IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re: MTE HOLDINGS, LLC*, et al.*, Debtors.	Chapter 11 Case No. 19-12269 (CTG) Jointly Administered
CHENAULT-VAUGHAN FAMILY PARTNERSHIP, LTD., Plaintiff, v. MDC REEVES ENERGY, LLC, a Delaware Limited Liability Company, CENTENNIAL RESOURCE DEVELOPMENT, INC., a Delaware Corporation, and CENTENNIAL RESOURCE PRODUCTION, LLC, a Delaware Limited Liability Company, Defendants.	Adv. Pro. No. 20-51005 (CTG) **Related Docket Nos. 55, 64, 84**

MEMORANDUM OPINION

This case involves a dispute over an obligation to pay royalties on the production of oil and gas. "In Texas the owner of land owns the oil, gas, and other minerals beneath the land in fee simple. If ownership of the minerals is severed from ownership of the surface, two separate fees simple result"[1] – a "surface estate" and a

[1] 1 Texas Law of Oil and Gas § 2.1 (2021).

"mineral estate." The plaintiff in this action was the one-sixth owner of the mineral estate of the property at issue.[2]

The plaintiff here "leased" its interest in the mineral estate for the production of oil and gas, in exchange for a royalty on the produced oil and gas. The term "lease" is in scare quotes, however, because although the document at issue is described as a lease, the Texas Supreme Court has explained that this type of agreement "is not a 'lease' in the traditional sense."[3] Rather, "the lessor is a grantor and grants a fee simple determinable interest to the lessee, who is actually a grantee."[4] The rights that the lease grants to the lessee/grantee is commonly described as a "working interest" in the grantor/lessor's mineral estate. Mineral leases typically require (and this lease in fact requires) the lessee to pay a royalty. Because the grantor of the oil and gas lease "reserves" the right to be paid a royalty, the traditional vocabulary of oil and gas law describes the lessor as retaining a "royalty interest" in the mineral estate. In this sense, the share of the production that derives from this "royalty interest" may be viewed, under Texas law, as the lessor's property – though as explained further below, more recent Texas case law at least calls that principle into some question.

It is common for a mineral lease to permit the lessee freely to assign its working interest, in whole or in part, to third parties. The lease in question here did precisely

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[2] The plaintiff, Chenault-Vaughan Family Partnership, Ltd., is referred to as "Chenault-Vaughan" or the "lessor."

[3] *Nat. Gas Pipeline Co. of Am. v. Pool*, 124 S.W.3d 188, 192 (Tex. 2003).

[4] *Id.*

that. Accordingly, the party to which the plaintiff initially leased a "working interest" in the mineral estate later assigned that interest to various third parties. After a chain of such assignments, the working interests in the lease came to be held by two entities. MDC Reeves Energy, one of the debtors, held approximately 80 percent of the working interest in the lease, and Luxe Operating held the balance of the working interest, approximately 20 percent. [5]

The issue in this case arises out of the fact that for part of the land at issue – a part referred to as "Iron Eagle Unit B" – Luxe, but not MDC, hired a third party operator to engage in oil and gas development activity on the land.[6] Under the terms of the operating agreement, the operator took on the obligation to pay the royalty due to the lessor for the part of the production attributable to Luxe's 20 percent share. But because the operator had no operating agreement with MDC and was not itself a party to the lease, it is not a party to any contract that purports to obligate it to pay a royalty on the production deriving from MDC's working interest.

The lessor argues that the operator is obligated to pay the royalty regardless of any contractual undertaking. The nub of this lawsuit is the lessor's insistence that the operator owes it a royalty attributable to the MDC's 80 percent share. The lessor's position is that under Texas law, any production that derives from its royalty interest,

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[5] Defendant MDC Reeves Energy, a debtor in these bankruptcy cases, is referred to as "MDC." Luxe Operating is referred to as "Luxe."

[6] That operator is Defendant Centennial Resource Production, LLC, referred to as "Centennial" or the "operator." Its affiliate, Centennial Resource Development, LLC is also a defendant, and is referred to as "Centennial Development."

and the proceeds thereof, are the property of the lessor. To the extent an operator comes into physical possession of that production or its proceeds, it is obligated to turn it over to the holder of the royalty interest, which is the rightful owner.

The operator offers a different construction of Texas law. Its position is that MDC's responsibility for paying the royalty it owes under the lease is a matter between MDC and the lessor – and that MDC's failure to honor its contractual obligation to the lessor to pay a royalty is fundamentally not the operator's problem. In its view, it was entitled to operate on the lease because Luxe was entitled (by virtue of its 20 percent interest) to develop the lease itself. Had Luxe operated the lease directly, it would be responsible, as a co-tenant, to pay MDC its share of the production (after deducting for the cost of production). And MDC would have whatever responsibility it has to pay a royalty on that production. The operator's position is that by virtue of its operating agreement with Luxe, it essentially stands in Luxe's shoes as a co-tenant with MDC. Because, during the bankruptcy case, MDC abandoned its interest in the lease back to the lessor, the operator acknowledges it now has the duties of a co-tenant to the lessor. But beyond the obligations that arise by virtue of its co-tenancy, the operator contends that Texas law imposes no further obligation on it to pay the lessor.

Before turning to that question, the Court must address the question of its subject-matter jurisdiction. The lessor, who filed the lawsuit in this Court, later had a change of heart and moved to dismiss the case for lack of subject-matter jurisdiction. Because the claims at issue are asserted by one non-debtor (the lessor) against

another non-debtor (the operator), the jurisdictional issue raises a fair question. The Court concludes, however, that it does have subject-matter jurisdiction as a matter "related-to" the bankruptcy case. It further concludes that, although this is a non-core matter that falls only within the related-to jurisdiction, the Court may nevertheless enter final judgment, under 28 U.S.C. § 157(c)(2), because the parties have consented to it.

On the merits, the Court concludes that the operator is not a party to any agreement that would obligate it to pay royalties to the lessor for its development of the MDC working interest in the Unit B lease. Nor does the Court accept the lessor's argument that the lessor is the rightful owner of all production (or the proceeds thereof) that derive from a "royalty interest," and that any party that operates an oil lease is thus obligated to pay those royalties to the holder of the royalty interest. Despite the ongoing use of the term "royalty interest," Texas law does not go so far as to treat the production that derives from the "royalty interest," and all proceeds thereof, as the lessor's property. Rather, the Court concludes that under applicable Texas law, the operator is a co-tenant that is entitled (by virtue of its agreement with Luxe) to operate on the lease and extract minerals. With respect to the operations that took place on MDC's working interest, the operator is obligated to pay, beginning at the time the lease was abandoned back to the lessor (thus returning the working interest to the lessor), the value of that share of production, minus the costs thereof. While the summary judgment record shows that (in the period following abandonment) on an *overall project* basis, the cost of production has exceeded the

value thereof, such that nothing would be due, the record does not indicate whether there are any individual wells for which the value of production has exceeded the costs. The Court will accordingly grant, in part, the operator's motion for summary judgment. The lessor's motion for summary judgment will be denied.

