

Court of Appeals, State of Michigan

ORDER

Athel E Williams v Terra Energy LTD

Docket No. 260725

LC No. 01-009317-CK

Christopher M. Murray
Presiding Judge

Helene N. White

Brian K. Zahra
Judges

The Court orders that the motion for immediate consideration is GRANTED.

Pursuant to MCR 7.205(D)(2), the January 21, 2005, order entered by the Otsego County Circuit Court is VACATED, and the matter is REMANDED. The trial court's findings on MCR 3.501(A)(1)(b) – (e), set forth in the trial court's earlier opinion, are inadequate for this Court to engage in a meaningful review of the competing positions presented by the parties and to examine the court's findings for clear error. With respect to the commonality factor, the trial court shall address (1) whether the leases contain similar provisions relating to the deduction of post-production costs, (2) whether an identical formula was utilized in deducting these costs, (3) each point raised by defendants and supported in the affidavits regarding the assignments, division orders, and royalty calculations, (4) how plaintiffs will demonstrate defendants' alleged breach of the leases by common proofs, rather than by individualized proof, and (5) whether potential defenses demonstrate that individualized issues will predominate and whether this should affect certification of the action. The trial court shall also explain its rationale for why the claim related to excessive post-production costs would require the examination of individual leases and may vary greatly from plaintiff to plaintiff, but did not render certification inappropriate for the claim related to production costs being improperly deducted as post-production costs. Finally, the trial court shall supplement its conclusory finding that the claims under counts three through seven were "also claims that are susceptible to common proofs, rather than individualized proofs, to establish liability," and should explain why plaintiffs' fraud claim is appropriate for class certification. *Freeman v State-Wide Carpet Distributors, Inc*, 365 Mich 313; 112 NW2d 439 (1961); *Van Vels v Premier Athletic Center of Plainfield, Inc*, 182 FRD 500, 509 (WD Mich 1998). We direct the trial court to address these issues within 56 days from the Clerk's certification of this order and shall cause a transcript of any hearing to be prepared and filed within 14 days after completion of the proceedings. Defendants shall immediately file a copy of the transcript with the Clerk of this Court.

The motion for stay is GRANTED and any order on remand is STAYED pending resolution of this appeal. The application is HELD IN ABEYANCE and the Court retains jurisdiction.

Judge White would DENY leave for failure to persuade.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

APR 22 2005

Date

Sandra Schultz Mengel

Chief Clerk