IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

THE KAY COMPANY, et al.,

Plaintiffs,

v. CIVIL ACTION NO. 2:06-cv-00612

EQUITABLE PRODUCTION CO.,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the Court is Defendant's Motion to Enforce the Final Judgment Order and Final Order. [ECF No. 268]. Class Counsel [ECF No. 277] and Intervenor Plaintiffs [ECF No. 278] have responded. Defendant has replied. [ECF No. 279]. The Motion is now ripe for decision. For the following reasons, the Motion is **DENIED**.

I. Background[1]

A. The Class Action

This case began in 2006 when Plaintiffs filed a Complaint against Equitable Production Company, now "EQT." The Amended Complaint sought, among other things, "damages for improper deductions of post-production expenses from their royalty payments and damages for breach of lease agreements, breach of fiduciary

[1] The full factual and procedural history of this case is discussed at length in my Memorandum Opinion and Final Order [ECF No. 224]. I fully adopt and incorporate those facts, but I only discuss the relevant background in this Opinion.

duty, fraud, violation of the West Virginia Consumer Credit and Protection Act (W. Va. Code § 46A-6-101, et seq.), violation of the flat rate royalty statute (W. Va. Code § 22-6-8), and punitive damages, *all related to the improper payment of royalties*." [ECF No. 182, at 2 (emphasis supplied)].

On April 28, 2010, I approved a class action settlement of all claims against EQT. As part of the Second Amended Settlement Agreement [ECF No. 182], which I adopted as the Final Settlement Agreement (the "Agreement"), I approved a provision "releasing [EQT] from future claims by Class Members from any and all *royalty claims* through the settlement date of December 8, 2008." [ECF No. 224, at 6 (emphasis supplied)]. Importantly, the released claims were "royalty claims."

The Agreement defines "royalty claims" as follows:

> those claims asserted by the Plaintiff Class Representatives in this Action, individually and as representatives of the Class, including claims for improper royalty payments, improper deductions, improper measurement, improper accounting for natural gas liquids, improper sales prices, breach of lease agreements, breach of fiduciary duty, fraud, violation of the West Virginia Consumer Credit and Protection Act (W. Va. Code § 46A-6-101, et seq.), violation of the flat rate royalty statute (W. Va. Code § 22-6-8) and punitive damages, *all based upon the failure to pay proper royalty*.

[ECF No. 182, at 17 (emphasis supplied)].

In addition to pertaining only to royalty claims, the release was temporally restricted to "the period covered by this settlement." [ECF No. 225, at 1]. The Agreement defines the relevant "Compensation Period" as being "from February 1, 2000, to the Effective Date," [ECF No. 182, at 7] which was "the date by which this

Agreement has been signed by all Parties hereto" [ECF No. 182, at 8]. The Agreement was effective on or about December 8, 2008.

To obtain settlement funds, participating class members were required to submit a "Claim Form." Among other things, the Claim Form relevant here, the "Flat Rate Claim Form," notified class members that by accepting the settlement, they would "release[] [EQT] from any and all Royalty Claims through the Effective Date" and "warrant [their] Ownership Period in the Covered Lease during the Compensation Period." [ECF No. 182, at 29]. That is, "[a]s consideration for this settlement," participating class members "REPRESENT[ED] and WARRANT[ED] that [they were] the owner[s] of the interest in the lease . . . and [were] entitled to the Settlement Payment set form [sic] herein." [ECF No. 182, at 30]. Further, participating class members who held Flat Rate Leases were notified that they "cannot seek forfeiture of their Flat Rate Leases after entry of Final Order and Judgment in this civil action." [ECF No. 182, at 30].

Additionally, as part of the Judgment in this case, I "BAR[RED] AND ENJOIN[ED] all Class Members from asserting Royalty Claims arising from the period covered by this settlement"; "ORDER[ED] that the Class Members' Royalty Claims against the Released Parties are released through the Effective Date, December 8, 2008"; "DECLARE[D], ADJUGE[D], AND DECREE[D] that this Agreement provides the exclusive remedy for Class Members (and any successors-in-interest) with respect to any and all Royalty Claims . . . that were or could have been brought in this action"; and "RESERVE[D] . . . continuing and exclusive jurisdiction

over the Parties and Class Members to administer, supervise, construe, and enforce the Agreement." [ECF No. 225, at 2].

B. The Wetzel County Litigation

In 2017, the "Huey Plaintiffs," who were members of the Flat Rate Lease subclass in this class action, filed a lawsuit in the Circuit Court of Wetzel County, West Virginia (the "Wetzel County litigation") against EQT. In that case, the Huey Plaintiffs allege, among other things, that EQT trespassed on their mineral estate which was, at some point, leased to EQT ("the Hoge Lease"). The Hoge Lease, entered into in 1900, included a habendum and cessation clause which provided that the lease was to have an initial term of five years and would continue to be held open "as long after the commencement of operations as said premises are operated for the production of oil or gas." [ECF No. 278, at 3]. According to the Huey Plaintiffs, EQT represented that the Hoge Lease was held open for production from 1935 to 2014 only by one well, EQT Well #1785.

The Wetzel County litigation alleges that EQT approached the Huey Plaintiffs in 2010 with proposed amendments to the Hoge Lease. Though it is unclear what transpired, the Huey Plaintiffs allege that their investigation and discovery in 2017, as part of the Wetzel County litigation, revealed that Well #1785 "was not producing for substantial periods of time in 1987 and 2004–2005." [ECF No. 278, at 4]. Therefore, the Huey Plaintiffs allege in the Wetzel County litigation that, by virtue of the habendum clause, the Hoge Lease terminated on its own when Well #1785 stopped producing. Nevertheless, the Huey Plaintiffs allege, "EQT entered the Hoge

Lease property in 2013-14 to drill new Marcellus Shale formation wells and eventually began removing hydrocarbon products from thereunder. This was actionable trespass under West Virginia law." [ECF No. 278, at 4].

