

13-1087

IN THE CIRCUIT COURT OF RITCHIE COUNTY
WEST VIRGINIA

ST. LUKE'S UNITED METHODIST CHURCH,
MARY MAXINE WELCH, and
JAY-BEE PRODUCTION COMPANY,

Plaintiffs,

VS.

Civil Acton No. 03-C-65
Hon. Timothy L. Sweeney, Judge

CNG DEVELOPMENT COMPANY,
TRI COUNTY OIL AND GAS, INC., and
EAST RESOURCES, INC.,

Defendants.

ORDER

On the 1st day of March, 2013, came the plaintiff Mary Maxine Welch ("Mrs. Welch"), by her counsel, William Crichton V and William Crichton VI, plaintiff St. Luke's United Methodist Church by its counsel, Ira M. Haught, and the defendant CNX Gas Company, LLC, formerly Dominion Exploration and Production, Inc. and CNG Development Company, ("CNX")¹, by its counsel W. Henry Lawrence and Cole Delancey, for hearing upon Mrs. Welch's *Renewed Petition for Partial Rescission and Other Relief and Motion for Partial Summary Judgment on the Issue of Breach of Drilling Agreement*.

The Court has now fully considered the argument of counsel, as well as the pleadings and responses thereto (including memoranda of law and exhibits) filed herein on the issues raised in

¹ Dominion Exploration and Production, Inc. was a predecessor to CONSOL Gas Company, which subsequently merged into CNX Gas Company, LLC. For ease of reference, and in accordance with recent Orders submitted by Defendant herein, the Defendant is referred to as CNX throughout this Order.

Mrs. Welch's Renewed Petition for Partial Rescission and Other Relief and Motion for Partial Summary Judgment on the Issue of Breach of Drilling Agreement.

After mature consideration, the Court does make the following findings of fact and conclusions of law:

Findings of Fact.

1. Plaintiffs initiated this action by filing their *Complaint* against CNX and other Defendants in the Circuit Court of Ritchie County, West Virginia on December 31, 2003. The gravamen of this action was CNX's alleged failure to develop and failure to protect an 850-acre leasehold referred to as "The Flanagan Lease". Plaintiffs sought relief including partial rescission of CNX's lease rights as to the Flanagan Lease.²

2. On February 13, 2006, CNX filed an *Offer of Judgment* wherein it offered to drill two wells it had permitted during 2006; and to drill at least two wells per year beginning in 2007 until a total of 11 wells have been drilled on the Flanagan Lease.

3. Thereafter, Mrs. Welch appealed this Court's *Order* of November 15, 2006 dismissing those portions of her *Complaint* relating to partial rescission.

4. The West Virginia Supreme Court reversed and remanded this Court's *Order* of November 15, 2006 by its opinion filed June 12, 2006, published as *St. Luke's United Methodist Church v. CNG, et al.*, 663 S.E.2d 639, 222 W.Va. 185 (2008). *Inter alia*, the Supreme Court found CNX "should be given an opportunity to further develop" the Flanagan Lease. *Id.* at S.E. 2nd 647. Accordingly, it instructed that "upon remand to the trial court, a reasonable period of time should be established to provide for such additional development on the part of [CNX]." *Id.* at S.E.2nd 648.

² CNX's leasehold rights in the natural gas underlying the leasehold are derived from a lease made by Zimry Flanagan and Sarah C. Flanagan to the Carter Oil Company dated November 16, 1898, of record in the Office of the Clerk of the County Commission for Ritchie County at Lease Book 10, Page 457.

5. However, the Supreme Court provided CNX would have “the option of foregoing any additional development of the leased tract should it no longer be interested in pursuing the same. In such event, however, it should give up the leased area that is not currently producing oil or gas to allow another entity to engage in exploration and development efforts on the currently undeveloped portion of the leased tract.” *Id.* at Syl. Pt. 18.

6. On August 19, 2008, CNX filed a *Motion for Approval of Proposed Drilling Plan*, wherein CNX indicated it “plans to proceed with the drilling plan outlined in its Offer of Judgment, whereby [CNX] will drill, or cause to be drilled, two wells during 2008 and two additional wells per year thereafter until a total of eleven wells have been drilled on the Flanagan Lease.”

7. On March 30, 2009, this Court entered an *Agreed Order* endorsed by counsel for St. Luke’s, Mrs. Welch and CNX, “resolving issues raised in” CNX’s *Motion for Approval of Proposed Drilling Plan*.

8. The *Agreed Order* provided *inter alia* “[CNX] has commenced operations under, and plans to proceed with the drilling plan initially outlined in its *Offer of Judgment* dated February 13, 2006, whereby [CNX] will drill or cause to be drilled two additional wells per year thereafter until a total of eleven (11) wells have been drilled on the Flanagan Lease...”.