Jurisdiction and Reference to Bankruptcy Court

The operative Complaint alleges that this Court has jurisdiction under 28 U.S.C. § 1334.[7] For the reasons described in further detail in Part I of the Analysis section of this Memorandum Opinion, the Court concludes that this case is within the district court's "related to" jurisdiction of section 1334(b).

As a case within the U.S. District Court for the District of Delaware's subject-matter jurisdiction, it has been referred to this Court pursuant to 28 U.S.C. § 157(a) and the *Amended Standing Order of Reference* dated February 29, 2012.

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[7] The complaint states that the basis for jurisdiction is section 1334(a). But that provision, which creates subject-matter jurisdiction over "cases under title 11," is the basis for subject-matter jurisdiction over what it typically described as the "main bankruptcy case." *See In re Combustion Engineering*, 391 F.3d 190, 225-226 n.38 (3d Cir. 2004) (section 1334(a) "refers merely to the bankruptcy petition itself") (citation omitted). The actual basis for subject-matter jurisdiction over this action is 28 U.S.C. § 1334(b), which provides, in relevant part, for jurisdiction over "civil proceedings …related to cases under title 11." The federal rules do not require that a complaint properly identify the statutory basis for the court's jurisdiction. *See Framlau Corp. v. Dembling*, 360 F. Supp. 806, 808 (E.D. Pa. 1973) ("Although plaintiff has failed to cite a valid jurisdictional statute as a basis for its complaint, Rule 8(a)(1) of the Federal Rules of Civil Procedure only requires that a pleading setting forth a claim for relief contain a short and plain statement of the grounds upon which the Court's jurisdiction depends. If there is a statement in the complaint sufficient to give the court jurisdiction, the particular statute conferring jurisdiction need not be specifically pleaded.") As described herein, the complaint does contain a sufficient statement of the facts on which this Court's jurisdiction depends.

The complaint correctly alleges that the state-law causes of action asserted in the complaint are non-core proceedings.[8] While a bankruptcy court may not, absent the consent of the parties, enter final judgment in a non-core matter, a bankruptcy court may enter final judgment in a non-core proceeding "with the consent of all of the parties to the proceeding."[9] In the pleadings, all parties expressly consented to this Court's entry of final judgment.[10] This Court will accordingly proceed on that basis.

Factual and Procedural Background

A. Factual background

Chenault-Vaughan owns a one-sixth mineral interest in the property at issue – property that is included in adjacent "pooled units" referred to as Iron Eagle Unit A and Unit B.[11] The "pooling" of mineral interests is a means to "bring together small

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[8] Complaint, D.I. 16, ¶ 5. *See In re Longview Power*, 515 B.R. 107, 113-114 (Bankr. D. Del. 2014) (explaining how state law disputes that could arise outside of bankruptcy are non-core matters).

[9] *See* Complaint, D.I. 16, ¶ 8; Centennial Answer, D.I. 18 ¶ 8; MDC Answer, D.I. 19 ¶ 8. The Supreme Court held in *Wellness Intern. Network Ltd. v. Sharif*, 135 S. Ct. 1932, 1944 (2015), that bankruptcy courts' adjudication of non-core matters with the consent of the parties did not offend principles of the separation of powers under Article III of the Constitution.

[10] Chenault-Vaughan's opposition to Centennial's summary judgment motion states that it does not consent to the entry of judgment. D.I. 71 at 1. At argument, however, counsel to Chenault-Vaughan made clear that those statements were made in error and that, as its complaint expressly stated, Chenault-Vaughan did consent to the entry of final judgment by this Court. Sept. 8, 2021 Hearing Tr. at 22-23.

[11] C-V App. at 001-006; Cent. App. at 7, 560. The Appendix of materials submitted by Chenault-Vaughan in support of its motion for summary judgment is docketed at D.I. 69 and cited as "C-V App." The Appendix of materials submitted by Centennial in support of its motion for summary judgment is docketed at D.I. 57 and cited as "Cent. App." Centennial filed a declaration and notice of pooled unit for each of the leases in Reeves County, Texas. These declarations were later amended to identify the correct survey associated with the lands. *See* Cent. App. at 383, 393, 395, and 560.

irregular tracts of land or mineral interests to form one drilling unit for the purposes of oil or gas production."[12] This is commonly accomplished, as it was here, through a pooling clause in a lease.[13]

In 2014, Chenault-Vaughan leased its mineral rights on the property at issue to 84 Exploration Partners, LLC.[14] The lease required the payment of a one-fourth royalty to Chenault-Vaughan.[15] The lease expressly permits 84 Exploration Partners to assign its interest, in whole or in part, to another party.[16] Through a series of assignments, MDC came to own approximately 80 percent of the working interest in the lease, while Luxe came to own the remaining 20 percent.[17]

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[12] Gina S. Warren, *Pooling Clauses and Statutes* 1 (David M. Patton, Eds., 2014).

[13] *Id.*; *see also* C-V App. at 008; Cent. App. at 69.

[14] C-V App. 008-010; Cent. App. 69-71.

[15] C-V App. 008; Cent. App. 69.

[16] C-V App. 009 ("The interest of either Lessor or Lessee hereunder may be assigned …. If Lessee transfers its interest hereunder in whole or in part, Lessee shall be relieved of all obligation thereafter arising with respect to the transferred interest."); Cent. App. 70 (same).

[17] The chain of title is set forth in documents contained in the C-V App. *See* C-V. App. 72-370. While Centennial itself once held a partial interest in the lease, it conveyed that interest to Luxe in 2018. C-V App. 188, 236. In addition to the underlying title documents included in the appendix, the summary judgment record includes a declaration by Skylar Fast, Centennial's land manager, who asserts that, as a result of the assignments, Luxe and MDC obtained 20 percent and 80 percent interests in the Lease, respectively. The declaration further asserts that Centennial once held a small interest in the lease but transferred it to Luxe in 2018. Chenault-Vaughan states, in opposition to the motion, that it "disputes" that "Centennial owns no interest in the lease." D.I. 71 at 3. *See also* D.I. 68 at 16-17; Sept. 8, 2021 Hearing Tr. at 140-144. But Chenault-Vaughan did not submit a declaration of its own, does not argue that the facts set forth in the Fast declaration are inadmissible, and does not point to record evidence that creates a genuine factual dispute. *See* Fed. R. Civ. P. 56(c) (explaining the procedure a party must follow when it contends that a fact is genuinely disputed). Chenault-Vaughan has therefore failed to establish a genuine factual dispute on this point.

In December 2017, Centennial entered into a joint operating agreement under which Centennial became the operator of the Luxe and Centennial shares of the various leases committed to Unit A, including the Unit A portion of the Chenault-Vaughan lease.[18] Under the terms of that agreement, Centennial pays the expenses associated with the development and charges each party its proportionate share of those expenses.[19] Those expenses include the royalties that Luxe and MDC owe under the terms of their leases.[20]

In January 2019, Centennial entered into a similar joint operating agreement with Luxe covering Unit B.[21] MDC, however, did not become a party to that agreement.[22] Under that agreement, Centennial is accordingly obligated to pay development expenses (and charge a proportional share) to Luxe. Centennial has included Luxe's royalty obligations among the expenses it has paid with respect to Unit B.[23] But because MDC never became a party to that agreement, no provision of the operating agreement purports to impose an obligation on Centennial to pay the royalty MDC owes on the Unit B portion of the lease.[24]

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[18] Cent. App. 398-426.

[19] Cent. App. 403.

[20] Cent. App. 435-436.

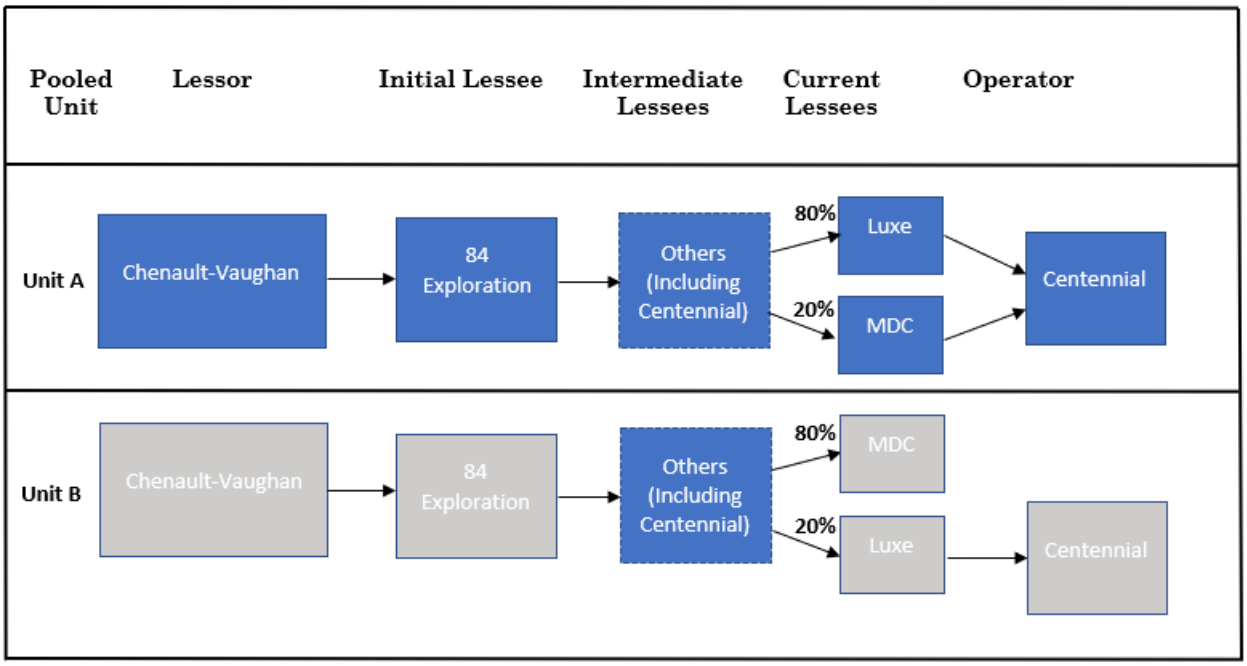
[21] Cent. App. 463, 483.

[22] Cent. App. 561.

[23] Cent. App. 497-498.

[24] Cent. App. 561.

Accordingly, the parties' relationships, and the rights to exploit the minerals associated with each of the leases, can be summarized in the following schematic:



In the period after Luxe entered into the joint operating agreement with Centennial regarding Unit B, Centennial proceeded on the mistaken assumption that MDC had become a party to that joint operating agreement (as it had with respect to Unit A).[25] Centennial accordingly paid royalties to Chenault-Vaughan based on MDC's share of the production on the lease. The total amount of those overpaid royalties, based on the unrebutted declaration of Skylar Fast, was $137,276.73.[26] When Centennial discovered its error in February 2020, it began setting off its overpayment from the royalties it otherwise owed Chenault-Vaughan on the Unit A

[25] Cent. App. 561.

[26] *Id.*

lease. Those overpayments were fully recouped in February 2021. Accordingly, in March 2021, Centennial resumed paying Chenault-Vaughan for royalties owed on Unit A.[27]

B. Procedural posture

Chenault-Vaughan brought suit against Centennial in June 2020, in state court in Reeves County, Texas, to recover the royalties that it contends Centennial had wrongfully withheld.[28] In October 2020, Chenault-Vaughan then filed a second lawsuit in the same court, contending that the recoupment of the Unit B royalties from the amounts due with respect to Unit A was improper.[29]

In November 2020, Chenault-Vaughan initiated this action, again seeking substantially similar relief, but adding MDC as a defendant. The complaint seeks relief from MDC both as a "pass through" for amounts due from Centennial and directly against MDC in its own right. Specifically, the complaint first alleges that "Centennial owes royalties under the Lease to Chenault-Vaughan for Units A and B."[30] The complaint then asserts a "pass through" theory against MDC. "Alternatively, Centennial must pay MDC the amount of the accrued Unit B royalties payable to Chenault-Vaughan under the lease so that MDC…can pay the Unit B

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[27] *Id.* The full accounting is set forth at Cent. App. 556-557.

[28] *Chenault-Vaughan Family Partnership, Ltd. v. Centennial Resource Development, Inc.*, 143rd Judicial Dist. Ct., Reeves County, TX, No. 20-06-23563, Cent. App. 542-551.

[29] *Chenault-Vaughan Family Partnership, Ltd. v. Centennial Resource Development, Inc.*, 143rd Judicial Dist. Ct., Reeves County, TX No. 20-10-23721, Cent. App. 523-540.

[30] Complaint, D.I. 1, ¶ 29.

royalties owed to Chenault-Vaughan."[31] Then, finally, the complaint asserts that to the extent Centennial is not liable for the royalties, MDC is. "MDC owes royalties to Chenault-Vaughan under the Assignment as to Unit B, to any extent Centennial is not liable under the Lease and operating agreement."[32] While Chenault-Vaughan amended its Complaint in December 2020 to add an additional count, the basic theory of recovery was the same as that set forth in the initial complaint.[33] Specifically, the amended complaint is clear that to the extent Centennial were to prevail in an argument that MDC (as lessee) is the only party responsible for paying the royalty, Chenault-Vaughan seeks to recover against MDC: "To the extent Centennial prevails on it theory that MDC owes the royalties attributable to [Unit B], MDC must pay the royalties to Chenault-Vaughan."[34]

The amended complaint contains six substantive claims: (1) trespass to try title under Texas Property Code § 22.001; (2) a claim under Texas Natural Resources Code § 91.401; (3) a claim for declaratory judgment regarding its entitlement to royalties under the Texas Civil Practice and Remedies Code; (4) a claim for declaratory judgment regarding its entitlement to royalties under 28 U.S.C. § 2201, (5) a claim for conversion, and (6) a claim for reformation of the legal description of the applicable pooled units.

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[31] *Id.* ¶ 30.

[32] *Id.* ¶ 31.

[33] Amended Complaint, D.I. 16 ¶¶ 28-30.

[34] *Id.* ¶ 30.

Upon the filing of the action in this Court, the Texas state court then abated both lawsuits until this adversary proceeding "is resolved or dismissed" and until Chenault-Vaughan names MDC as a party to its state court lawsuits.[35]

In addition, in December 2020 debtor MDC sought authority to abandon the Unit B lease on the ground that the "potential value of [MDC's] share of the production did not justify the development and production cost it would be required to incur."[36] This Court granted that motion by order entered in January 2021.[37]

Upon the completion of discovery in this adversary proceeding, both Centennial and Chenault-Vaughan filed motions for summary judgment.[38] Chenault-Vaughan also moved to dismiss this action for lack of subject-matter jurisdiction.[39] This Court held a hearing on the various motions on September 8, 2021. The Court thereafter took the motions under advisement.

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[35] *Chenault-Vaughan Family Partnership, Ltd. v. Centennial Resource Development, Inc.*, 143rd Judicial Dist. Ct., Reeves County, TX, Nos. 20-06-23563 & 20-10-23721, Cent. App. 553-554.

[36] *In re MTE Holdings, LLC*, No. 19-12269 (CSS) (Bankr. D. Del. Dec. 30, 2020), D.I. 1877, at 3.

[37] *In re MTE Holdings, LLC*, No. 19-12269 (CSS) (Bankr. D. Del. Jan. 25, 2021), D.I. 1900. Chenault-Vaughan thereafter moved the Court to reconsider that order on the ground that the form of release the debtors filed in Reeves County was alleged to be incorrect. D.I. 2050, 2071. This court denied that motion on the ground that the requirements of Fed. R. Civ. P. 60(b) were not satisfied. D.I. 2268. *See also* June 21, 2021 Hearing Tr. at 31-64.

[38] D.I. 55, 64.

[39] D.I. 84. Chenault-Vaughan also filed a motion to further amend its complaint. D.I. 54. At oral argument on the various pending motions, Chenault-Vaughan withdrew that motion. Sept. 8, 2021 Hearing Tr. at 158-159.

Applicable Legal Standards

The motion to dismiss for lack of subject-matter jurisdiction is brought under Fed. R. Civ. P. 12(b)(1), made applicable to this adversary proceeding by Fed. R. Bankr. P. 7012(b). In considering the motion, the Court accepts the facts as alleged in the complaint as true and examines whether those facts are sufficient to give rise to related-to jurisdiction under section 1334(b).[40]

The cross-motions for summary judgment are brought under Fed. R. Civ. P. 56, as made applicable to this proceeding by Fed. R. Bankr. P. 7056. A party seeking summary judgment is entitled to the entry of judgment if the movant can show "that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law."[41] A moving party may rely on any material included in the summary judgment record, including depositions, documents, affidavits or declarations, and other material.[42] A party opposing a summary judgment motion on the ground that a material fact is genuinely disputed may point to the same kinds of record evidence in its opposition.[43]

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[40] A motion brought under Rule 12(b)(1) can be either "facial" or "factual." Where the motion is "facial attack," "the court must only consider the allegations of the complaint and documents referenced therein and attached thereto, in the light most favorable to the plaintiff." *Gould Electronics Inc. v. United States*, 220 F.3d 169, 176 (3d Cir. 2000).

[41] Fed. R. Civ. P. 56(a).

[42] Fed. R. Civ. P. 56(c)(1) (identifying the types of "materials in the record" that may be cited in support of a motion for summary judgment).

[43] Fed R. Civ. P. 56(c)(1) (noting that the identified materials may be cited by a "party asserting that a fact cannot be or is genuinely disputed").

The question on a motion for summary judgment is whether there is a genuine issue of material fact. A fact is material if it is one that could alter the outcome of the case. And a dispute is genuine if a reasonable factfinder could, based on the evidence submitted, resolve the factual dispute in favor of either the moving or non-moving party.[44] Accordingly, if a rational factfinder could not, based on the record evidence, find for the non-moving party, there is no genuine dispute that needs to be tried, and the moving party is entitled to the entry of summary judgment.[45]

In this case, neither party appears to contend that there is any genuine dispute of material fact that would necessitate a trial.[46] Rather, the dispute between the parties is primarily a legal one that is ripe for resolution on cross-motions for summary judgment.

Analysis

I. This Court has subject-matter jurisdiction over this action.

As noted above, the applicable statutory basis for subject-matter jurisdiction over this adversary proceeding is 28 U.S.C. § 1334(b), which provides the district courts with jurisdiction over "civil proceedings … related to cases under title 11."[47] "A proceeding is related to bankruptcy if 'the outcome of that proceeding could

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[44] *See Miller v. SWZ Financial*, No. 15-50880 (LSS) (Bankr. D. Del. Nov. 8, 2021), D.I. 173.

[45] *See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586-587 (1986).

[46] Sept. 8, 2021 Hearing Tr. at 113.

[47] 28 U.S.C. § 1334(b).

conceivably have any effect on the estate being administered in bankruptcy.'"[48] As the Third Circuit has emphasized, a "key word in this test is 'conceivable.' Certainty, or even likelihood, is not a requirement."[49] Rather, a proceeding will be within the bankruptcy jurisdiction whenever it is "possible" that the proceeding will affect "'the debtor's rights, liabilities, options, or freedom of action' or 'the handling and administration of the bankrupt estate.'"[50]

Importantly, "[r]elated-to jurisdiction—like other types of federal jurisdiction—is determined at the time of filing."[51] As the Supreme Court has explained, it "has long been the case that the jurisdiction of the court depends upon the state of things at the time of the action brought."[52]

These principles essentially resolve the dispute over this Court's subject-matter jurisdiction. *First*, to the extent the complaint seeks to recover against the debtor's estate, it would have a paradigmatic "effect" on the estate (reducing the recoveries of other creditors) and would thus be within the related-to jurisdiction. Fairly read, the complaint does seek that relief. It alleges that to the extent Centennial is not obligated to pay Chenault-Vaughan's royalties, MDC (a debtor) is required to pay them.[53] It does not matter for this purpose that Chenault-Vaughan's

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[48] *In re Markus Hook Dev. Park*, 943 F.2d 261, 264 (3d Cir. 1991) (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)).

[49] *Id.*

[50] *Id.* (citing *In re Smith*, 866 F.2d 576, 580 (3d Cir. 1989)).

[51] *In re Semcrude*, 864 F.3d 280, 289 (3d Cir. 2017).

[52] *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567, 570 (2004).

[53] D.I. 1 ¶ 31; D.I. 16 ¶ 30.

main target is Centennial, a non-debtor, and that its claims against MDC are brought only "in the alternative." So long as an effect on the bankruptcy estate is "conceivable," the case is within the bankruptcy jurisdiction.

Second, even if one were to read Chenault-Vaughan's complaint (as Chenault-Vaughan contends[54]) only to seek to recover against MDC as a "pass through" from Centennial, and not to seek a recovery from the estate itself – a reading that, for what it is worth, is quite difficult to square with the complaint's allegation that "MDC owes royalties to Chenault-Vaughan under the Assignment as to Unit B"[55]—that relief would still be sufficient to give rise to related-to jurisdiction. As the caselaw explains, the type of effect on a bankruptcy estate sufficient to create related-to jurisdiction need not be economic. Anything that affects the debtor's "freedom of action" or "the handling and administration of the bankrupt estate" will suffice for this purpose. The relief that Chenault-Vaughan seeks – an order of this Court directing that MDC take funds from Centennial and pay them over to Chenault-Vaughan – would certainly affect the debtor's "freedom of action." Accordingly, even if one were to read the relief sought against MDC in the narrow way that Chenault-Vaughan now claims, that would still be sufficient to create subject-matter jurisdiction over this proceeding.

Third, Chenault-Vaughan argues that that subject-matter jurisdiction is defeated by MDC's abandonment of its interest in the Chenault-Vaughan lease.[56] But

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[54] *See* Sept. 8, 2021 Hearing Tr. at 14-15.

[55] D.I. 16 ¶ 30.

[56] D.I. 85 at 18-19.

that argument runs afoul of the notion that a court's subject-matter jurisdiction is assessed at the time of the complaint's filing. Just as the Third Circuit found in *SemCrude* that the confirmation of the plan of reorganization did not operate to divest the bankruptcy court of jurisdiction because at "the time of filing of these adversary actions" their resolution "could have affected the bankruptcy estates,"[57] neither the subsequent rejection of the leases nor ultimate confirmation of the debtors' plan of reorganization affects this Court's subject-matter jurisdiction over this adversary proceeding.

Finally, Chenault-Vaughan argues that this case is outside the subject-matter jurisdiction because the royalties in question are not "property of the estate."[58] In saying that the royalties are not "property of the estate," Chenault-Vaughan presumably means that to the extent MDC obtained its share of production from Centennial, some portion of that production – attributable to the royalties due to Chenault-Vaughan – is held by MDC in constructive trust for the benefit of Chenault-Vaughan, rather than being included under Section 541 as part of the MDC bankruptcy estate.

As Centennial correctly points out in response, however, subject-matter jurisdiction depends on whether the action will have a "conceivable effect" on the

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[57] *SemCrude*, 864 F.3d at 289.

[58] D.I. 85 at 8-9.

bankruptcy estate, not on whether the plaintiff is seeking to recover some identifiable asset that is estate property.[59]

And in any event, it is not at all clear under Texas law that the premise of Chenault-Vaughan's argument is correct. Chenault-Vaughan's theory is apparently that when the holder of a mineral estate leases its mineral interest but retains the royalty interest, any party that comes into possession of the production necessarily holds the portion of that production that is attributable to the royalty interest in constructive trust for the benefit of the holder of the royalty interest.

This Court rejected a similar argument that was advanced as a basis to deny confirmation of the debtors' plan of reorganization. At the time the Court confirmed the plan, it had understood the argument advanced by the parties objecting to confirmation somewhat differently, as a form of the argument that the claims for unpaid royalties were secured claims.[60] In seeking a stay of confirmation, however, the claimants articulated the argument more clearly, explaining that because the "royalty interest" is not conveyed to the lessee as part of a mineral lease, any proceeds that derive from that "mineral interest" is likewise outside the bankruptcy estate. In denying the stay, the Court observed that, on the merits, this was an issue on which there was fair room for disagreement, but nevertheless denied the stay on the ground

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[59] D.I. 86 at 12-13.

[60] *In re MTE Holdings, LLC,* No. 19-12269 (CTG) (Bankr. D. Del.), Sept. 3, 2021 Hearing Tr. at 51-52.

that the objecting parties declined to present any evidence supporting the contention that the plan purported to sell "property" that the debtors did not own.[61]

As noted above, the Court does not believe that its subject-matter jurisdiction depends on the resolution of this question. But as further described below, this property-of-the-estate issue is closely related to Chenault-Vaughan's merits argument. That is, Chenault-Vaughan contends that under Texas law, it (the original lessor) holds not only the "royalty interest" in the mineral estate, but also that it is the true owner of any production that might derive from that royalty interest or the proceeds thereof. It is therefore worth noting that the cases on which Chenault-Vaughan relies[62] do not, in fact, stand for such a proposition. *In re MCZ, Inc.*[63] involved the bankruptcy of an operator. The operator was obligated to put all of the proceeds of production (not just some fraction that could be traced to the royalty interest) in a separate bank account. The bankruptcy court found that equitable title to the funds in that account (except perhaps for the interest earned on the deposits – a question the bankruptcy court left to the state court) belonged to the owners of the working interests. Chenault-Vaughan, however, points to nothing in this record (either in the leases or operating agreement) suggesting that the share of production attributable to its royalty interest must be segregated from the balance of the

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[61] *In re MTE Holdings, LLC,* No. 19-12269 (CTG) (Bankr. D. Del. Sept. 15, 2021), D.I. 2622 at 4-6, 8-10.

[62] *See* D.I. 85 at 8-9.

[63] 82 B.R. 40 (Bankr. S.D. Tex. 1987).

production. In the absence of such evidence, *MCZ* does nothing to establish that any production or proceeds held by MDC was not property of the bankruptcy estate.

In re Reichman Petroleum Corp.[64] involved a plaintiff that had acquired a working interest in a lease from the debtor before the debtor's bankruptcy. The debtor thereafter conveyed its right to the revenues from the leases to an operator. The court explained, however, that the debtor's conveyance of its rights to those revenues did not entitle the operator to revenues associated with the plaintiff's working interest, since "a party cannot release property, money or claims it does not own."[65] Once the plaintiff had acquired the working interest "revenue earned by those working interests became the property of Plaintiffs."[66] *Reichman*, however, had nothing at all to do with the right to receive royalties or suggest in any way that some portion of the revenues flowing from the production of oil and gas (a subset that is traceable to a "royalty interest") is not "owned" by the holder of the working interest.

Nor does Judge Shannon's opinion in *In re SemCrude* stand for such a proposition.[67] There, the debtor was essentially a contractor of the operator, having agreed to take on the responsibility for collecting and distributing payments on behalf of an operator that lacked the back-office capabilities to perform that function itself. The debtor never purported to have any ownership interest in the proceeds of

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[64] 434 B.R. 790 (Bankr. S.D. Tex. 2010).

