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KCLEBER H. KABEL
CLERK OF DISTRICT COURT

STEVENS COUNTY, KANSAS

IN THE DISTRICT COURT OF STEVENS COUNTY, KANSAS

GILBERT H. COULTER and
ELIZABETH S. LEIGHNOR, individually
and as representative plaintiffs on
behalf of persons or companies
similarly situated,

Plaintiffs

vs.

Case No. 98-C-40

ANADARKO PETROLEUM CORPORATION,
Defendant

ORDER BY THE COURT UPON THE PLAINTIFF'S MOTION
FOR TRIAL BY THE COURT

This matter comes on before the Court upon the Plaintiffs' Motion for Trial by the Court pursuant to K.S.A. 60-239(a)(2).

When this case was originally filed by the Plaintiffs, they filed their request for Trial by Jury and now come before the Court asking the Court for leave to revoke their Demand for Trial by Jury.

The Defendant, on the other hand, has objected thereto and the Defendant claims that the Plaintiffs may not withdraw their demand for trial by jury without consent of the parties pursuant to K.S.A. 60-238(d).

The Plaintiffs argue nevertheless this proceeding is an equitable proceeding for an accounting and trial by jury would not be proper and, therefore, they ask for trial in this matter to be heard by the Court.

That is exactly the nature of the action filed by the Plaintiffs against the Defendant in this instant proceeding. This is a case for an accounting.

Therefore, this Court finds the relief sought is equitable in nature and finds that trial by jury is not a right of the Plaintiffs or the Defendant.

IT IS, THEREFORE, THE ORDER, JUDGMENT AND DECREE of this Court that Trial to the Court shall be had in this proceeding and the request for Trial by Jury of the Defendants shall be and is hereby denied.

This Order is a final judgment of the Court without the necessity of any further orders, judgments or journal entries of any nature.

Dated this 4th day of December, 2001.



Tom R. Smith, District Court Judge

CERTIFICATE OF SERVICE

I, Renata McCulloch, hereby certify that I mailed a true and correct copy of the above Order by hand delivery or United States mail, postage prepaid and properly addressed on the 4th day of December, 2001 to:

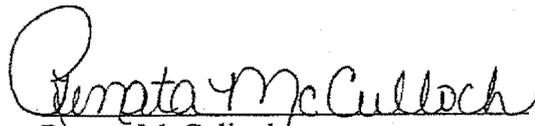
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Renata McCulloch

The Kansas Constitution Bill of Rights Section 5 provides the right of trial by jury shall be that right that existed at common law under which no party was entitled to a trial by jury as a right in a suit at equity. Vanier v. Ponsoldt, 251 Kan. 88.

The test to determine whether an action is one in equity is whether or not the essential nature of the action is grounded on equitable rights and is one in which equitable relief is sought. First National Bank of Olathe v. Clark, 226 Kan. 619.

The Court has heard the argument of both parties herein and reviewed the various authority submitted by both.

This Court in making its determination relies primarily upon Karnes Enterprises, Inc. v. Quan, 221 Kan. 596.

It is considered by this Court to be the better practice to determine if a case should be tried by jury after all discover has been completed as it has been in this case.

The Court has reviewed the nature of the Plaintiffs' claim in which the Plaintiffs' basic premise is that the Defendant is not properly accounting to the Plaintiffs for royalty proceeds because, as the Plaintiffs claim, the Defendant is making improper deductions from the sales of natural gas before remitting royalties to the Plaintiffs.

In order to determine whether an action is or is not based upon equitable rights or in which equitable relief is sought, the Court has to consider the essential nature of the action. In Re Estate of Johnson, 176 Kan. 339.

This Court finds the instant case between the parties hereto is essentially the same as in Karnes Enterprises, Inc. v. Quan, supra. In that proceeding the Kansas Supreme Court stated “. . . the lessor is entitled to an accounting from the lessee where dispute arises as to the correctness of the statement of sales or profits submitted by the lessee to the lessor.”