C. The Motion to Enforce Judgment

EQT now files its Motion to Enforce Judgment, alleging that the Huey Plaintiffs are in violation of my Final Order which adopted the Agreement. Specifically, EQT alleges that the trespass claim in Wetzel County litigation is a royalty claim that was released by the terms of the Agreement in this case. According to EQT, the Agreement was predicated on the validity of the subject leases and, by submitting a Claim Form and accepting settlement funds, the Huey Plaintiffs represented and warranted that they held a valid lease and had the right to payment. Now, according to EQT, the Huey plaintiffs are seeking to terminate the Hoge Lease in violation of the Agreement. EQT asks me to exercise my continuing jurisdiction to enforce the Judgment by enjoining the Huey Plaintiffs' trespass claim in the Wetzel County litigation.

II. Relevant Law

The All Writs Act, 28 U.S.C. § 1651, empowers a federal court to enjoin proceedings that interfere with federal judgments. This includes the power to enjoin state court proceedings, but only when an exception to the Anti-Injunction Act, 28 U.S.C. § 2283, applies. The Anti-Injunction Act provides that "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by an Act of Congress, or where necessary in aid of its

jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. These three exceptions "are narrow and are 'not [to] be enlarged by loose statutory construction.'" *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 146 (1988) (emphasis in original) (quoting *Atlantic Coast Line R. Co. v. Locomotive Engineers*, 398 U.S. 281, 287 (1970)). "Any doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed." *Atlantic Coast Line R. Co.*, 398 U.S. at 297; *accord Smith v. Bayer Corp.*, 564 U.S. 299, 306 (2011). Even where one of the exceptions to the Anti-Injunction Act applies, "[t]he power to enjoin state proceedings is discretionary, allowing the court to weigh those factors both pro and con to the issuance" of an injunction. *Commonwealth Edison Co. v. Gulf Oil Corp.*, 541 F.2d 1263, 1274 (7th Cir. 1976).

III. Discussion

The threshold question is whether the Huey Plaintiffs' trespass claim in the Wetzel County litigation is a "royalty claim" that was or could have been brought in this case and was therefore released by the Agreement and Final Order. I **FIND** that it is not such a claim. The Agreement makes clear that royalty claims are claims "*based upon the failure to pay proper royalty*." [ECF No. 182, at 17 (emphasis supplied)]. The trespass claim in the Wetzel County litigation has nothing to do with whether EQT paid proper royalties. In fact, it is premised on the idea that EQT had no royalties to pay because the Hoge Lease terminated of its own accord through nonproduction. Because the trespass claim is not a royalty claim, it was not released by the Agreement or my Judgment in this case.

Even still, EQT argues I should exercise my discretion to enjoin the Wetzel County litigation because doing so is necessary in aid of this court's jurisdiction and to protect and effectuate the Judgment. I find neither argument persuasive.

The "in aid of jurisdiction" exception applies when the state court action may "seriously impair the federal court's flexibility and authority to decide [its] case." *Atl. Coast Line R. Co.*, 398 U.S. at 295. Nothing about the Wetzel County litigation interferes with my ability to decide this case because I already decided it on April 28, 2010, almost eleven years ago.

The second exception, known as the relitigation exception, was "designed to permit a federal court to prevent state litigation of an issue that was previously presented to and decided by the federal court." *In re Am. Honda Motor Co.*, 315 F.3d 417, 440 (2003) (quoting *Chick Kam Choo*, 486 U.S. at 147)). I recognize EQT's argument that the Agreement and payment of settlement funds was predicted on each class member representing and warranting that he or she held a valid lease and was due the money owed, and that the Agreement prevents class members from later seeking to terminate the subject lease. However, I do not find that either of these issues was squarely presented for the court's determination. The Huey Plaintiffs do not necessarily dispute these facets of the Agreement but argue that they did not know at the time of the Agreement that they did not hold a valid lease, and that they are not now seeking to terminate the lease. Rather, the Huey Plaintiffs argue the lease terminated on its own before this case was even filed. But, because the Huey Plaintiffs were under the belief that the Hoge Lease was held open by Well #1785,

they believed they were class members who held a Flat Rate Lease in this action and accepted the settlement, including the release and warranties. It was not until 2017 that the Huey Plaintiffs say they realized the Hoge Lease may have terminated as early as 1987.

Even if I could issue an injunction based on the relitigation exception given these two facets of the Agreement, I would not do so. Enjoining a state court action is an extraordinary measure not to be taken lightly. The settlement class in this case included an estimated 10,000 plaintiffs [ECF No. 184, at 2] and the Agreement will not be disturbed as to any of them, except the Huey Plaintiffs, regardless of the outcome of the Wetzel County litigation. Whether or not the Hoge Lease terminated pursuant to the habendum clause is a disputed question of fact for the jury in the Wetzel County litigation. If the jury determines that the lease terminated prior to the Compensation Period, the Huey Plaintiffs did not have a valid lease for which they were due payments under the Agreement and they never should have been class members in the first place. If that turns out to be the case, Plaintiffs suggests that EQT has a much less extraordinary remedy available—it could request an order requiring the Huey Plaintiffs to repay the settlement funds they were awarded here.

IV. Conclusion

For the foregoing reasons, EQT's Motion to Enforce the Judgment [ECF No. 268] is **DENIED**. The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party. The court further **DIRECTS** the Clerk to post a copy of this published opinion on the court's website, www.wvsd.uscourts.gov.

ENTER: April 22, 2021

JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE