

FILED
U.S. DISTRICT COURT
COURT OF KANSAS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

OCT 8 9 47 AM '99

BALTIMORE CASH
BY C. Frayer DEPUTY

GILBERT H. COULTER and)
ELIZABETH S. LEIGNOR,)
individually and as representative)
plaintiffs on behalf of persons or)
companies similarly situated,)
)
Plaintiffs,)
)
v.)
)
ANADARKO PETROLEUM CORPORATION,)
)
Defendant.)

No. 98-1413-WEB

Memorandum and Order

This matter is before the court on the plaintiffs' motion to remand the action to state court. Plaintiffs argue that the court lacks subject matter jurisdiction because the amount in controversy as to each plaintiff is less than the \$75,000 jurisdictional minimum of 28 U.S.C. § 1332. Defendant Anadarko argues that the plaintiffs are seeking to enforce a single right in which they have an undivided interest, and that their claims may therefore be aggregated to satisfy the \$75,000 jurisdictional minimum.

Although Anadarko has requested oral argument, the court concludes that the briefs filed by the parties present the issues clearly, and that oral argument would not assist in deciding the issues. For the reasons set forth herein, the court finds that the plaintiffs' motion to remand to state court should be granted.

The plaintiffs initiated this action by filing a petition in

the District Court for Stevens County, Kansas. The petition was alleged to be brought on behalf of a class of persons (subject to certain exclusions) "owning mineral interests in lands located in the areal confines of the Kansas Hugoton Gas Field, burdened by oil and gas leases owned in whole or in part by defendant, production from which is collected in one or more gathering systems operated by defendant's wholly-owned subsidiary, Anadarko Gathering Company." Pet. at 2, ¶E. The petition contains class action allegations that mirror the provisions of Rule 23 of the Federal Rules of Civil Procedure, subsections (b)(1), (b)(2) and (b)(3). The petition further alleges: that the defendant "has failed to properly and fully account for royalty payments due to members of plaintiff class in accordance with the express and implied covenants of their leases,..." (¶J); "[D]efendant has unjustly enriched itself and breached its duties and obligations (both express and implied) arising under the aforementioned leases" (¶L); "Defendant has the duty to fully and completely account to members of the plaintiff class for all sums owed to them under the provisions of their respective leases" and "Defendant has breached its fiduciary duty by reducing royalty payments to members of the plaintiff class and by failing to disclose such reductions" (¶M). The petition prays for declaratory relief pertaining to the proper determination and payment of royalties, a full accounting by defendant of its methods of determining royalty payments, and

damages and interest for underpayment of, or improper deductions from, royalties. The petition alleges that the amount in controversy with respect to the plaintiffs individually is less than \$75,000. (¶N).

Section 1332 of Title 28, U.S. Code, provides in part that the district courts shall have original jurisdiction of civil actions between citizens of different states "where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs,..." The Supreme Court has long held that the "amount in controversy" requirement does not permit the separate and distinct claims of two or more plaintiffs to be aggregated in order to satisfy the jurisdictional amount. See Oliver v. Alexander, 6 Pet. 143, 8 L.Ed. 348 (1832) (sailors' claims against owner of ship for unpaid wages could not be aggregated). The Court has recognized two exceptions to this rule, however, one of which is "in cases in which two or more plaintiffs unite to enforce a single title or right in which they have a common and undivided interest." Snyder v. Harris, 394 U.S. 332, 335 (1969).

The "single title or right" standard adopted by the Supreme Court is also known as the "common fund" exception to the rule against aggregating claims. Gilman v. BHC Securities, Inc., 104 F.3d 1418, 1423 (2nd Cir. 1997). Cases applying this exception typically involve "claims to a piece of land, a trust fund, an estate, an insurance policy, a lien, or an item of collateral,

which [the plaintiffs] claim as common owners or in which they share a common interest arising under a single title or right." Id. at 1424. The "paradigm cases" are those involving a single indivisible res - such as an estate or piece of property - the adjudication of which necessarily implicates the rights of all claiming ownership in the property. See Id. at 1423 (listing cases).