[65] *Id.* at 796.

[66] *Id.* at 797.

[67] 418 B.R. 98 (Bankr. D. Del. 2009).

production, and the court accordingly found that the debtor held the funds in constructive trust for the benefit of the operator.[68]

Indeed, if anything, the Texas case law suggests that once the holder of a mineral interest conveys a working interest to another party via a "lease," the interest holder, while retaining a "royalty interest" in the "mineral estate," no longer has a property interest in the minerals themselves (other than a "possibility of reverter" upon the termination of the lease). Rather, the lessee "acquires title to all of the oil and gas in place" and a lessor has a claim against the lessee to be paid its royalties.[69] If the lessor does not have a property interest in the minerals themselves, it necessarily follows that the lessor is not the "owner" of the proceeds of those minerals.[70] Rather, as the Court of Appeals of Texas has explained, such a claim to

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[68] The other cases on which Chenault-Vaughan relies in arguing that MDC's interest in the share of production attributable to Chenault-Vaughan's royalty interest is outside MDC's bankruptcy estate, D.I. 85 at 9, are similarly unavailing, standing largely for the well-settled principle that assets in which the debtor holds bare legal title, but no equitable interest, are not property of the estate.

[69] *Pool*, 124 S.W.3d at 192 ("[w]hen an oil and gas lease reserves only a royalty interest, the lessee acquires title to all of the oil and gas in place, and the lessor owns only a possibility of reverter and has the right to receive royalties"). *See Luckel v. White*, 819 S.W.2d 459, 464 (Tex. 1991) ("In Texas, a typical oil and gas lease actually conveys the mineral estate (less those portions expressly reserved, such as royalty) as a determinable fee."). The key point is that although the "royalty interest" is a retained portion of the "mineral estate," it by no means necessarily follows that the share of produced oil and gas that can be attributed to that "royalty interest" remains the property of the lessor. As far as this Court has been able to discern, none of the Texas cases cited by Chenault-Vaughan stands for such a proposition.

[70] The lease itself imposes no obligation on the lessee to segregate the production (or proceeds thereof) deriving from the "royalty interest" from the balance of the production. Rather, with respect to gas, the royalty is defined as "one-fourth … of the *proceeds* realized by Lessee from the sale thereof." Cent. App. 69. And with respect to oil, the lease requires the Lessee either to deliver one fourth of the production "to Lessor at the wellhead," or, at the option of the Lessor, for the Lessee to provide a "credit at the Lessee's oil purchaser's transportation facilities." The lease contains no provision suggesting that any proceeds be held in a separate

recover unpaid royalties is typically viewed as a claim for breach of contract arising under the lease – the agreement that is the source of the legal obligation to pay a royalty.[71] For current purposes, however, the critical point is that regardless of whether the share of production attributable to Chenault-Vaughan's royalty interest is or is not part of the MDC bankruptcy estate, Chenault-Vaughan's complaint seeks relief that would have a conceivable effect on MDC's bankruptcy estate, which is all that is required to establish this Court's subject-matter jurisdiction.

II. Centennial is entitled to summary judgment on Chenault-Vaughan's claim for trespass to try title under Texas Property Code § 22.001 (Count I).

Under Texas law, an action for "trespass to try title" under section 22.001 of the Texas Property Code is "the method of determining title to lands."[72] Chenault-Vaughan's theory is that, as "lessor," it owns (and has owned) the "royalty interest" associated with its one-sixth mineral interest. And it therefore believes it is the owner of whatever share of production is derived from its royalty interest.

The dispute here, however, is not over whether Chenault-Vaughan holds the "royalty interest" in the lands at issue. No one disputes that it does. Indeed, since

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account, as one would expect if the contract rendered those proceeds the "property" of the lessor, rather than creating a contractual obligation of the lessee to pay the royalty to the lessor.

[71] *Harrison v. Bass Enterprises Prod. Co.*, 888 S.W.2d 532, 536 (Tex. App. 1994) (holding that a claim by the holder of a royalty interest against the holder of a working interest for unpaid royalties sounds in contract rather that tort).

[72] *See Brumley v. Duff*, 616 S.W.3d 826, 831-832 (Tex. 2021). The applicable statutory provision states that "a trespass to try title action is the method of determining title to lands, tenements, or other real property."

MDC abandoned its interest in the lease, that working interest was also returned to Chenault-Vaughan upon the effective date of the abandonment. The critical question on which the parties disagree (and the basis for the relief Chenault-Vaughan seeks in the first count of its Complaint – an order ejecting Centennial from the premises and directing that Centennial pay royalties) is about the legal consequences that flow from Chenault-Vaughan holding a royalty interest in the mineral estate.

Texas law, however, has answered that question: The lessor's "royalty interest" is not a possessory interest and it therefore is not a proper subject of a trespass-to-try-title action.[73] And even after MDC abandoned its working interest such that Chenault-Vaughan obtained a possessory interest, that abandonment did not disturb Luxe's 20 percent working interest. As a result, Chenault-Vaughan became a co-tenant with Luxe, each with the right to possess the land and extract its minerals. Because Luxe was entitled to possess the land, and also to permit Centennial, as its operator, to do so on its behalf, there is no basis under Texas law for Chenault-Vaughan to eject Centennial from the land. Centennial is thus entitled to summary judgment on this count.

III. Centennial is entitled to summary judgment on Chenault-Vaughan's claim under the Texas Natural Resources Code § 91 (Count II).

Section 91.402 of the Texas Natural Resources Code provides that, after the first sale of production from an oil and gas well, payments must be made from a

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[73] *Richmond v. Wells*, 395 S.W.3d 262, 267 (Tex. App. 2012).

"payor" to a "payee" on "a timely basis according to the frequency of payment specified in a lease or other written agreement between payee and payor."[74]

Chenault-Vaughan seeks to recover unpaid royalties from Centennial under this statutory provision, arguing that it is a "payee" within the meaning of the provision. And "payee" is defined to mean "any person … legally entitled to payment from the proceeds derived from the sale of oil and gas."[75] A "payor" is an entity "who undertakes to distribute oil and gas proceeds to the payee."[76]

Centennial emphasizes the word "undertakes" in the definition of payor, arguing that its inclusion effectively limits the statute to payment obligations running from lessee to lessor. D.I. 56 at 14. And it is true, as the caselaw explains, that the heartland of the work intended by the statute was to provide a statutory remedy for lessors against lessees that fail to make timely payment.[77] But as Centennial candidly acknowledges, D.I. 56 at 14-15 n.6, Texas cases have also recognized that where (as Chenault-Vaughan contends is the case here) the act of operating an oil well is sufficient to create an obligation to pay a royalty, the statute will apply.[78] The Court accordingly does not read the statute to impose an independent limitation on a lessor's right to recover. Rather, the question essentially collapses into whether the law imposes an obligation on an operator to pay a royalty

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[74] Tex. Nat. Res. Code § 91.402(a).

