

STATE OF WYOMING) IN THE DISTRICT COURT
) : SS.
COUNTY OF SHERIDAN) FOURTH JUDICIAL DISTRICT

CASE NO. CR-2014-372

BROOK MINING COMPANY,)

Plaintiff,)

VS.)

MOTION TO DISMISS

BIG HORN COAL COMPANY,)

Defendants.)

The above-entitled matter came on for hearing before the Honorable William J. Edelman, Judge of the Fourth Judicial District of Wyoming, on January 8, 2015 at Sheridan, Wyoming.

The proceedings were reported by Jeff S. Eaton, Official Court Reporter for the Fourth Judicial District, as hereinafter certified.

A P P E A R A N C E S

The Plaintiff was present and represented by Anthony Todd Wendtland, Wendtland & Wendtland, LLP, Sheridan, Wyoming, and Thomas L. Sansonetti, Holland & Hart, LLP, Cheyenne, Wyoming.

The Defendant was present and represented by Jon T. Dyre and Lynnette J. Boomgaarden, Crowley Fleck PLLP, Billings, Montana.

EXHIBIT B

Jeff S. Eaton, Official Court Reporter
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1 MR. DYRE: Thank you, Your Honor.

2 May it please the Court, Counsel.

3 As you know, I represent Big Horn Coal Company.

4 And Big Horn Coal Company owns some land just outside
5 of Sheridan on which -- which RAMACO wants to use for a
6 proposed coal mine.

7 We've referred to that land in the briefs as BHC
8 Land, I'll do so today.

9 Big Horn Coal Company obtained its interest in land
10 back in 1954 in a deed from Sheridan-Wyoming Coal Company. And
11 we've referred to that deed as the 1954 deed. We're not very
12 imaginative, but that's what we called it.

13 The grantor of the interest with Sheridan-Wyoming
14 Coal Company and Sheridan-Wyoming Coal Company reserved all
15 minerals including the coal.

16 In the last few years through I think two
17 conveniences, RAMAC Wyoming Coal Company, LLC is now the owner
18 of the mineral interests, including the coal.

19 And I believe that there has now been a lease of the
20 coal between RAMACO and Brook, which is why the two plaintiffs
21 in this case.

22 I'm not sure if you saw a reply brief we faxed and
23 filed it yesterday. But as we mentioned in the brief, Big Horn
24 Coal Company acknowledges that RAMACO now owns the coal and the
25 mineral -- minerals. And BHC also acknowledges -- Big Horn

1 Coal Company also acknowledges that under the 1954 deed, RAMACO
2 has the right, and I quote, To use as much of the surface of
3 the lands as may be necessary and convenient in order to enable
4 RAMACO to explore, drill, and extract and remove the coal.

5 Now, it's Big Horn's position that the right to use
6 the surface is limited to access of the coal that's under the
7 BHC lands and the adjacent land.

8 It's also Big Horn's position that RAMACO's right to
9 use the surface to mine is limited by certain legal principles
10 such as the accommodation doctrine, and it is also limited by
11 the Wyoming specrum [sic] Section 35-11-406.

12 We also contest the damage limitations that are in
13 the deed, \$10 per acre, I believe, and so forth.

14 Now, the -- the issues I just mentioned may be issues
15 before the Court at some point, but right now they're not.

16 Right now, the only issue that's been raised by
17 RAMACO is whether the mining operations set forth in RAMACO's
18 pending mine permit applications are within RAMACO's right to
19 use as much of the surface of the lands as may be necessary and
20 convenient for exploring, drilling, and extracting the coal.

21 Now, the key words in their requested relief is
22 "pending". Pending means not yet decided. Pending means we
23 are waiting for it to happen or yet to happen.

24 Synonyms for the word pending would include future,
25 contingent, and uncertain. And each of those words appears in

1 the Wyoming Supreme Courts decision in international
2 Association of Firefighters Local, Union No. 279 versus The
3 City of Cheyenne, in which the Court used those words in the
4 following manner: It is well established that a court cannot
5 declare the rights of parties upon a set of facts which is
6 future, contingent and uncertain, i.e., pending.

7 Other synonyms for the word pending would include
8 future or anticipated, where it is used by the Wyoming Supreme
9 Court in White versus Board of Land Commissioners, where the
10 court held, "The declaratory judgment act does not give the
11 courts power to determine future rights or anticipated disputes
12 or controversies, i.e., the Court does not have power to hear
13 pending rights.

14 The Court's jurisdiction under the Declaratory
15 Judgment Act is limited to determining those rights that
16 currently exist. And at the current time RAMACO doesn't have
17 the right to operate a mine.

18 The Wyoming Department of Environmental Quality is
19 the only entity that can give RAMACO and Brook the right to
20 start mining on Big Horn Coal's property.

