

FIFTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF LEA

TMBR/SHARP DRILLING, INC.,

Plaintiff,

v.

No. CV- 2017-2110

DAVID H. ARRINGTON OIL & GAS,
INC., JAMES D. HUFF, MADELINE
STOKES, ERMA STOKES HAMILTON,
JOHN DAVID STOKES, and TOM STOKES,

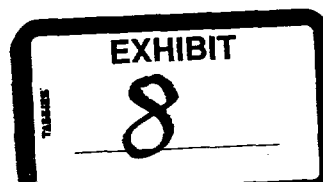
Defendants.

**PLAINTIFF'S COMPLAINT FOR DECLARATORY JUDGMENT,
TORTIOUS INTERFERENCE, REPUDIATION, DAMAGES,
AND INJUNCTIVE RELIEF**

TMBR/SHARP DRILLING, INC. ("TMBR/Sharp"), Plaintiff, for cause of action against
DAVID H. ARRINGTON OIL & GAS, INC., JAMES D. HUFF, MADELINE STOKES, AND
ERMA STOKES HAMILTON would show the Court as follows:

THE PARTIES

1. Plaintiff is TMBR/Sharp Drilling, Inc. ("TMBR/Sharp") which is a Texas corporation doing business in the State of New Mexico and with offices in Midland, Texas.
2. Defendant David H. Arrington Oil & Gas, Inc. ("Arrington O&G") is a Texas corporation doing business in New Mexico and is a resident of Midland, Texas. It may be served Certified Mail, Return Receipt Requested, through its registered agent, Lewis Cox, III, at 311 North First Street, Lovington, New Mexico, 88260.



3. James D. Huff ("Huff") is an individual doing business in New Mexico and is a resident of Mineola, Texas. He may be served by Certified Mail, Return Receipt Requested, at P. O. Box 705, Mineola, Texas 75773.
4. Defendant Madeline Stokes is an individual owning real property in New Mexico and residing in Ozona, Texas and may be served by Certified Mail, Return Receipt Requested, at Box 1115, Ozona, Texas 76943.
5. Defendant Erma Stokes Hamilton is an individual owning real property in New Mexico and residing in Big Spring, Texas and may be served by Certified Mail, Return Receipt Requested, at 408 W. Washington, Big Spring, Texas 79720.
6. Defendant John David Stokes is an individual owning real property in New Mexico and residing in Ozona, Texas and may be served by Certified Mail, Return Receipt Requested, at P. O. Box 1739, Ozona, Texas 76943.
7. Defendant Tom Stokes is an individual owning real property in New Mexico and residing in Ozona, Texas and may be served by Certified Mail, Return Receipt Requested, at Box 932, Ozona, Texas 76943.

VENUE AND JURISDICTION

8. Pursuant to New Mexico Statute 38-3-1(D), venue is mandatory in Lea County, New Mexico because the real property, ownership of which is at issue, is located there.
9. This Court has jurisdiction over the parties and the subject matter of this action.

FACTUAL BACKGROUND

ORIGINAL LEASES

10. Effective July 1, 1998, TMBR/Sharp entered into an operating agreement ("Operating Agreement") covering oil and gas properties in Lea County, New Mexico.
11. Exhibit "A" to the Operating Agreement described lands covered by the agreement including Section 24, T-16-S, R-35-E, in Lea County, New Mexico, and more specifically described two oil and gas leases, each of which cover, among other lands, the NW/4 SW/4 and NW/4 NE/4 of said Section 24.

THE LEASES

12. The first lease ("First Lease") is an oil and gas lease made effective December 7, 1997 between Madeline Stokes and Ameristate Oil & Gas, Inc. ("Ameristate").
13. The First Lease is recorded in Book 827, page 128 of the Deed Records of Lea County, New Mexico, as amended by instrument dated August 10, 2000.
14. The second lease ("Second Lease") is a lease made effective December 7, 1997 between Erma Stokes Hamilton and Ameristate. It is filed in Book 827, page 124 of the Deed Records of Lea County, New Mexico as amended by instrument dated August 14, 2000.
15. By Quitclaim Deed with Reservation of Life Estate and executory rights, Emma Stokes Hamilton granted John David Stokes and Tom Stokes her remaining interest in the Second Lease.

16. These two leases, as amended, are herein referred to as the "Original Stokes Leases" or the "First Lease" and "Second Lease," and copies thereof are attached hereto as Exhibits "A" and "B"
17. TMBR/Sharp is a successor in interest to Ameristate by assignment of the First Lease and Second Lease.

THE POOLED UNIT

18. On November 17, 2000, TMBR/Sharp Drilling as operator under the Operating Agreement, filed an application for permit to drill (Form C-101) with the Oil Conservation Division ("OCD") of the State of New Mexico, a copy of which is attached as Exhibit "C."
19. On the same date TMBR/Sharp filed a well location and acreage dedication plat describing the pooled unit dedicated to the proposed well, the Blue Fin "24" No. 1 Well (Form C-102) with the OCD and outlined thereon the 320 pooled acres in Township 16 South, Range 35 East, NMPM, Section 24: W/2, Lea County, New Mexico. A copy of this instrument is attached as Exhibit "D."
20. The permit to drill was approved by the OCD on November 22, 2000.
21. The Blue Fin "24" No. 1 Well was spudded in March 29, 2001 and a drill stem test was run on May 15, 2001.
22. On June 3, 2001 casing was placed in the hole.
23. On June 28, 2001 the well was perforated and on June 29, 2001 hydrocarbons were produced from the well.

24. The well, which is capable of producing hydrocarbons in paying quantities, is presently waiting for a pipeline connection.
25. The Original Stokes Leases each provides in Paragraph 5 in pertinent part: "Lessee is hereby granted the right and power, from time to time, to pool or combine this lease, the land covered by it or any part or horizon thereof with any other land, leases, mineral estates or parts thereof for the production of oil or gas Lessee shall file a written unit designation in the county in which the premises are located and such units may be designated from time to time and either before or after the completion of wells. Drilling operations on or production *from any part of any such unit* shall be considered for all purposes, except the payment of royalty, as operations conducted upon or production from the land described in this lease." (emphasis added).
26. A portion of the lands covered by each of the Original Stokes Leases, namely the NW/4 SW/4 of Section 24, was included in the unit designation filed in Lea County, New Mexico with the OCD of the State of New Mexico during the primary term of such leases. Therefore, during the primary term, there was a well being drilled on a pooled unit which included Original Stokes Lease Acreage. Those activities were sufficient to preserve the leases beyond the primary terms. The First and Second Leases and all acreage described therein are now held by the Blue Fin "24" No. 1 Well, subject to continuous development by TMBR/Sharp as described below.

TOP LEASES

27. On or about March 27, 2001, Huff acquired an oil and gas lease from Defendant Madeline Stokes covering the same lands and minerals covered by the Original Stokes Leases. This lease is herein referred to as the "Stokes Top Lease."
28. The Stokes Top Lease purports to be for a primary term of three (3) years from June 7, 2001, and as long thereafter as oil or gas is produced from said land or from land with which said land is pooled.
29. On the same date, Huff acquired an oil and gas lease from Defendant Erma Stokes Hamilton also covering the same lands described in the Original Stokes Leases. This lease is herein referred to as the "Hamilton Top Lease."
30. The Hamilton Top Lease is for the same primary term as the Stokes Top Lease. The Stokes Top Lease and Hamilton Top Lease are herein collectively referred to as the "Huff Top Leases," and copies thereof are attached hereto as Exhibits "E" and "F."
31. The Huff Top Leases each provide in pertinent part: "This oil and gas lease is subordinate to that certain 'Prior Lease' [Original Stokes Leases] recorded in... Lea County Records, as amended by instrument dated ... recorded ... Lea County Records, but only to the extent that said prior lease is currently a valid and subsisting oil and gas lease."
32. On or about July 12, 2001 Michael J. Canon, an attorney in Midland, Texas contacted Randy V. Watts an independent landman working for TMBR/Sharp and Ameristate and other parties to the Operating Agreement.

