[Cite as *Ricketts v. Everflow E., Inc.*, 2016-Ohio-4807.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

LARRY RICKETTS, et al. PLAINTIFFS-APPELLANTS VS. EVERFLOW EASTERN, INC., et al. DEFENDANTS-APPELLEES	)	CASE NO. 14 MA 0103 OPINION

CHARACTER OF PROCEEDINGS: Civil Appeal from the Court of Common Pleas of Mahoning County, Ohio Case No. 2013-CV-3351

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiffs-Appellants:

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JUDGES:
Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Carol Ann Robb

Dated: June 29, 2016

[Cite as *Ricketts v. Everflow E., Inc.*, 2016-Ohio-4807.]
WAITE, J.

{¶1} Larry Ricketts, Susan Ricketts, James Bryson, Joanne Bryson, Kenneth Yurco, Laura Yurco and Gregory Huber (collectively, "Appellants") appeal a decision by the Mahoning County Common Pleas Court to dismiss their complaint for declaratory judgment filed against Appellees, Everflow Eastern, Inc., Chesapeake Exploration, LLC and Total E & P USA, Inc.

{¶2} Appellants had filed a previous action for quiet title, breach of contract, fraud, negligence and bad faith on May 9, 2012, Mahoning County Common Pleas Court Case No. 12 CV 1379. The action was voluntarily dismissed on December 28, 2012 after Everflow filed a motion seeking to dismiss the complaint. Appellants subsequently filed the present declaratory judgment action, this time alleging: (1) expiration of the lease due to Everflow's breach based on allegations that the consolidation unit was "improperly formed and improperly filed"; (2) the lease violates public policy; (3) breach of implied covenants; and (4) failure of mutuality and consideration. Appellants do not address on appeal the dismissal of their mutuality and consideration claims. Hence, the trial court's decision as to these is affirmed.

{¶3} Appellants first argue that the trial court erred in determining the amended complaint stated no operative facts regarding their allegation that the Appellees' consolidation unit was "improperly formed and improperly filed." The trial court held that in the absence of any operative facts, a stand-alone legal conclusion failed to satisfy the basic pleading requirements of Civ.R. 8(A).

{¶4} Appellants next contend the trial court erred in holding that the disclaimer of implied covenants contained within the lease applied to the leases

during their secondary term. Finally, Appellants argue the trial court erred in dismissing their claims that the leases should be declared expired at least with regard to any acreage not included in the consolidation unit. These two last contentions are based on their belief that the disclaimer of implied covenants can only apply during the primary term of their respective leases; a contention newly raised to this Court. As such, they are not properly brought before the Court of Appeals.

{¶5} An issue not addressed by the trial court, but timely raised as an affirmative defense by Appellees, is that Appellants' claims are barred based on the applicable statute of limitations. Appellants' claims are all based in contract. The statute of limitations governing breach of oil and gas claims is R.C. 2305.041, which became effective on April 6, 2007. This section changed the statutory limitations period in which to bring a claim for breach of a lease regarding oil or gas drilling to the eight-year period allowed for ordinary contractual actions. While an action alleging a breach of an express or implied provision concerning calculation or payment of royalties must be brought within four years consistent with the Uniform Commercial Code's statute of limitations for breach of contract involving the sale of goods (R.C. 2305.041; R.C. 1302.98; *accord* U.C.C. 2-725) an action alleging any other breach of the lease must be brought within the time specified in R.C. 2305.06: eight years.

{¶6} The subject leases were executed in 1988. The consolidation unit at issue was recorded in 1991. This declaratory judgment action was filed in November of 2013 seeking the court's interpretation of specific provisions of the lease

agreement relating to the consolidation unit. While styled as a declaratory judgment action, where the parties seek to have their rights and duties declared, the entire matter revolves around breach of contract claims, specifically, breach of an oil and gas lease contract. The statute of limitations specified in R.C. 2305.041, and even the ordinary contract statute of limitations, has long since passed for Appellants. Therefore, in accordance with Ohio law, we affirm the decision of the trial court based on the separate grounds that the matter is barred by the statute of limitations found in R.C. 2305.041.

Factual History

{¶7} Appellants Larry and Susan Ricketts own a 13-acre parcel of land in Mahoning County and entered into an oil and gas lease with Everflow Eastern, Inc. ("Everflow") on April 15, 1988. Appellants James and Joanne Bryson own two parcels of land in Mahoning County totaling approximately 103 acres and entered into a lease with Everflow on February 3, 1988 on the first parcel, and March 2, 1988 regarding the second parcel. Appellants Kenneth and Laura Yurco own 9.656 acres in Mahoning County and entered into a lease with Everflow on March 2, 1988. Appellant Gregory Huber owns a parcel of land in Mahoning County of unspecified acreage and entered into a lease with Everflow on February 9, 1988.

