” was ExxonMobile. In 2006, Defendant Quantum Resources Management (“QRM”) acquired these roles from ConocoPhillips and ExxonMobile. Then in 2012, Defendant QRE Operating (a wholly-owned subsidiary of Defendant QR Energy) acquired the working and operating interests in Jay Field from QRM. Finally, in 2014 and by merger, QR Energy became a wholly-owned subsidiary of Defendant Breitburn Management Company, a wholly-owned subsidiary of Defendant Breitburn, LLC.

To its knowledge, Plaintiff claims that Breitburn, LLC is the current Assignor under the Conveyance Contract, holding the working and operating interests in the Jay Field. Plaintiff also claims that it was not contemporaneously or timely notified of, nor never consented to, any of the aforementioned assignments.

And, Plaintiff claims, “[s]ince their acquisition of the working and operating interests under the Conveyance Contract in the Jay Field, the Breitburn Defendants have systematically failed and refused to pay royalties to Plaintiff as required by the Conveyance Contract.”

Plaintiff also claims that it was publically traded on the New York Stock Exchange until July 2015 – when it was delisted by the SEC because the Breitburn Defendants² “failed and refused to provide the Trust with financial information necessary for [it] to make the required SEC filings.”

² As identified in the Complaint, the “Breitburn Defendants” are Quantum Resources Management, LLC; QRE Operating, LLC; Breitburn Energy Partners, LP, and Breitburn Management Company.

Plaintiff claims that in the 23 years preceding the Breitburn Defendants' takeover of operations, Plaintiff received over \$300 million in royalty payments – averaging more than \$13 million per year. But since the Breitburn Defendants took over in 2006, Plaintiff “has received ZERO royalties.”

Plaintiff claims that Defendants have: (1) wrongfully withheld at least \$18,262,794.49 in royalties as of June 30, 2015, and (2) failed to provide information to which Plaintiff is entitled. As a result, Plaintiff filed its current Complaint on claims of: (Counts I, V, & VI) breach of contract, (Count II) conversion, (Count III) breach of fiduciary duty, (Count IV) fraudulent conveyance, and (Count VII) accounting.

Defendants respond that “the Trust is not receiving payments because, under the terms of the Conveyance, no payments are due.” Rather, Defendants argue that the Conveyance provides that QRE can recoup production costs and costs related to future capital expenditures from Plaintiff's share of the costs. In other words, Defendants argue that “QRE Operating advances the Trust's share of the costs associated with maintaining the Jay Field.” And Defendants maintain that they are simply recouping these costs.

It is necessary to first address Defendants' requests for summary disposition under MCR 2.116(C)(6) and (C)(1) because the same challenge this Court's ability to hear the substantive claims. As stated, Defendants argue that: (1) there is a prior action pending between the parties involving the same claims, and (2) the Court does not have personal jurisdiction over these Defendants.

Summary disposition is appropriate under (C)(6) where there is “[a]nother action has been initiated between the same parties involving the same claim.”

Relevant to this issue, a brief background of the two prior case filings is necessary. On Oct 3, 2014, our Plaintiff filed a Complaint in the Federal District Court for the Eastern District of Michigan. The named Defendants in said case were QRM, QR Energy, and QRE Operating, and it was filed on claims of: (I) breach of contract, (II) statutory conversion, (III) fraud, (IV) breach of fiduciary duty, (V) RICO, (VI) accounting, (VII) receiver.

On July 14, 2015, the Hon. George Steeh issued an Opinion and Order granting Defendants' motion to dismiss based on Plaintiff's failure to adequately plead its federal RICO claim. Because there were no valid federal claims and there were Michigan parties on both sides, the Judge Steeh ruled that he lacked diversity subject-matter jurisdiction. But Judge Steeh allowed Plaintiff 30 days to amend its complaint to adequately plead its RICO claim (or until August 13, 2015). Plaintiff never did so.

One day before Plaintiff's 30-day amendment window closed, on August 12, 2015, QRE Operating filed its Complaint for Declaratory Relief in Texas state court. QRE's Complaint seeks rulings that: (1) it has not failed to make required payments, (2) it may refrain from escrowing funds, (3) the Trust is only entitled to limited access to books, and (4) QRE is not required to provide other information.

On September 3, 2015, based on Plaintiff's failure to file an amended complaint, Judge Steeh issued an order dismissing the Eastern District of Michigan case.

And on September 16, 2015, over one month after QRE filed the Texas case, Plaintiff Trust filed the present case.