33. Mr. Canon advised Mr. Watts that his clients – the Stokes Family – questioned the continued validity of the Original Stokes Leases, in that no pooling designation had been filed in the County Clerk’s office of Lea County prior to the expiration of the primary term of the Original Stokes Leases.
34. Mr. Phil Brewer, an attorney for TMBR/Sharp and other parties to the Operating Agreement, responded to Mr. Canon’s inquiry by letter advising of TMBR/Sharp’s position that the Original Stokes Leases were in full force and effect.
35. Mr. Canon replied to Mr. Brewer’s letter in writing indicating that the “Stokes Family had questions with respect to whether or not the lease [Original Stokes Leases] is in effect and whether Ameristate has taken the necessary and appropriate action to perpetuate its lease beyond the expiration of its primary term, June 17[sic], 2001.”
36. On information and belief, Huff has taken the position that the Original Stokes Leases have expired and that the Huff Top Leases are in effect.
37. On July 19, 2001 Arrington O&G filed an application for and obtained a permit to drill the Triple Hackle Dragon 25 No. 1. Well on the W/2 of Section 25, T-16-S, R-35-E, Lea County, New Mexico. The OCD approved the application on July 19, 2001.
38. The unit designated by Arrington O&G for this permit covered lands described in the Original Stokes Leases and the Huff Top Leases.
39. On information and belief, Arrington O&G obtained this permit to drill on the basis of ownership rights claimed to be held pursuant to the Huff Top Leases.

40. On July 30, 2001, Arrington O&G filed an application for and obtained a permit to drill the Blue Drake 23 No. 1. Well on the E/2 Section 23, T-16-S, R-35-E, Lea County, New Mexico. The OCD approved the application
41. The unit designated by Arrington O&G for this permit covered lands described in the Original Stokes Leases and the Huff Top Leases.
42. On information and belief, Arrington O&G obtained this permit to drill on the basis of ownership rights claimed to be held pursuant to the Huff Top Leases.
43. David H. Arrington ("Arrington"), President of Arrington O&G, made statements to a TMBR/Sharp representative that the leases held by TMBR/Sharp had terminated and his company intended to move forward with development.
44. On August 8, 2001, TMBR/Sharp was denied a permit to drill the Blue Fin "25" No. 1 Well on the E/2 of Section 25, by letter from Chris Williams, District I Supervisor for the Oil Conservation Division of the State of New Mexico, stating that the permit granted to Arrington O&G precluded the permit applied for by TMBR/Sharp.
45. On August 8, 2001, TMBR/Sharp was denied a permit to drill the Leavelle "23" No. 1 Well on the E/2 of Section 23, also on the basis of a letter from Chris Williams with like statement that the permit granted Arrington O&G precluded the granting of the permit sought by TMBR/Sharp.
46. The Original Stokes Leases are in full force and effect. However, each of these leases contains a "continuous development clause." Specifically, in Paragraph 12 of Exhibit A of each such lease provides in pertinent part: "Should Lessee fail to timely commence a well

in accordance with aforesaid 180 days continuous drilling or development prior to the point in time the leased premises have fully developed then this lease shall terminate as to all lands not included in or otherwise allocated to a well unit.”

47. TMBR/Sharp attempted to drill two additional wells in accordance with the provisions of Paragraph 12 of the Original Stokes Lease, but was denied drilling permits by the OCD on its leasehold property because those lands are claimed to be subject to the Huff Top Leases.
48. The drilling applications filed by Arrington O&G have prevented TMBR/Sharp from exercising its rights and fulfilling its obligations under the Original Stokes Leases.