[75] *Id.* § 91.401(1).

[76] *Id.* § 91.401(2).

[77] *See ConocoPhillips Co. v. Koopman,* 542 S.W.3d 643, 662 (Tex. App. 2016).

[78] *See Prize Energy Res., L.P. v. Cliff Hoskins, Inc.,* 345 S.W.3d 537, 561-562 (Tex. App 2011).

on production where it is operating as a co-tenant, without its own operating agreement with the interest holder. For the reasons described below, it does not.

A. Centennial is not obligated, as a co-tenant, to pay a royalty to Chenault-Vaughan.

Chenault-Vaughan's central thesis appears to be that Centennial, which operated on MDC's working interest with full knowledge of the fact that MDC was obligated to pay a royalty to Chenault-Vaughan, became liable for paying that royalty. The basis for that contention is a variant of its argument about "property of the estate" described under Part I, above. As Chenault-Vaughan sees it, the production from MDC's working interest that can be said to derive from Chenault-Vaughan's royalty interest is oil or gas that is Chenault-Vaughan's property – not MDC's. That production remains Chenault-Vaughan's property after Centennial extracted it from the ground and Centennial thereafter held that production in constructive trust for the benefit of Chenault-Vaughan. To the extent the production was sold to a buyer, the proceeds thereof are likewise the property of Chenault-Vaughan. And now Centennial is legally obligated to turn those royalties over to Chenault-Vaughan, its rightful owner.

There is nothing inherently illogical or irrational about such a legal regime. And there is no reason why one might not, in order to provide the utmost protection for the rights of those who are entitled to be paid royalties, establish a set of legal principles that give the royalty holder a robust ownership interest in the oil and gas that derives from its "royalty interest" as well as any proceeds thereof. And in fairness to Chenault-Vaughan, the strand of Texas law that treats the "royalty

interest" as a separate stick in the bundle of rights associated with land ownership – one that is retained by a lessor when it otherwise conveys the right to extract oil and gas by entering into a mineral lease – may well reflect an interest in providing such protection to the rights of those to whom royalties are due.[79]

The reason the argument fails, however, is that a review of the cases makes clear that this thread is not pulled all the way through the fabric of Texas law in the manner that Chenault-Vaughan's argument would suggest. Rather, another line of Texas cases makes clear that under a mineral lease, a lessee "acquires ownership of all of the minerals in place that the lessor/grantor owned and purported to lease."[80] The lessor "owns only a possibility of reverter and has the right to receive royalties."[81] That articulation of the nature of the lessor's interest, coming from the Supreme Court of Texas, cannot be squared with Chenault-Vaughan's contention that the lessor retains legal ownership of all of the production deriving from its royalty interest.

Of all the Texas oil and gas decisions cited by the parties, the one that on its facts seems to be closest to this one is *Devon Energy*.[82] It involved a mineral interest that was held by two different parties – call them Lessor A and Lessor B. Lessor A

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[79] *See generally Luckel*, 819 S.W.2d at 464 (Tex. 1991) (describing the royalty interest as being "expressly reserved" and carved out of the conveyance of the mineral interest from lessor to lessee).

[80] *Pool*, 124 S.W.3d at 192.

[81] *Id*.

[82] *Devon Energy v. Apache Corp.*, 550 S.W.3d 259 (Tex. App. 2018).

had a one-third mineral interest while Lessor B had a two-thirds interest. Both lessors leased their respective mineral interests to separate lessees (call them Lessee A and Lessee B). Lessee A engaged in drilling and development activity, producing oil and gas wells on the land in question. It then paid two-thirds of the net revenues (after recovering its cost of production) to Lessee B (which, under its lease, held the working interest).

Lessor B then sued both Lessee A and Lessee B for its royalty. When the case reached the court of appeals, the principal question was whether Lessee A was obligated to pay a royalty to Lessor B – a party with which it had no contractual relationship. The court held that it was not.[83]

Significantly, the court distinguished the case before it from a prior case, *Prize Energy*,[84] in which the Court of Appeals of Texas found that a party operating an oil well on land that divided between owners (a party in a position analogous to that of Lessee A) *was* required to pay a royalty to a party in a position analogous to that of Lessor B.[85] The difference, however, was that Lessor B had not entered into a standard lease. Rather, it conveyed its mineral interest to Lessee B but retained a "nonparticipating royalty interest … in the estate that it conveyed" to Lessee B.[86]

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[83] *Id.* at 261.

[84] *Id.* at 263-264

[85] *See Prize Energy*, 345 S.W.3d at 537.

[86] *Devon*, 550 S.W.3d at 264.

The *Devon* court drew a sharp distinction between the "nonparticipating royalty interest" at issue in *Prize Energy* and the "overriding royalty interest" at issue in the case before it. "[B]ecause the royalty interest in *Prize Energy* was [a nonparticipating royalty interest] and not a royalty interest reserved by a lease, that distinguishes *Prize Energy* from this case."[87] The court explained that "[o]verriding royalty interests and lease royalty interests are creatures of the oil and gas lease," whereas a nonparticipating royalty interest "does not relate to a particular lease … [and] does not end when the lease ends, rather it is generally tied to the land."[88]

Chenault-Vaughan's royalty interest, like that of Lessor B's in *Devon Energy*, derives entirely from its lease – it is not tied to the land. This case is accordingly more like *Devon Energy* than it is like *Prize Energy*. And while it is true that Centennial was operating under a joint operating agreement with Luxe rather than a lease from a different lessor, the basic principle of *Devon Energy* remains applicable. Centennial was a co-tenant with MDC on the land at issue. And as *Devon Energy* explained, it "has long been the rule in Texas that a cotenant has the right to extract minerals from common property without first obtaining the consent of his cotenants."[89] But when a co-tenant does so, "he must account [to the other co-tenants]

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[87] *Id*.

[88] *Id.* (internal quotations and citations omitted).