{¶8} On November 27, 2013, some twenty-five and a half years after the execution of the leases and twenty-two years after the formation of the consolidation unit at issue, Appellants filed this action for declaratory judgment, alleging expiration

of the lease, violation of public policy, breach of implied covenants and lack of mutuality and/or consideration.

{¶9} On February 11, 2014, Everflow filed a motion to dismiss pursuant to Civ.R. 12(B)(6) alleging, among other things, that, Appellants' claims were barred by the statute of limitations. A magistrate's decision was issued on June 9, 2014, granting Appellee's motion to dismiss. The magistrate did not address the statute of limitations argument, finding instead that: (1) Appellants did not support their allegation that the consolidation unit was improperly formed and improperly filed, in violation of Civ.R. 8(A); (2) the lease provisions as to the remaining acreage not included in the consolidation unit could not be declared expired merely because these acres were outside of the unit; (3) Appellants' contention that the leases violate public policy fails, as the exhibits attached to the complaint show an active well operates on the premises; (4) the leases disclaim all implied covenants; and (5) there was mutuality between the parties and the leases are supported by ample consideration.

{¶10} Appellants filed objections to the magistrate's decision. The trial court issued a judgment entry ultimately adopting the magistrate's decision. Appellants present three assignments of error for review.

ASSIGNMENTS OF ERROR

> THE TRIAL COURT ERRED IN HOLDING THAT APPELLANTS' AMENDED COMPLAINT STATED NO OPERATIVE FACTS IN SUPPORT OF ITS ALLEGATION THAT THE GARVER UNIT WAS

IMPROPERLY FORMED AND IMPROPERLY FILED. JUDGMENT ENTRY, JULY 29TH, AT 373-374.

THE TRIAL COURT ERRED IN HOLDING THAT THE DISCLAIMER OF IMPLIED COVENANTS APPLIED TO THE LEASES DURING THE SECONDARY TERM. JUDGMENT ENTRY, JULY 29TH, 2014, AT 375.

THE TRIAL COURT ERRED IN HOLDING THAT "[M]ERELY BECAUSE A PORTION OF [APPELLANTS'] PROPERTY WAS INCLUDED IN THE CONSOLIDATION UNIT IS NOT A VALID REASON TO DECLARE THE REMAINING ACREAGE 'EXPIRED' UNDER THE TERMS OF THE LEASE." JUDGMENT ENTRY, JULY 29TH, 2014, AT 374-375.

{¶11} In resolving a Civ.R. 12(B)(6) motion to dismiss, courts must accept the allegations in the complaint to be true. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). Further, the trial court may look only to the complaint to determine whether the allegations included within it are legally sufficient to state a claim. *Hanson v. Guernsey Cty, Bd. of Commrs.*, 65 Ohio St.3d 545, 548, 605 N.E.2d 378 (1992). In order to grant a motion to dismiss pursuant to Civ.R. 12(B)(6), it must appear beyond a doubt that the plaintiffs can prove no set of facts that warrant relief. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus.

{¶12} In *Velotta v. Petronzio Landscaping, Inc.*, 69 Ohio St.2d 376, 433 N.E.2d 147 (1982), the Ohio Supreme Court held a Civ.R. 12(B)(6) motion to dismiss

based on a violation of a statute of limitations should be granted only where the complaint conclusively shows on its face that the action is time barred. In order to conclusively demonstrate that the action is time barred, the allegations in the complaint must demonstrate both (1) the applicable statute of limitations, and (2) the absence of factors which would toll the pertinent statute, or make it inapplicable. *Lindsey v. Schuler,* 7th Dist. No. 11 MA 205, 2012-Ohio-3675. ¶ 11.

{¶13} R.C. 2305.041 governs the applicable statute of limitations for oil and gas leases. It reads:

> With respect to a lease or license by which a right is granted to operate or to sink or drill wells on land in this state for natural gas or petroleum and that is recorded in accordance with section 5301.09 of the Revised Code, an action alleging breach of any express or implied provision of the lease or license concerning the calculation or payment of royalties shall be brought within the time period that is specified in section 1302.98 of the Revised Code. An action alleging a breach with respect to any other issue that the lease or license involves shall be brought within the time period specified in section 2305.06 of the Revised Code.