21 As we pointed out in our brief, that is a lengthy
22 process that will probably take at least a year and maybe more
23 before we know whether RAMACO will be allowed to mine at all,
24 and if so, what operations will be actually be permitted and
25 allowed by Wyoming DEQ.

1 Now, from the standpoint of judicial economy, it
2 makes little sense for us to litigate whether or not RAMACO can
3 use Big Horn's property for a mine that may never happen.

4 From the standpoint of the jurisdictional limitations
5 on the Court, the fact that there is no -- we don't yet know
6 whether RAMACO will be allowed to mine or what they'll be
7 allowed to do is fatal to the jurisdictional requirements of
8 the Wyoming Supreme Court.

9 Any decision that you might render in this case now
10 could be rendered moot. If we take the mining permit and look
11 at the pending proposed operations.

12 If you were to rule based on that, we have no idea a
13 year from now they -- he may say either no, you cannot mine at
14 all, RAMACO, or all those operations you asked for, we don't
15 approve. And so whatever order you enter would have no effect,
16 it would be rendered moot.

17 Because we don't know what mining operations might
18 actually be approved by the DEQ, any ruling you would give at
19 this point particular point in time would be clearly advisory,
20 which is clearly not allowed.

21 The most you could do at this point is say, Well, if
22 the DEQ actually approves RAMACO's plans to do highwall mining,
23 which is also known as coffin pit mining.

24 The most the Court could do is say, Well, if that's
25 allowed it would or would not, however you rule, would be

1 within RAMACO's rights under the 1954 deed.

2 The "if" in that decision is fatal to jurisdiction.
3 The "if" is what shows that there is no relief that can be
4 granted at this time because it renders any decision that you
5 may reach on these hypothetical pending facts, purely advisory
6 and outside the Court's jurisdiction.

7 Now, as I said earlier, Big Horn Coal Company doesn't
8 contest what the deed says. It says what it says.

9 But what the deed says is that RAMACO has the right
10 to use as much of the surface of the lands that may be
11 necessary convenient.

12 The problem with the words like "necessary" and
13 "convenient" is you have to apply them to something, you have
14 to look at -- well, you have to know what you're looking at to
15 determine whether or not it's necessary or convenient, or, as
16 they say, "The devil's in the detail."

17 Here, we don't know all the details because the
18 detail's pending.

19 RAMACO's right to mine is a contingent right. The
20 operations are anticipated. They are not yet vested, they are
21 not yet determined.

22 And until pending rights and pending operations
23 become actual, the Court cannot grant final relief in this
24 case.

25 It's been suggested in the briefs that "I filed this

1 motion", "We filed this motion as a stall tactic." I didn't.

2 Pointing out a lack of subject matter of jurisdiction
3 is not a stall tactic.

4 Pointing out a lack of jurisdiction is not only
5 proper, but I believe it is mandatory, and needs to be raised
6 at the first opportunity, which we did.

7 Now, in RAMACO's reply brief RAMACO raised some
8 issues that they thought maybe the Court would have
9 jurisdiction to hear. They might -- they could probably could
10 bring a quiet title action, or maybe they could limit relief
11 being sought to permitting the deed. I don't know what issues
12 RAMACO might come up with. I only know what RAMACO requested
13 in the complaint as drafted.

14 And that complaint asked for one thing and only one
15 thing, and that's a ruling based on mining operations that have
16 been described in the pending application before DEQ.

17 And for reasons in our brief, and the reason I've
18 just mentioned, that claim for relief in the complaint fails to
19 state a claim upon which relief could be granted at this time.

20 Unless you have any questions, that concludes my
21 comments for the moment.

22 THE COURT: I don't. Thank you.

23 Mr. Wendtland, Mr. Sansonetti, who is responding on
24 behalf of RAMACO?

25 MR. SANSONETTI: Tony is going to take the lead.

REPORTER'S CERTIFICATE

1
2 STATE OF WYOMING)
3 COUNTY OF SHERIDAN) : SS.

4 I, Jeff S. Eaton, do certify that I am a Registered
5 Professional Reporter in and for the State of Wyoming.

6 That as such reporter, I reported the occasion of the
7 proceedings of the above-entitled matter at the aforesaid time
8 and place.

9 That the proceeding was reported by me in stenotype
10 using computer-aided transcription consisting of pages 2
11 through 26 inclusive;

12 That the same constitutes a true and correct
13 transcription of the said proceedings;

14 That I am not of kin or otherwise associated with any
15 of the parties herein or their counsel, and that I am not
16 interested in the events thereof.

17 WITNESS my hand at Buffalo, Wyoming, this 10th day of
18 April, 2015.

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21 _____
22 Jeff S. Eaton, RPR
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