ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL. CLAUGUS FAMILY FARM, L.P. Relator, v. SEVENTH DISTRICT COURT OF APPEALS 131 West Federal Street Youngstown, Ohio 44503 and GENE DONOFRIO, in his official capacity as a judge on the Seventh District Court of Appeals 131 West Federal Street Youngstown, Ohio 44503 and JOSEPH J. VUKOVICH, in his official capacity as a judge on the Seventh District Court of Appeals 131 West Federal Street Youngstown, Ohio 44503 and MARY DEGENARO, in her official capacity as a judge on the Seventh District Court of Appeals 131 West Federal Street Youngstown, Ohio 44503 Respondents.	Supreme Court Case No. 14-0423 **COMPLAINT IN PROHIBITION AND MANDAMUS**

FILED
MAR 10 2014
CLERK OF COURT
SUPREME COURT OF OHIO

PARTIES AND JURISDICTION

1. Relator Claugus Family Farm, L.P. ("Claugus Family") is a limited partnership duly organized and existing under the law of the State of Ohio. The Claugus Family now owns

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both the surface and mineral rights to most of that land, including a parcel of approximately 60.181 acres in Green Township.

2. Respondent Seventh District Court of Appeals (the "Seventh District") is a court of law of the State of Ohio located in Youngstown, Ohio. The Seventh District is the appellate district designated to hear appeals from the Monroe County Court of Common Pleas.

3. Respondent Gene Donofrio is a judge on the Seventh District Court of Appeals and is named in his official capacity as judge.

4. Respondent Joseph J. Vukovich is a judge on the Seventh District Court of Appeals and is named in his official capacity as judge.

5. Respondent Mary DeGenaro is a judge on the Seventh District Court of Appeals and is named in her official capacity as judge.

6. The Claugus Family seeks an order from this Court immediately prohibiting enforcement of portions of a Judgment Entry issued by the Seventh District, acting through the Honorable Judge Gene Donofrio, the Honorable Judge Joseph J. Vukovich, and the Honorable Mary DeGenaro issued on September 26, 2013 (hereinafter the "Tolling Order") to the extent it applies to the Claugus Family as an absent member of the class certified in an underlying class action filed in the Monroe County Court of Common Pleas and described in detail below. The Claugus Family further seeks an order from this Court directing Respondents to vacate the Tolling Order to the extent it applies to the Claugus Family as an absent class member.

7. The Tolling Order purports to toll the expiration of hundreds of oil and gas leases across the state of Ohio, the lessors other than the named Plaintiffs being absent members of the aforesaid lawsuit. The Claugus Family has not been notified of the class action, the Tolling Order, or its right to opt out of the class. The Claugus Family thus has been denied due process.

8. This Court has jurisdiction over this action pursuant to Article IV, Section 2 of the Constitution of Ohio.

THE CLASS ACTION LAWSUIT

9. On September 14, 2011, four individuals filed suit against Beck Energy Corporation ("Beck Energy") in the Monroe County Common Pleas Court. The case was assigned Case No. 2011-345. The complaint alleges that the oil and gas leases the plaintiffs signed with Beck Energy are invalid.

10. On September 29, 2011, the complaint was amended to assert claims on behalf of a class of landowners who had signed Form G&T (83) oil and gas lease with Beck Energy and the action became the underlying class action described above.

11. On July 12, 2012, the Common Pleas Court granted summary judgment to the named plaintiffs, holding that these plaintiffs' Form G&T (83) leases constitute leases in perpetuity in violation of Ohio public policy. The Court held these leases to be void *ab initio*.

The Common Pleas Court Improperly Certifies a Class under Rule 23(B)(2)

12. On July 19, 2012, one week after obtaining summary judgment, the named plaintiffs filed a motion for class certification pursuant to Ohio Civil Rule 23(B)(2) and sought leave to amend the complaint yet again.