After examining the claims asserted in the petition in the instant case, as well as the materials submitted by the parties, the court concludes that the plaintiff class is not seeking to enforce a "single title or right, in which they have a common and undivided interest." The petition makes clear that the plaintiffs are seeking to enforce express and implied obligations arising from separate and individual lease agreements. As such, they are seeking to enforce rights held individually rather than in common, notwithstanding the fact that all of the individual lease agreements may be virtually identical. As Judge Saffels explained recently in a class action where it was alleged that the defendant improperly calculated and passed through certain charges on building lease contracts held by the plaintiffs:

Defendants contend that plaintiffs seek "vindication of a common interest" because the injunctive relief sought depends on the interpretation of a particular provision in lease contracts allegedly common to all of defendants' retail tenants. The court disagrees. Although the contract terms in issue may be identical, and the circumstances

of the alleged breach the same, the plaintiffs are not parties to the same contract. Plaintiffs have not united to vindicate a "common, joint, integrated, or undivided" right. Rather, each class member seeks to enforce its own separate contract and have united merely for convenience and economy.

Girrens, Inc. v. Simon DeBartolo Group, Inc., 976 F.Supp. 1399, 1402 (D. Kan. 1997). The same is true with respect to the plaintiffs' oil and gas leases in this case. In this regard, the court has considered, but rejects, defendant's argument that the plaintiffs are seeking to enforce a single right by virtue of various pooling agreements or pooling clauses. In support of this argument, defendant cites a report submitted by David Pierce, Professor of Law at Washburn University School of Law, in which he opines that the claims of all mineral owners covering acreage within pooled areas should be aggregated in determining the amount in controversy.¹ In the court's view, Professor Pierce's sampling and analysis of the various provisions at issue only underscores the fact that plaintiffs are not seeking to enforce a common, undivided right. In sum, the court finds no basis, factual or legal, for concluding that the amount in controversy as to each plaintiff exceeds \$75,000.

The defendant has done a commendable job of explaining the

¹ Plaintiffs have objected to "Professor Pierce's lecture on his own view of the law" and argue the court should not consider his report. The court considers Professor Pierce's discussion of the law to be, essentially, a brief on behalf of the defendant, and has considered it in that vein.

facts common to each of the plaintiff's claims, such as the unitary system used for gathering and transporting natural gas purchased from the plaintiffs, the single gas sales contract under which Anadarko sells the gas, and the similar (if not identical) royalty clauses giving rise to each of the plaintiff's claims. While these facts show that the plaintiffs have common legal interests, they do not show the existence of a single, undivided title or right.

As plaintiffs point out, this court has consistently rejected attempts at aggregating the claims of oil and gas royalty owners to meet the jurisdictional threshold of \$ 1332. See Leroy Cattle Co. v. Final Oil & Chem. Co., No. 93-1286, 1994 WL 151105 (D. Kan., Mar. 2, 1994); Smith v. Amoco Prod. Co., No. 93-1363, 1994 WL 70196 (D. Kan., Feb. 3, 1994); Lemon v. Anadarko Prod. Co., 771 F.Supp. 335 (D. Kan. 1991); Sternberger v. TXO Prod. Corp., 771 F.Supp. 330 (D. Kan. 1991); Alford v. Mesa Petroleum Co., No. 90-1228, 1991 WL 268710 (D. Kan., Sept. 24, 1991); and Farrar v. Mobil Oil Corp., No. 90-1199, 1991 WL 192119 (D. Kan., Sept. 18, 1991). The court sees no reason to depart from these decisions under the facts of this case.

Conclusion.

The court concludes that it lacks subject matter jurisdiction over the dispute. Accordingly, the plaintiffs' Motion to Remand (Doc. 29) is GRANTED. The action is hereby REMANDED to the District Court for Stevens County, Kansas. The clerk is directed to mail a certified copy of this order to the clerk of the district court for Stevens County. IT IS SO ORDERED this 8th day of October, 1999, at Wichita, Ks.



Wesley E. Brown, U.S. Senior District Judge