9. Thereafter, CNX caused a total of eight (8) wells to be drilled on the Flanagan Lease through the year 2011.

10. On November 2, 2012, CNX filed a *Notice of Modification of Drilling Plan* wherein it stated its intent to “suspend its plans to drill the remaining two wells in 2012 and one well in 2013 [on the Flanagan Lease] as a result of changed economics.” CNX attached to its *Notice of Modification of Drilling Plan* the Affidavit of a Senior Financial Analyst employed by

CONSOL, which indicated “at the current low gas prices and well economics, the three proposed wells cannot be economically developed.”

11. CNX did not drill any wells on the Flanaghan Lease in the year 2012.

B. Conclusions of Law.

1. A compromise or settlement agreement is favored by law and is to be construed as any other contract. *Eurenergy Res. Corp. v. S&A Prop. Research, LLC*, 228 W.Va. 434, 720 S.E.2d 163 (W.Va., 2011). See also *Floyd v. Watson*, 163 W.Va. 65, 254 S.E.2d 687 (1979); *Wright v. Davis*, 132 W.Va. 722, 53 S.E.2d 335 (1949); *Janney v. Virginian Railway*, 199 W.Va. 249, 193 S.E. 187 (1937); and *Maze v. Bennett*, 114 W.Va. 169, 171 S.E. 249 (1933).

2. A valid written instrument which expresses the intent of the parties in plain and unambiguous language is not subject to judicial construction or interpretation but will be applied and enforced according to such intent. Syl. Pt. 1, *Cotiga Dev. Co. v. United Fuel Gas Co.*, 147 W.Va. 484, S.E.2d 626 (1962).

3. By virtue of the *Agreed Order* of March 30, 2009, the parties entered into a contractual agreement to address the West Virginia Supreme Court’s instructions that CNX should be provided an opportunity for additional development of the Flanaghan Lease. The drilling program set forth in the *Agreed Order* established CNX’s obligation as to further development of the Flanaghan Lease.

4. CNX’s contractual development obligation, as contained in the *Agreed Order* of March 30, 2009, supplanted CNX’s implied obligation to develop the Flanaghan Lease as a reasonably prudent operator.

5. By electing, in its discretion, not to further develop the Flanagan Lease pursuant to the *Agreed Order*, CNX has exercised its option to forego any additional development of the leased tract as specifically provided for at Syl. Pt. 18 of *St. Luke's United Methodist Church v. CNG, et al.*, 663 S.E.2d 639, 222 W.Va. 185 (2008).

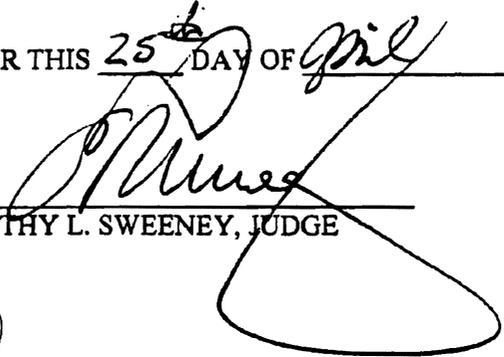
6. Accordingly, CNX should give up the leased area that is not currently producing oil or gas to allow another entity to engage in exploration and development efforts on the currently undeveloped portion of the Flanagan Lease. *See Id.*

It is therefore ORDERED that Mrs. Welch's *Renewed Petition for Partial Rescission and Other Relief* is GRANTED in part, consistent with such Findings of Fact and Conclusions of Law set forth above.

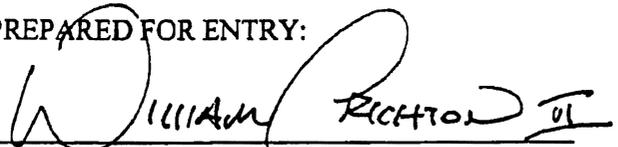
Accordingly, it is further ORDERED that partial rescission be and is effected as to the Defendants' leasehold rights in the natural gas reserves underlying that certain tract of real estate situate in Union District, Ritchie County, West Virginia, comprising a total of 850 acres, referred to herein as the Flanagan Lease and more particularly described or referenced in the Complaint, as to all formations below those that have been heretofore developed by Defendants provided, however, that Defendants shall retain their leasehold rights to the formations underlying the Flanagan Lease through which Defendants have currently developed.

The Clerk is directed to send copies of this Order to William Crichton, VI, 325 9th Street. Parkersburg, WV 26101; W. Henry Lawrence, 400 White Oaks Blvd., Bridgeport, WV 26330; and to Ira M. Haught, 210 E. Main St., Harrisville, WV 26362.

ENTER THIS 25th DAY OF July, 2013.