13. Class actions maintained under Civil Rule 23(B)(2) do not normally require notice to members of the proposed class or the opportunity to opt out of the class because such actions only seek an injunction or declaration based upon conduct of the defendant which affects the plaintiffs generally.

14. Because members of a class action maintained under Civil Rule 23(B)(2) are not afforded notice of the suit or an opportunity to opt out of the class, maintenance of a class action

under Civil Rule 23(B)(2) is inappropriate when the suit may result in a disposition that will not affect the proposed class members generally.

15. On October 1, 2012, Beck Energy moved to toll the operation of the original Plaintiffs' leases.

16. On February 8, 2013, the Common Pleas Court granted class certification pursuant to Civil Rule 23(B)(2). In doing so, the Court noted that Beck Energy had entered into the pre-printed form lease designated "Form G&T(83)" with approximately 415 landowners in Monroe County and 200-300 landowners in other Ohio counties. The Court further noted that the Beck Energy leases in Monroe County, alone, cover approximately 32,280 acres.

17. The Common Pleas Court certified the class pursuant to Civil Rule 23(B)(2) despite the fact that, if the leases were indeed void *ab initio*, class members would have individual and variable claims against Beck Energy for slander of title and money damages.

18. Beck Energy then filed an appeal from the decision certifying the class, and that appeal was assigned Case No. 13 MO 03. The Seventh District remanded the case to the Common Pleas Court, inter alia, to define the class clearly.

19. On June 10, 2013, the Common Pleas Court responded by defining the class as:

> "all persons who are lessors of property in the State of Ohio, or who are successors in interest of said lessors, under a standard form oil and gas lease with Beck Energy Corporation, known as (G&T (83)", [sic] where Beck Energy Corporation has neither drilled nor prepared to drill a gas/oil well, nor included the property in a drilling unit, within the time period set forth in paragraph 3 of said Lease or thereafter."

20. The Common Pleas Court further decided that its entry granting summary judgment would apply to all proposed members of the class as of September 29, 2011, when the complaint was first amended to assert claims on behalf of a class of landowners, despite the fact

that a number of the leases in effect as of September 29, 2011, would likely have expired and be no longer in effect on July 12, 2012 when summary judgment was granted.

The Common Pleas Court Declines to Toll the Leases of Absent Class Members

21. On July 16, 2013, Beck Energy filed a motion with the Common Pleas Court asking the Court to toll the leases of all the proposed class members.

22. On August 2, 2013, the Common Pleas Court filed an entry tolling the leases of only the named plaintiffs pending the outcome of Beck Energy's appeals. In doing so, the Court discussed (but did not toll) "leases that ***may eventually be included in this class*** if the Plaintiffs prevail and this matter goes forward as a class action." Thus, the Court denied the motion to toll the leases of all proposed class members.

23. Beck Energy then filed an appeal, assigned Case No. 13 MO 16, appealing from the Common Pleas Court's decision declining to toll the leases of all the proposed class members.

24. Despite seeking certification pursuant to Civil Rule 23(B)(2), the named plaintiffs filed a "Motion for Approval of Notice to Class and Establishment of Method of Service." On August 8, 2013, the Common Pleas Court denied this motion. On May 31, 2013, the Court previously had denied a prior motion seeking to compel Beck Energy to identify every lessor who had signed a Form G&T (83) lease. Taken together, these two decisions foreclosed any possibility that the absent members of the class would receive either notice of the action or an opportunity to opt out.

The Seventh District Unconstitutionally Tolls the Leases of Absent Class Members

25. On September 26, 2013, the Seventh District issued the Tolling Order, which modified the Common Pleas Court's tolling order of August 2, 2013 as follows:

> The lease terms are also tolled as to the ***proposed*** defined class members. The tolling period for all leases shall commence on October 1, 2012, the date Beck Energy first filed a motion in the trial court to toll the terms of the oil and gas leases. The tolling period shall continue during the pendency of all appeals in this Court, and in the event of a timely notice of appeal to the Ohio Supreme Court, until the Ohio Supreme Court accepts or declines jurisdiction. At the expiration of the tolling period, Beck Energy, and any such successors and/or assigns shall have as much time to meet any and all obligations under the oil and gas lease(s) as they had as of October 1, 2012.