On September 21, 2015, Plaintiff responded to the Texas case, and on October 9, 2015, a scheduling order was issued in said case – setting a September 19, 2016 trial date. The Texas case remains pending and is the basis for Defendants' (C)(6) motion.

A (C)(6) motion is not limited those actions filed in this state or federal courts in the State of Michigan. *Valeo Switches & Detection Sys, Inc v Emcom, Inc*, 272 Mich App 309, 319; 725 NW2d 364 (2006).

“[T]he plain language of MCR 2.116(C)(6) is in keeping with the purpose of the plea of abatement by prior action rule, which was designed to prevent parties from ‘litigious harassment’ involving the same question and claims as those presented in pending litigation.” *Valeo Switches*, 272 Mich App at 319-320.

Further, it is not necessary that the parties and claims in the two actions be identical. “Complete identity of parties is not necessary” provided that the two suits are “based on the same or substantially the same cause of action.” *J.D. Candler Roofing Co, Inc v Dickson*, 149 Mich App 593, 598; 386 NW2d 605 (1986), quoting *Ross v Onyx Oil & Gas Corp*, 128 Mich App 660, 666-667; 341 NW2d 783 (1983).

Summary disposition under MCR 2.116(C)(6) is appropriate where “[r]esolution of either action will require examination of the same operative facts.” *JD Candler*, 149 Mich App at 601.

Defendants claim that this case involves the same operative facts as the Texas case, arguing:

- Both actions raise the question whether QRE Operating failed to make payments owed under the Conveyance. *See* Compl. ¶ 118, Ex. 1 ¶ 71. To resolve this, both courts will need to examine, among other things, what the Conveyance requires and how QRE Operating has been calculating and maintaining the Excess Production Cost Balance and Special Cost Escrow Account.
- Both actions raise the question whether QRE Operating failed to provide the Trust with information to which it claims it is entitled under the Conveyance. *See* Compl. ¶ 122; Ex. 1 ¶¶69-70. To resolve this, both courts will need to examine, among other things, what the Conveyance requires, what information has been requested by Plaintiff, and what information has been provided by QRE Operating.

- Both actions raise the question whether QRE Operating failed to comply with the Special Cost Escrow provisions of the Conveyance. *See* Compl. ¶¶ 15-153; Ex. 1 ¶ 68. To resolve this, both courts will need to examine, among other things, what the Conveyance requires and how QRE Operating has maintained the Special Cost Escrow Account.

In response, Plaintiff does not dispute that: (1) the Texas case was filed first and remains pending; and (2) it was served the prior Texas case before it filed this case.

Plaintiff, instead, concentrates its attention on the arguments that (1) the two cases do not involve identical parties and identical claims; and (2) the Texas case is “a nullity” that was “not filed in good faith” because the Breitburn Defendants filed it while the Eastern District of Michigan case was still pending.

But these arguments miss the mark. As stated, it is well settled that complete identity of parties is not necessary as long as the two suits are based on the same or substantially the same cause of action. And the proper focus is on whether both actions will require examination of the same operative facts. As a result, Plaintiff’s argument that the two cases do not involve **identical** parties or **identical** claims is not the test. The test is whether both actions require examination of the same operative facts.

And, as argued by Defendants, both cases wholly involve determinations of whether QRE failed to: (1) make payments required under the Conveyance, (2) provide all information required under the Conveyance, and (3) comply with the Special Escrow provisions of the Conveyance. In other words, the Texas action essentially amounts to a Counterclaim or Answer to the present action – or vice versa. Both cases depend on examination of precisely the same facts.

Plaintiff's second argument, that the Texas case is "a nullity," is similarly misplaced. This Court is without authority to determine that a pending lawsuit in the Texas Court is invalid. If Plaintiff believes that the Texas case is properly dismissed, it must raise that issue there.

The two cases have indistinguishable subject matter and, therefore, are appropriately considered the same or substantially the same cause of action for purposes of MCR 2.116(C)(6). For this reason, the Court GRANTS Defendants' motion to for summary disposition under (C)(6) and DISMISSES Plaintiff's Complaint without prejudice.³

Because the Court has granted Defendants' motion under (C)(6), it is unnecessary to address Defendants' (C)(1) motion or Plaintiff's motion for partial summary disposition.

This Order is a Final Order that resolves the last pending claim and closes the case.

IT IS SO ORDERED

November 25, 2015
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge

³ Dismissals under MCR 2.116(C)(6) are appropriately without prejudice. *JD Candler*, 149 Mich App at 601.