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IN THE DISTRICT COURT OF STEVENS COUNTY, KANSAS

KOLEN... LABEL
CLERK OF DISTRICT COURT

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OPAL LITTELL, CHERRY RIDER and
BONNIE BEELMAN, individually and
as representative plaintiffs on behalf
of persons or concerns similarly situated,
Plaintiffs

vs.

Case No. 98-CV-51

OXY USA, INC.,

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 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.

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.

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

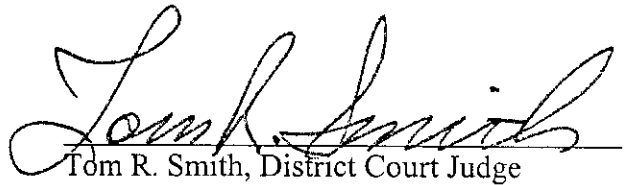
This Court finds the instant case between the parties hereto is essentially the same as in Karnes Enterprises, Inc. v. Quan, supra. In that proceeding the Kansas Supreme Court stated ". . . the lessor is entitled to an accounting from the lessee where dispute arises as to the correctness of the statement of sales or profits submitted by the lessee to the lessor." 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 the Plaintiff's Motion for Trial by the Court shall be and is hereby granted and that Trial to the Court shall be had in this proceeding.

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 30th day of April, 2002.


Tom R. Smith, District Court Judge

CERTIFICATE OF SERVICE

I, Renata McCulloch, hereby certify that I mailed a true and correct file-stamped copy of the above Journal Entry by United States mail, postage prepaid and properly addressed on the 30th day of April, 2002 to:

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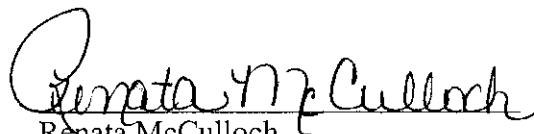
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Renata McCulloch