26. The Seventh District offered no explanation as to how it could properly toll the leases of lessors who were only "proposed defined class members" without providing notice to them that their contractual rights and obligations would be affected and giving them the opportunity to opt out of the action. It ignored the need for due process in the face of the potential burden to be imposed on the property rights of absent class members and the differential (rather than a general) impact on the potential class members.

27. The Tolling Order further fails to recognize that, if the Seventh District holds that the Common Pleas Court improperly certified the class, the class action has not been "properly conducted;" absent "class members" are neither parties nor in privity with parties; and are not bound by any orders or judgments issued in the "class action."

28. In the event of decertification, both the Common Pleas Court and the Seventh District would lack jurisdiction over the absent class members, and the Seventh District's Tolling Order purporting to bind absent class members would violate well-established principals of due process.

THE RELATOR'S PROPERTY

29. On February 21, 2006, the Claugus Family, acting through an affiliate, purchased the aforesaid 60.181 acre farm in Monroe County, Ohio. The Claugus Family purchased the entire interest in the property, including the interest in the mineral estate. The affiliate formally transferred the farm into the name of the Claugus Family on March 25, 2011.

30. A prior owner of the farm had signed a Form G&T (83) oil and gas lease with Beck Energy on February 4, 2004 (hereinafter the "Beck Energy Lease"). The primary term of the Beck Energy Lease was ten years; the secondary term was to continue "so much longer thereafter as oil or gas or their constituents are produced or are capable of being produced on the premises in paying quantities, in the judgment of the Lessee, or as the premises shall be operated by the Lessee in the search for oil or gas."

31. No well was drilled on the property during the primary term; oil and gas were not produced in any quantities during the ten year primary term; Beck Energy did not operate the premises in search of oil or gas during the primary term; Beck Energy expressed no judgment regarding future production; and the lease therefore terminated at midnight on February 3, 2014.

32. On September 30, 2013, the Claugus Family signed a Paid-Up Oil & Gas Lease with Gulfport Energy Corporation (hereinafter the "Gulfport Lease") covering the property.

33. The Gulfport Lease provides that the Claugus Family will receive an advanced royalty of $7,000 for each net mineral acre as to which title is confirmed as clear, along with a 20% royalty from any oil and gas ultimately produced. Thus, the Claugus Family should receive an advance royalty of $421,267.00 and potential royalties could total millions of dollars. These same terms are available to other lessors to Beck Energy whose leases have expired.

34. The Gulfport Lease includes a 90 day "title period" from September 30 to December 29, 2013, during which Gulfport reviewed title to the property for title defects.

35. An oil and gas lease not released of record does not constitute a title defect under the Gulfport Lease, if the primary term of such oil and gas lease has expired and no producing oil and gas well has been drilled pursuant to said lease.

36. A 180 day "cure period" follows the title period during which the Claugus Family may cure any title defects. That period began to run against Claugus Family on December 30, 2013 and ends on June 27, 2014

37. Because the primary term of the Beck Energy Lease did not expire until midnight on February 3, 2014, at the time the Gulfport Lease was signed, the Beck Energy Lease constituted a title defect, which would allow Gulfport to reject title.

38. The Beck Energy Lease, however, should have expired during the cure period, curing the title defect and allowing the Claugus Family to receive the advance royalty and any royalties from a well drilled under the Gulfport Lease.

RESPONDENT'S ORDER IS ARBITRARY, UNREASONABLE AND UNLAWFUL

39. By its terms, the Beck Energy Lease expired on February 3, 2014, at midnight.

40. The Seventh District's Tolling Order purports to toll the Beck Energy Lease (and the leases of hundreds of other landowners throughout the state who, like the Claugus Family) retroactively to October 1, 2012.