COUNT I
DECLARATORY JUDGMENT: ORIGINAL STOKES LEASES
ARE PROPERLY POOLED

49. TMBR/Sharp incorporates by reference the factual information contained in paragraphs 1 through 44 of this Complaint.
50. TMBR/Sharp is an interested party under a written contract whose rights, status or other legal relations should be determined by the Court pursuant to the New Mexico Declaratory Judgment Act 44-6-1 through 44-6-15.
51. TMBR/Sharp seeks a declaratory judgment from the Court that the Original Stokes Leases are in full force and effect because TMBR/Sharp was drilling upon lands properly pooled with the lands covered by the Original Stokes Leases across the expiration of the primary term as provided for in Paragraph 5 of the lease.
52. Specifically, TMBR/Sharp seeks a declaratory judgment that its written unit designation filed in Lea County with the Oil Conservation Division of the State of New Mexico on

November 17, 2000 satisfied the obligations of Paragraph 5 of the Original Stokes Leases to properly pool the NW/4 SW/4 of Section 25, T-16-S, R-35-E, into a unit comprised of the W/2 of said Section 25.

COUNT II
DECLARATORY JUDGMENT: HUFF TOP LEASES NOT EFFECTIVE

53. Plaintiff incorporates by reference the factual information contained in paragraphs 1 through 44 of this Complaint.
54. TMBR/Sharp seeks a declaratory judgment from the Court that the Huff Top Leases are not effective because the Original Stokes Leases are currently valid and subsisting oil and gas leases covering the lands described therein and superior in all respects to the Huff Top Leases.

COUNT III
TORTIOUS INTERFERENCE

55. Plaintiff incorporates by reference the factual information contained in paragraphs 1 through 44 of this Complaint.
56. Arrington, Arrington O&G's and Huff's solicitation and acceptance of the Huff Top Leases, constitute deliberate and malicious tortious interference with the contractual relationships between TMBR/Sharp on the one hand and each of Madeline Stokes and Erma Stokes Hamilton on the other.

57. Huff's knowledge of the Original Stokes Lease is undisputed and clearly evidenced by the fact that Huff took a top lease that would not be viable until the expiration of the Original Stokes Leases.
58. TMBR/Sharp has been denied its right to perform continued drilling operations on the Original Stokes Leases.
59. Huff, Arrington and/or Arrington O&G have asserted that the Original Stokes Leases expired, that the Huff Top Leases were valid and subsisting oil and gas leases, and requested and received permits from the OCD to drill wells on lands and minerals covered by the Original Stokes Leases.
60. Arrington O&G obtained drilling permits, told TMBR/Sharp employees that the Original Stokes Leases were expired, and performed operations on the lands covered by the Huff Top Leases.
61. Huff, Arrington and Arrington O&G further knew and understood that TMBR/Sharp could not utilize its contractual rights if it could not obtain permits from the Oil Conservation Division of the State of New Mexico to drill on acreage covered by the Original Stokes Leases.
62. Huff's, Arrington's and Arrington O&G's willfully and intentionally committed acts calculated to cause damage to TMBR/Sharp and its lawful business and ownership of the property pursuant to the Original Stokes Leases.
63. Huff's, Arrington's and Arrington O&G's acts were the proximate cause of damage to TMBR/Sharp in that TMBR/Sharp lost the opportunity or lost time in which to drill wells

on the pre-selected sites, and deprived TMBR/Sharp of the benefit of the Original Stokes Leases.

64. TMBR/Sharp has suffered actual damage and loss by virtue of Huff's, Arrington's and Arrington O&G's conduct by losing drilling opportunities in that drilling rigs are now reasonably available and gas prices remain high. If drilling is delayed, either rigs may become unavailable or gas prices may drop. Further, TMBR/Sharp has been damaged by its loss of future production from the two wells it intended to drill but was denied permits for.

COUNT IV
TMBR/SHARP'S DUTY TO DRILL SHALL BE SUSPENDED

65. Plaintiff incorporates by reference the factual information contained in paragraphs 1 through 44 of this Complaint.
66. Paragraph 9 of each of the Original Stokes Leases provides in pertinent part: "Should lessee be prevented from complying with any express or implied covenant of this lease, or from conducting drilling or reworking operations hereunder, or from producing oil or gas hereunder by reason of scarcity or inability to obtain or use equipment or material or by operation of force majeure, or by any federal or state law or any order, rule or regulation of governmental authority, then while so prevented, lessee's duty shall be suspended, and Lessee shall not be liable for failure to comply therewith, and this lease shall be extended while and so long as Lessee is prevented by any such cause from conducting drilling or reworking operations or from producing oil or gas hereunder, and that time while Lessee is

so prevented shall not be counted against Lessee, anything in this lease to the contrary notwithstanding.”

67. The conduct of Arrington O&G, acting on behalf of or in concert with Huff, in applying for and receiving permits to drill from the Oil Conservation Division on lands and minerals covered by the Original Stokes Leases, has caused the Oil Conservation Division to withhold the applied for drilling permits for the Blue Fin “25” No. 1 Well and the Leavelle “23” No. 1 Well, thereby resulting in circumstances which have triggered Paragraph 9 of the Original Stokes Leases.
68. Pursuant to the terms of Paragraph 9 of the Original Stokes Leases TMBR/Sharp seeks a declaratory judgment that its duty “shall be suspended” and it “shall not be liable for failure to comply therewith [the lease] and the leases “shall be extended while and so long as lessee is prevented from conducting drilling or reworking operations or from producing oil or gas hereunder,” as a result of it being unable to obtain OCD permits for the drilling of the referenced wells.

COUNT V
EQUITABLE CLAIM: LEASE REPUDIATION

69. Plaintiff TMBR/Sharp incorporates by reference the factual information contained in paragraphs 1 through 44 of this Complaint.
70. Madeline Stokes and Erma Stokes Hamilton have, acting through their attorney, Michael J. Canon, wrongfully repudiated the Original Stokes Leases by asserting that the actions of the Lessee/Plaintiff are not sufficient, pursuant to the Original Stokes Leases, to perpetuate such leases beyond the specified primary term.
71. Further, their assertions that the Huff Top Leases are valid and subsisting oil and gas leases and permitting Huff and Arrington to obtain the interfering permits, precluding the exercise by TMBR/Sharp of its rights pursuant to the Original Stokes Leases, constitute a clear and unequivocal challenge to TMBR/Sharp's title to the Original Stokes Leases.
72. For such time as TMBR/Sharp is precluded from obtaining permits and pursuing its rights pursuant to the Original Stokes Leases, TMBR/Sharp requests this court exercise its equitable powers and suspend the running of any time period for performance by TMBR/Sharp pursuant to the Original Stokes Leases.

PRAYER FOR RELIEF

69. WHEREFORE, PREMISES CONSIDERED, Plaintiff TMBR/Sharp, Inc. respectfully requests the Court enter judgment awarding TMBR/Sharp the following relief:


- a. All direct and consequential damages of Defendants' breaches of their duties as described herein;
- b. An award of damages for Arrington's and Huff's tortious interference;
- c. A declaration that TMBR/Sharp's written unit designation filed in Lea County with the Oil Conservation Division of the State of New Mexico on November 17, 2000, satisfied the obligations of Paragraph 5 of the Original Stokes Leases to properly pool the N/4 SW/4 of Section 25, T-16-S, R-35-E, into a unit comprised of the W/2 of said Section 25;
- d. A declaration that the Huff Top Leases are not effective because the Original Stokes Leases are currently valid and subsisting oil and gas leases covering the lands described in this Complaint;
- e. A finding that Madeline Stokes and Erma Stokes have repudiated the Original Stokes Leases;
- f. Equitable relief relieving TMBR/Sharp from any obligation to conduct further drilling operations required under the Original Stokes Leases pending a judicial resolution as to the validity of the Original Stokes Leases;
- g. A temporary restraining order and injunctive relief ordering Arrington O&G and/or Huff refrain from drilling any wells on and acreage covered by the Original Stokes Leases;
- h. Awarding TMBR/Sharp costs, reasonable attorney's fees and pre-judgment and post-judgment interest at the highest lawful statutory or contractual rate; and

- i. Awarding TMBR/Sharp such other and further relief at law or in equity to which it may be justly entitled.

Respectfully submitted,

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