

IN THE OHIO SUPREME COURT

**STATE OF OHIO EX REL.
CLAUGUS FAMILY FARM, L.P.,**

Relator,

vs.

**SEVENTH DISTRICT COURT OF
APPEALS, ET AL.,**

Respondents.

CASE NO. 14-0423

ORIGINAL ACTION IN
PROHIBITION AND MANDAMUS

**INTERVENING RESPONDENT BECK ENERGY CORPORATION'S
SUPPLEMENTAL MOTION FOR STAY**

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Intervening Respondent, Beck Energy Corporation (“Beck Energy”), files this Supplemental Motion for Stay following the Notice of Appeal and Memorandum in Support of Jurisdiction filed by Appellants, Larry A. and Lori Hustack, Lawrence and Michelle Hubbard and David Majors (hereinafter, collectively “*Hupp* Appellants”), individually and as class representatives, on November 7, 2014, in *Hupp v. Beck Energy Corp.*, Supreme Court Case No. 14-1933.

Beck Energy previously moved for a stay in this matter on October 21, 2014, indicating the *Hupp* Appellants intended to appeal the Seventh District Court of Appeals’

decision in *Hupp v. Beck Energy Corp.*, 7th Dist. Monroe Nos. 12 MO 6, 13 MO 2, 13 MO 3, 13 MO 11, 2014-Ohio-4255. Beck Energy supplements its motion for stay following the filing of the *Hupp* appeal to bring to the Court's attention that both cases challenge the same tolling order raising concerns of lack of notice to the class members. Because Relator Claugus Family Farm, L.P. ("Relator") is a member of the *Hupp* class action if the Court decides to exercise jurisdiction and accept the *Hupp* appeal, there will be no need to separately address the issues Relator asserts herein.

I. **ARGUMENT**

A. **Relator's Complaint in Prohibition and Mandamus should be stayed.**

Beck Energy asks the Court to issue a stay in this matter while the Court determines whether to grant jurisdiction to hear the *Hupp* Appellants' appeal and, if the appeal is accepted, to continue the stay until the Court renders its decision in that appeal. Beck Energy requests a stay because Relator, as a proper Civ.R. 23(B)(2) class member, should not be permitted to seek relief outside of the class action while the class continues to pursue relief through the appellate process.

In its Memorandum in Support of Jurisdiction, the *Hupp* Appellants specifically challenge the tolling order issued by the Seventh District Court of Appeals in Proposition of Law No. 3:

In a Civ.R. 23(B)(2) class action challenging the validity of oil and gas leases, after the trial court has declared the leases void, it is error for an appellate court to retroactively toll the leases of absent plaintiff class members without notice, to a date before any motion to toll those leases was filed, and before the class was certified.

(Emphasis added.) (Memorandum in Support of Jurisdiction of Appellants Clyde

A. Hupp, et al., Case No. 14-1933, p. 13 (Nov. 7, 2014).

This is the exact argument Relator raises in its original action – that the court of appeals should not have tolled the absent class members’ leases without notice. Therefore, as a class member, Relator can raise these concerns, in the *Hupp* appeal, if the Court decides to exercise jurisdiction. Asking the Court to step in at this time, on Relator’s behalf, is unfair to the *Hupp* Appellants. As a class member, Relator should not be permitted to single itself out from the Civ.R. 23(B)(2) class in order to receive special relief on issues that allegedly impact the entire class as a whole.

For this reason, Beck Energy asks the Court to issue a stay while the *Hupp* Appellants’ Memorandum in Support of Jurisdiction is pending before this Court and, if the Court decides to exercise jurisdiction, wait to decide the merits of Relator’s original action until after the merits of the *Hupp* Appellants’ appeal are determined.

II. CONCLUSION

Relator is a member of a properly certified Civ.R. 23(B)(2) class. On this basis, Beck Energy asks the Court to stay this matter while it determines whether to exercise jurisdiction over the *Hupp* Appellants’ appeal and, in the event it does, until it decides the merits of that appeal.

Respectfully submitted,

s/s Scott M. Zurakowski

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PROOF OF SERVICE

I hereby certify that copies of Intervening Respondent Beck Energy Corporation's Notice of Mootness and Motion for Stay were served by United States mail, pursuant to S.Ct.Prac.R. 3.11(B), this 14 th day of November 2014 upon:

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