41. The Claugus Family is a proposed, but absent member of the class as defined by the Common Pleas Court.

42. The Claugus Family never was provided notice of the class action, never was provided notice of the Tolling Order, never was given the opportunity to opt out of the class action, and has been deprived of basic due process of law.

43. The Seventh District issued the Tolling Order despite acknowledging in the order that affected landowners such as the Claugus Family are merely part of a ***proposed*** class.

44. The entry of the Tolling Order also was improper because the Common Pleas Court certified the class under Civil Rule 23(B)(2). This certification denies absent class

members procedural due process on the theory that the court will be awarding only general, not individual relief to the class, so no burden would be imposed on the absent class members who do not receive notice. Comprehensively considered though, the relief that should be granted will not be general. It will vary from one landowner to the next.

45. Gulfport has informed the Claugus Family that the Beck Energy Lease still constitutes a title defect because the Tolling Order purports to toll the Beck Energy Lease during the entire pendency of the class action, adding years to the term of the lease.

46. The actions of the Seventh District in issuing the Tolling Order purporting to bind the Claugus Family as an absent class member were arbitrary, unreasonable, and unlawful.

47. The actions of the Seventh District in issuing the Tolling Order purporting to affect the rights of the Claugus Family as an absent class member who was not provided with notice of the class action and an opportunity to opt out of the class were arbitrary, unreasonable, and unlawful.

48. Retroactively tolling the leases of hundreds of property owners across the state who were not notified of the class action or given an opportunity to opt out (potentially costing those property owners many millions of dollars and affecting contractual rights and obligations established prior to the issuance of the Tolling Order or without notice of the Tolling Order) is a gross abuse of discretion on the part of the Seventh District.

49. The Claugus Family is being harmed by the Tolling Order by which the Seventh District unconstitutionally violated its right to due process, as well as the due process rights of hundreds of other landowners across the state of Ohio. The results of that unconstitutional decision will costs landowners such as the Claugus Family many millions of dollars, and will

expose other landowners who signed new oil and gas leases with third parties in reliance on the terms of the Form G&T (83) leases to liability for breach of contract.

50. Because the Claugus Family has no plain and adequate remedy in the ordinary course of the law, writs of prohibition and mandamus are appropriate.

51. The Claugus Family brings this action to insure that the right to due process of law established by the Fourteenth Amendment to the United States Constitution and Article I, § 16 of the Ohio Constitution is respected and the constitutional rights of the Claugus Family and other absent class members are protected and upheld.

Wherefore, Relator prays that this Court:

(a) Issue a peremptory writ of prohibition permanently enjoining Respondents from enforcing Paragraph 2 of the Judgment Entry of September 26, 2013, to the extent it applies to the Claugus Family;

(b) Issue a peremptory writ of mandamus directing Respondents to vacate the Tolling Order to the extent it applies to the Claugus Family;

(c) Because of the importance of the issues raised, in the event that it does not issue a peremptory writ, that it issue an alternate writ setting forth an expedited schedule for the presentation of evidence and briefing; and

(d) Grant any and all further relief to which Relator may be entitled, including costs and attorney's fees herein.

Respectfully submitted,

Daniel H. Plumly (0016936), Counsel of Record

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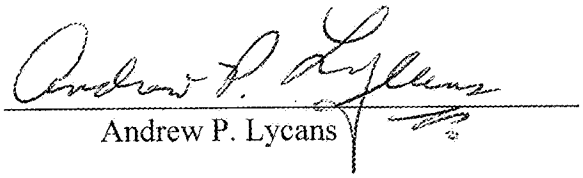
ENDORSEMENT TO THE CLERK

Please issue and serve summons, together with a copy of the complaint, upon the Respondents by certified mail pursuant to S.Ct. Prac. R. 10.4(A).



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