

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JEFFREY S. VODENICHAR, et al.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 2:12-cv-01624-AJS
)	
HALCÓN ENERGY PROPERTIES, INC.,)	
)	
Defendant.)	

MOTION TO DISMISS WITHOUT PREJUDICE

Plaintiffs, by their undersigned counsel, move to dismiss this action without prejudice pursuant to Fed.R.Civ.P. Rule 41(a)(2). Plaintiffs seek this Order because all disputes that arose out of the transaction at issue cannot be resolved in this Court under diversity jurisdiction. Judicial economy would be better served by dismissing this action without prejudice so that all claims can be presented in one court, the state court, and the parties can avoid having two simultaneous actions which raise the same or related issues.

1. In this action, plaintiffs allege that defendant Halcón Energy Properties, Inc. (“Halcón”) breached a certain letter of intent (the “Halcón Agreement”) under which Halcón agreed to enter into oil and gas leases with owners of land in Mercer County, Pennsylvania. This Court has jurisdiction over plaintiffs’ claims solely by reason of diversity of citizenship under 28 U.S.C. § 1332(a).

2. The other parties to the Halcón Agreement were Co-Exprise, Inc. (“CX-Energy”) and Morascyzk & Polochak (“M&P”). M&P and CX-Energy are citizens of the Commonwealth of Pennsylvania, as are the individual and representative plaintiffs.

3. Defendant Halcón is going to join CX-Energy and M&P as parties in the immediate future. (*See*, January 16, 2013, Case Management Conference at Tr. 13-14). Although all of the bases for Halcón's joinder are unknown, Halcón's Amended Answer contains a "fraud" defense which asserts that the plaintiffs, in connection with their oil and gas leases, submitted Orders For Payment that differed from the Orders For Payment that were attached to the Halcón Agreement. Upon information and belief, the Orders For Payment were furnished to the plaintiff landowners by M&P and/or CX-Energy, and Halcón believes that M&P and/or CX-Energy made the purported change in the language in the Order For Payment.

4. To the extent that Halcon's above allegations are true, plaintiffs have claims against M&P and/or CX-Energy which have to be asserted to assure that all claims of the class members as well as the representative plaintiffs are fully, fairly and efficiently pursued. Plaintiffs were not aware of these potential claims when they commenced this action.

5. M&P and CX-Energy also may have made certain negligent misrepresentations to plaintiffs and the members of the class concerning the Halcón Agreement.

6. Plaintiffs, however, cannot assert any such claims against M&P and/or CX-Energy in this Court because diversity of citizenship does not exist between plaintiffs and M&P and/or CX-Energy, each of whom is a citizen of Pennsylvania. Moreover, supplemental jurisdiction under 28 U.S.C. § 1367(a) cannot supply a jurisdictional basis for plaintiffs' claims because 28 U.S.C. § 1367(b) forbids the exercise of supplemental jurisdiction "over claims by plaintiffs against persons made parties under Rule 14, 19, 20 or 24 of the Federal Rules of Civil Procedure." *See, e.g., Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365 (1978); *Herrick Company, Inc. v. SCS Communications, Inc.*, 251 F.3d 315, 325-26 (2d Cir. 2001); *See also*,

Exxon Mobil Corporation v. Allapattah Services, Inc., 545 U.S. 546 (2005). Thus, plaintiffs may assert their claims against M&P and CX-Energy only in state court.

7. After this action was commenced, plaintiffs also learned that M&P and CX-Energy assert that plaintiffs must pay them certain “transaction fees” out of any recovery that plaintiffs obtain from Halcón. Plaintiffs intend to seek a declaratory judgment or other relief concerning those transaction fee claims, but they can do so only in a state court forum.

8. Pursuing simultaneous state and federal court actions would result in duplicative, piecemeal litigation with potentially inconsistent results. This would waste federal and state judicial resources as well as the parties’ resources. Proceeding in state court alone will assure that all aspects of the controversy can be resolved in one action in which all parties can participate as to all issues.

9. In order to fully protect all of the instant plaintiffs’ and class members’ rights, plaintiffs and others have filed a class action in the Court of Common Pleas of Mercer County, Pennsylvania, against Halcón, CX-Energy and M&P, captioned *Jeffry S. Vodenichar, et al. v. Halcón Energy Properties, Inc.*, No. 2013-512. A true and correct copy of the Class Action Complaint in the state court action is attached as Exhibit 1.

10. Both this action and the state court action have been filed on behalf of the identical class. The class members will not be prejudiced by proceeding in state court. To the contrary, *all* claims and issues can be resolved fully in the state court proceeding. All of the claims and issues cannot be addressed in this court. Moreover, because the actions relate to oil and gas leases within Mercer County, the state court is ideally suited to deal with any issues that may arise relating to such leases and landowner property rights.

11. Defendant Halcón will suffer no prejudice by proceeding in state court. Halcón voluntarily engaged in these transactions in Mercer County; it will be able to assert any and all defenses in the state forum; and virtually all of Halcón's efforts in this Court — mostly relating to developing its defenses and producing relevant documents — will be fully applicable to the state court proceedings. No substantive, non-scheduling rulings have been made in this action.

12. No notice to the class is necessary under Fed.R.Civ.P. 23(e) because no class has yet been certified. In addition, there can be no possible prejudice to the class because the state court action duplicates and continues the claims against Halcón by the identical class.

13. Finally, this Court's ADR proceedings are in a preliminary stage, consisting only of choosing and retaining an ENE/mediator and an initial phone conference of approximately one hour dealing with procedural matters. Those efforts would also be useful in the state court proceeding, a setting in which all of the parties, including M&P and CX-Energy, can participate.

WHEREFORE, the plaintiffs respectfully request that the Court enter the attached Order dismissing this action without prejudice.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Dismiss Without Prejudice, was served this 22nd day of February, 2013, upon all counsel of record by first class U.S. mail, postage prepaid, addressed as follows:

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