

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
 BUSINESS COURT DIVISION

SHONK LAND COMPANY, LLC,
CATHY S. GATSON, CLERK
 KANAWHA COUNTY CIRCUIT COURT

Plaintiff,

vs.

Civil Action No.: 18-C-193
 Presiding Judge Wilkes
 Resolution Judge Lorensen

CABOT OIL & GAS CORPORATION, and
 CARBON WEST VIRGINIA COMPANY, LLC,

Defendants.

**ORDER GRANTING DEFENDANT'S MOTION
 FOR LEAVE TO CONDUCT LIMITED ADDITIONAL DISCOVERY REGARDING
 THIRD-PARTY LESSEE TOR LLC**

This matter came before the Court this 10th day of April 2019 upon Defendant, Cabot Oil & Gas Corporation's Motion for Leave to Conduct Limited Additional Discovery Regarding Third-Party Lessee, TOR LLC. The Plaintiff, Shonk Land Company (hereinafter "Shonk" or "Plaintiff"), by counsel Nicholas S. Johnson, Esq., and Defendant, Cabot Oil and Gas Corporation (hereinafter "Cabot" or "Defendant"), by counsel Robert M. Stonestreet, Esq., have fully briefed the issues necessary. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process. So, upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

FINDINGS OF FACT

1. This matter was commenced with the filing of the complaint on February 27, 2018, wherein Plaintiff alleged Breach of Lease for Assignment Without Lessor's Consent

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(Count I); Breach of Lease for Non-Payment and Late Payment of Royalties (Count II); and Breach of the Ratification's Royalty Calculation Methodology (Count III).

2. In Cabot's first set of discovery requests to Shonk, Cabot requested Shonk to identify and produce mineral leases between Shonk and third parties. On a prior date, a certain lease involving Shonk and TOR, LLC (hereinafter "TOR" or "Third-Party Lessee") was identified. Cabot later served Shonk with a second set of discovery requests seeking, among other things, all communications between Shonk and TOR concerning leasing mineral interests held by Shonk. Specifically, Cabot served Shonk with discovery requests on December 21, 2018 requesting communications with TOR as follows:

Document Request No. 21: Produce all documents and ESI exchanged between representatives of Shonk Land Company, LLC and representatives of TOR, LLC concerning leasing mineral interests held by Shonk Land Company, LLC or an affiliated company.

3. On January 22, 2019, Shonk timely responded to this discovery request, and produced 259 emails between Shonk and Mr. Graff, which were sent between June 12, 2014 and April 18, 2016, and averred they pertain to the TOR lease. Shonk also produced a business proposal identifying the principals of TOR as Bill Maloney, F.T. (Tom) Graff, and Ruben Graham. *See* Def's Mot. to Compel, p. 4.
4. On March 19, 2019, Cabot filed the instant Motion for Leave to Conduct Limited Additional Discovery Regarding Third-Party Lessee, TOR LLC, arguing that in light of new information that was produced in discovery regarding Shonk and TOR at the close of discovery, that discovery should be re-opened for the limited purpose of

engaging in further discovery concerning “Shonk’s dealings with TOR”. *See* Def’s Mot., p. 1.

5. On March 27, 2019, Shonk filed its Response in Opposition of Cabot Oil & Gas Corporation’s Motion for Leave to Conduct Limited Additional Discovery Regarding Third-Party Lessee, TOR LLC, asserting that the request should be denied because Cabot had “ample opportunity” to obtain discovery regarding Shonk’s dealings with TOR. *See* Pl’s Resp., p. 1.
6. On April 1, 2019, Cabot filed its Reply in Support of Motion for Leave to Conduct Limited Additional Discovery Regarding Third-Party Lessee, TOR LLC.
7. The Court now finds the instant Motion is ripe for adjudication.

CONCLUSIONS OF LAW

Pending before the Court is a motion by Defendant Cabot Oil & Gas Corporation (“Cabot”) seeking an order to allow for additional limited discovery prior to the trial, limited to information regarding Plaintiff Shonk Land Company (“Shonk”) and a third-party lessee, TOR LLC, with whom Shonk negotiated an oil and gas lease agreement signed in April 2016.

Generally, “trial courts should not permit the parties to obtain extensions absent a showing of good cause.” *State ex rel. Pritt v. Vickers*, 214 W. Va. 221, 227, 588 S.E.2d 210, 216 (2003) (quoting Cleckley, *Litigation Handbook*, § 16(b)(3), at 360).

“[T]he primary measure of the good cause standard for securing modification of the scheduling order is the moving party’s diligence in attempting to meet the order’s requirements.” Louis J. Palmer, *Litigation Handbook on West Virginia Rules of Civil Procedure*, p. 511 (5th ed. 2017). “In determining whether to modify [a] scheduling order, the trial court should consider the possible prejudice to the party opposing the modification.” *Id.*

In this matter, the Court considers the fact that although an unredacted copy of the TOR lease was produced in discovery in November 2018, that version of the lease did not include a legal description of the property addressed. Subsequently, on January 22, 2019, another production of documents included another unredacted copy of the TOR lease with wording that describes the relevant property as 10,000 acres, but containing no legal description. Further, produced documents including communication between Shonk and TOR that include various maps that may depict the area governed by the TOR lease, including multiple wells described as “Williams Coal” wells. The Court notes discovery was set to close January 31, 2019¹.

Cabot argues this information produced in discovery may lead to information that shows portions of the TOR lease overlap with the subject property covered by the leases at the heart of this case. Shonk, on the other hand, avers the properties are adjacent but do not overlap. Shonk has produced an Affidavit stating the same, but conceding that no legal description has been found. Cabot avers it did not discover of the possible overlap of property until after January 31, 2019. Because of the lack of a recorded legal description, the Court finds Cabot is entitled to make inquiry of this limited issue, the lease between Shonk and TOR and the circumstances surrounding that lease.

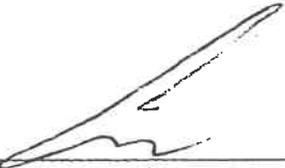
Given the timeline of how the information came about in discovery, up and until the close of discovery, the Court finds Cabot acted diligently and was not dilatory in its investigation of this issue. The Court notes the TOR lease is unrecorded and does not contain a legal description of the property. The Court also finds that the circumstances of the TOR lease are important to this case. The circumstances of the TOR lease are relevant to whether or not Shonk’s refusal to

¹ The Court also notes it granted leave to conduct five depositions outside of the discovery deadline at the hearing on January 23, 2019.

consent to assignment was reasonable. Cabot has alleged that the existence of a substantial financial incentive for Shonk to refuse consent may be present, and this would be highly relevant to the reasonableness inquiry. Therefore, good cause exists to re-open discovery for the limited purpose of investigating the TOR lease and the circumstances surrounding that lease. Discovery may include depositions of Shonk and TOR representatives.

CONCLUSION

Accordingly, it is hereby ADJUDGED and ORDERED that Defendant Cabot Oil & Gas Corporation's Motion for Leave to Conduct Limited Additional Discovery Regarding Third-Party Lessee, TOR LLC is hereby GRANTED. The Court notes the objections and exceptions of the parties to any adverse ruling herein. The Court directs the Circuit Clerk to distribute attested copies of this order to all counsel of record, and to the Business Court Central Office at West Virginia Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.



 JUDGE CHRISTOPHER C. WILKES
 JUDGE OF THE WEST VIRGINIA
 BUSINESS COURT DIVISION

STATE OF WEST VIRGINIA
 COUNTY OF KANAWHA, SS
 I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
 AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
 IS A TRUE COPY FROM THE RECORDS OF SAID COURT
 GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 12
 DAY OF April 2019
 _____ CLERK
 CLERK OF KANAWHA COUNTY, WEST VIRGINIA

380 West South Street
Martinsburg, WV 25401
304264-1992
304-264-2163

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CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

Fax

To: Cathy S. Gatson	From: Tessa Bowers, Law Clerk
Fax: 304-357-0473	Pages: 6 (incl. cover sheet)
Phone: 304-357-0440	Date: 4/10/2019
Re: Business Court Order to be filed	cc: n/a

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

This is an Order signed by Judge Christopher Wilkes, Senior Circuit Judge in Berkeley County, who is Presiding Judge in 18-C-193 (Kanawha County) as this case has been referred to the Business Court Division. This Order is to be entered in Kanawha County 18-C-193.

Please file and send attested copies to all counsels of record.