{¶14} R.C. 1302.98(A) specifies that "[a]n action for breach of any contract for sale must be commenced within four years after the cause of action has accrued." Appellants' action does not in any way relate to the calculation or payment of royalties, so does not invoke this four year statute of limitations. However, R.C. 2305.06 states, "[e]xcept as provided in sections 126.301 and 1302.98 of the Revised

Code, an action upon a specialty or an agreement contract, or promise in writing shall be brought within eight years after the cause of action accrued." See also *Interstate Petroleum Co. v. Young*, 2013-Ohio-1943, 992 N.E.2d 468 (11th Dist.) (holding that the R.C. 2305.06 statute of limitations, which was then fifteen years, applied to enforceability of a written oil and gas lease).

{¶15} Although styled as a declaratory judgment action, the case *sub judice* sounds in breach of contract law. It presents the same claims through which Appellants originally sought recovery in the 2012 breach of contract action. This matter seeks to have the court interpret Appellants' leases to determine whether they have either expired or are void based on an alleged breach of implied warranty. It also seeks to have the court find a breach of contract based on an alleged improperly formed consolidation unit. Because this case is entirely based on breach of contract claims regarding the lease agreements at issue, the statute of limitations for Appellants' claims provided an eight-year period from the recording of the consolidation unit. This period expired on January 15, 1999. R.C. 2305.06.

{¶16} R.C. 1302.98(B) states:

> A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance, the

> cause of action accrues when the breach is or should have been discovered.

{¶17} Paragraph 10 of the leases executed between the various parties in 1988 reads as follows:

> Lessee is hereby granted the right at any time to unitize the leased premises *or any portion thereof*, as to any or all strata or stratum, with any other lands for the production of oil and/or gas and/or the constituents of either. No such unit shall embrace more than 160 acres provided that if any governmental regulations shall prescribe a spacing pattern for the development of the field, then any such unit may embrace as much additional acreage as may be so prescribed. Operations upon and production from the unit shall be treated as if such operations were upon or if such production were from the leased premises whether or not the well or wells are located thereon, provided, however, that Lessee shall pay Lessor, in lieu of other royalties and shut-in payments, only such proportion of the royalties or shut-in payments stipulated in paragraph 4 of this lease as the amount of his acreage placed in the unit, or his royalty interest therein on an acreage basis, bears to the total acreage in the unit. (Emphasis added.)

{¶18} In this matter, the alleged breach on which all of their claims are based occurred when the consolidation unit was formed and recorded on January 15, 1991. Appellants acknowledged in their complaint that Appellees filed a Consolidation of Oil

and Gas Leases to form a consolidation unit covering 66.65 acres and specifically notes that it can be found at Volume 1213, Page 83 of the Mahoning County Records. That recorded notice was also attached to the complaint as an exhibit. A review of the document reveals extensive recitals, including the names of Appellants and several other land owners whose property was also included in the unit, specific references to the leases that each had signed, a breakdown of the royalty structure for each land owner as well as an attached well location map indicating what portion of each leaseholder's parcel was included within the unit. Paragraph 10 of the various 1988 leases contemplates the formation of a consolidation unit and further acknowledges that only a portion of the leased acreage may be included in a unit.

{¶19} At that point, no future performance relative to the unit was prescribed by the lease or anticipated in writing by the parties. Appellants did not file this action until two decades had passed. No possible tolling event or suggestion of the inapplicability of the statute of limitations is contained within Appellants' initial complaint or subsequent amended complaint.

{¶20} An appellate court may affirm a trial court's decision on separate grounds so long as the evidentiary basis on which it relies was "adduced before the trial court." *State v. Peagler*, 76 Ohio St.3d 496, 668 N.E.2d 489 (1996), paragraph one of the syllabus.

{¶21} In their initial pleadings as an affirmative defense as well as in their Civ.R. 12(B)(6) motion, Appellees directed the trial court to the evidentiary basis for the statute of limitations issue, although incorrectly asserting a more generous fifteen-

year statute of limitations. Nonetheless, although the trial court elected to grant the motion to dismiss based on its analysis of the merits of Appellants' claims, we affirm the trial court based on the separate grounds that Appellants' claims are clearly time barred by the applicable statute of limitations set forth in R.C. 2305.06 and R.C. 1302.98.

Conclusion

{¶22} Based on the foregoing, Appellants' three assignments of error are moot, and the trial court's judgment in favor of Appellees is affirmed on separate grounds that Appellants' claims are barred based on the applicable statute of limitations.

Donofrio, P.J., concurs.

Robb, J., concurs.