TIMOTHY L. SWEENEY, JUDGE

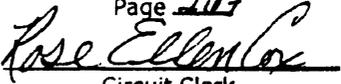
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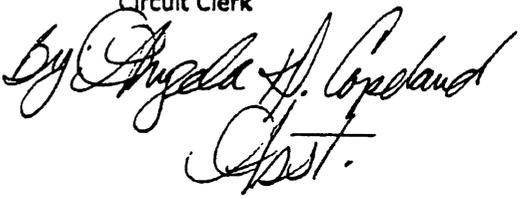

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I hereby certify that the annexed
is a true and correct copy
original on file in my office
of Rose Ellen Cox
County of West Virginia
FILED ON 5/02/13
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Circuit Clerk

By 
Clerk

IN THE CIRCUIT COURT OF RITCHIE COUNTY, WEST VIRGINIA

ST. LUKE'S UNITED METHODIST CHURCH,
MARY MAXINE WELCH, and
JAY-BEE PRODUCTION COMPANY,

Plaintiffs.

v.

Civil Action No. 03-C-65
(Judge Timothy L. Sweeney)

CNG DEVELOPMENT COMPANY,
TRI COUNTY OIL AND GAS, INC., and
EAST RESOURCES, INC.,

Defendants.

**ORDER REGARDING MOTION FOR
RECONSIDERATION OF ORDER ENTERED MAY 2, 2013**

On the 19th day of June, 2013, came the Plaintiff Mary Maxine Welch ("Mrs. Welch"), by her counsel, William Crichton V and William Crichton VI, and the Defendant CNX Gas Company LLC ("CNX"), successor in interest to Dominion Exploration & Production, Inc., by its counsel, W. Henry Lawrence and Cole Delancey, for a hearing on CNX's Motion for Reconsideration of Order Entered May 2, 2013, or in the Alternative for Stay Pending Writ of Prohibition. Upon consideration of the motion, the memoranda in support thereof and in opposition thereto, the argument of counsel and the entire record, this Court **GRANTS in PART and DENIES in PART** CNX's Motion for Reconsideration of Order Entered May 2, 2013, or in the Alternative for Stay Pending Writ of Prohibition.

The Court **HOLDS** that because the May 2nd Order was neither final as to all claims and parties nor was it certified under West Virginia Rule of Civil Procedure 54(b), CNX properly brought the motion for reconsideration pursuant to the Court's inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient in

accordance with *Hubbard v. State Farm Indemnity Co.*, 213 W. Va. 542, 548 S.E.2d 176, Syl. Pt. 4 (2003).¹

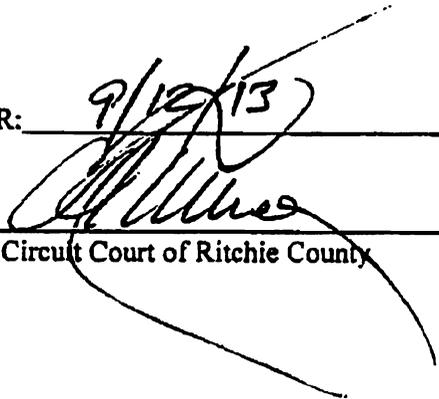
The Court further **HOLDS** that the motion for reconsideration is **DENIED** for insufficient cause.

The Court further **CERTIFIES** under West Virginia Rule of Civil Procedure 54(b) that there is no just reason for delay and **DIRECTS** entry of final judgment as to the claims adjudicated in the May 2nd Order and this **ORDER** effective the date of entry of this **ORDER**.

The Court also **HOLDS** that the motion for stay, which has been agreed to by Ms. Welch, is **GRANTED** for good cause shown. The action is hereby **STAYED** in this Court pending final resolution of a petition for a writ of prohibition, petition for appeal or other review by the West Virginia Supreme Court of Appeals.

The Clerk is directed to send copies of this Order to William Crichton V and William Crichton VI, 325 9th Street, Parkersburg, WV 26101; Richard L. Starkey, 914 Market Street, Suite 302, Parkersburg, WV 26101; and W. Henry Lawrence and Amy M. Smith, 400 White Oaks Blvd., Bridgeport, WV 26330.

ENTER: 9/12/13



Judge, Circuit Court of Ritchie County

¹ Because the May 2nd Order was not certified as a final judgment under Rule 54(b), the time to file a petition for appeal does not run from that date. The Court notes, however, that CNX filed its motion on May 16, 2013, which is within the ten (10) day period set forth in West Virginia Rule of Civil Procedure 59(e), *see* W. Va. R. Civ. P. 6(a), and would have tolled the running of time for appeal under West Virginia Rule of Civil Procedure 72. Review of the motion under Rule 59(e) would not have changed the Court's holdings.

Order prepared and submitted by:



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Attorneys for Mary Maxine Welch

I hereby certify that the annexed
instrument is a true and correct copy
of the original on file in my office

Attest: Rose Ellen Cox

Ritchie County of West Virginia

ENTERED ON Sept 16, 2013

IN 24 Order Book No. 27

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Circuit Clerk