[89] *Id.* at 261 (citation omitted); *Wagner & Brown v. Sheppard*, 282 S.W.3d 419, 426 (Tex. 2008); *Byrom v. Pendley*, 717 S.W.2d 602, 605 (Tex. 1986); *Cox v. Davison*, 397 S.W.2d 200, 201 (Tex. 1965).

on the basis of the value of any minerals taken, less the necessary and reasonable costs of production and marketing."[90]

It bears note that Chenault-Vaughan rejects the application of *Devon Energy*, contending that cases involving two separate leases are wholly unlike those involving a "single lease." D.I. 68 at 23-25. By that, Chenault-Vaughan appears to mean that in cases like *Devon Energy*, the party we called Lessee B is not in the same "chain of title" as Lessor A. Unlike that case, however, Centennial's rights derive from Luxe, which is itself a downstream assignee from Chenault-Vaughan. That is, in fact, a distinction, but it is one that makes no difference. While Luxe's interest in the lease, like MDC's, derives ultimately from Chenault-Vaughan, the fact that Centennial was Luxe's operator on Unit B, rather than MDC's, makes this situation highly analogous to the "two-lease" cases that Chenault-Vaughan seeks to distinguish. At the end of the day, Centennial is a co-tenant. Accordingly, before the lease was abandoned, Centennial was co-tenant with MDC, and Chenault-Vaughan had a contractual right to be paid a royalty that ran against MDC. After abandonment, Centennial and Chenault-Vaughan were co-tenants. Chenault-Vaughan thereafter had the rights that Texas law provides to such co-tenants.[91]

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[90] *Devon*, 550 S.W.3d at 261; *see also Wagner*, 282 S.W.3d at 426.

[91] In the same part of its argument, Chenault-Vaughan suggests that Centennial, as a co-tenant, became liable on the lease by virtue of "ratifying" it when the lease was listed on the Unit B Declaration that Centennial filed. That argument fails for the same reason as does Chenault-Vaughan's argument that the filing of declaration creates an estoppel. *See infra*, Part III.B.

Accordingly, after abandonment, Chenault-Vaughan (in its capacity as the holder of the working interest) was entitled to the value of the production after subtracting the cost thereof. The record is undisputed, however, that the costs of development and production have not yet been recovered on Unit B.[92] At argument, however, counsel for Centennial acknowledged that whether it is appropriate to view this issue on a project basis (which in this context would relate to the pooled unit) or on an individual well basis is typically assessed based on the circumstances of the project.[93] Counsel further acknowledged that it has produced such information on a well-by-well basis, but that this information is not included in the summary judgment record.[94] Those acknowledgements give rise to the possibility that, if the circumstances suggested that Chenault-Vaughan was entitled to an accounting on an individual well basis, there may be wells included within Unit B for which the value of the production might have covered the associated costs. In that event, Chenault-Vaughan would be entitled to an accounting for the value of any production that exceeded those costs. For this reason, this matter cannot be fully resolved on the existing summary judgment record. As further described in the conclusion of this opinion, the Court will set a status conference to address the process for resolving those matters that remain outstanding.

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[92] Cent. App. at 561-562.

[93] Sept. 8, 2021 Hearing Tr. at 115.

[94] *Id.* at 116.

B. Centennial is not bound to pay a royalty as a present or former party to the lease or by estoppel or ratification of the lease.

As an alternative to its theory that it is entitled to be paid its royalty because it retains the "royalty interest" in the mineral rights and is thus the true owner of all production and proceeds that might derive therefrom, Chenault-Vaughan also argues that Centennial effectively bound itself to the terms of the lease by virtue of having itself once been in the chain of title and by operating on the property with knowledge that the lessee was obligated to pay a royalty. D.I. 68 at 12-26.[95]

Chenault-Vaughan's argument about Centennial's liability arising out of its having once been a lessee of a portion of the working interest, D.I. 68 at 12-16, is defeated by the terms of the lease itself. The lease makes clear that when it is assigned, the assignee takes on all of the obligations of the assignor and the assignor "shall be relieved of all obligations thereafter arising with respect to the transferred interest."[96] While Chenault-Vaughan contends that this provision applies to the initial assignment but not subsequent assignments, that argument is inconsistent with the ordinary principle that an assignee stands in the shoes of the assignor, with all of the same rights and obligations. Parties to a lease certainly *could* agree to a

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[95] These arguments are set forth in greater detail in the proposed Second Amended complaint than they are in the operative First Amended Complaint. That motion to amend, however, was withdrawn at oral argument. *See supra* n. 39. Centennial contends that these arguments are not properly before the Court. *See* D.I. 81 at 7. But a complaint need only set out facts showing an entitlement to relief. Fed. R. Civ. P. 8(a)(2). It is not required to specify the legal theory on which those facts entitle the plaintiff to relief. *See Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506, 512 (2002). These contentions are therefore properly before the Court on the pending summary judgment motions.

[96] Cent. App. at 70.

provision providing that the release of the assignee from future-arising obligations applied only to the initial transfer, but not subsequent transfers. But if that were the intent, one would expect to find language in the lease so providing. In the absence of any such language in the operative lease, Chenault-Vaughan's argument is unsuccessful.[97]

Chenault-Vaughan also argues that Centennial is liable for the royalties on an "estoppel" or "ratification" theory based on recitals in the Unit B Declaration. D.I. 68 at 19-21. When multiple leases are pooled together into a common unit, Texas law requires the filing of a declaration setting out the tract of land at issue.[98] Chenault-Vaughan's argument is that the declaration that Centennial filed with respect to Unit B contained a recital stating that Unit B "encompasses the entire Leasehold interest" and that as a result it is "estopped to deny the terms of the Lease, including the royalty provisions." D.I. 68 at 20. But as Centennial correctly points out in response, the recording of a deed to which one is not a party does not by itself make that entity a party to the deed.[99] And in any event, the Unit B declaration is not a deed, and nothing therein can be understood to be a representation by Centennial that it would

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[97] Chenault-Vaughan also argues that Centennial (or its affiliate, Centennial Development) remains a party to the lease. D.I. 68 at 16-19. But nothing in the evidence to which Chenault-Vaughan points contradicts the evidence Centennial submitted indicating that, in 2018, it transferred the interest it once held to Luxe. *See* Cent. App. 560. Accordingly, as described above, *see supra* n.17, Chenault-Vaughan has not shown a genuine factual dispute on this issue.

[98] 1 Texas Law of Oil and Gas § 4.8; *Dixon v. Amoco Prod., Co.*, 150 S.W.3d 191, 194 (Tex. App 2004).

[99] *See Trial v. Dragon,* 593 S.W.3d 313, 320 (Tex. 2019).

undertake to pay the royalties due under the Chenault-Vaughan lease.

C. Centennial was entitled to recoup overpayments on Unit B from its subsequent payments on Unit A.

As described above, the dispute in this case relates primarily to unpaid royalties on production from Unit B, where MDC did not execute the operating agreement with Centennial and Luxe. Centennial is also the operator, however, on Unit A. There, Chenault-Vaughan is the lessor (entitled to receive royalties) and both Luxe and MDC have entered into a joint operating agreement under which Centennial serves as the operator. As a result, for Unit A, Centennial paid Chenault-Vaughan the royalties due on the production from both MDC's and Luxe's working interests.

Centennial proceeded, for some time, on the mistaken understanding that MDC *had* executed the operating agreement for Unit B. Centennial thus paid Chenault-Vaughan a royalty for that production. Upon discovering the mistake, Centennial essentially repaid itself for those overpayments by deducting the amounts it had paid Chenault-Vaughan on Unit B royalties from the amounts it otherwise owed for production on the MDC Unit A lease. As a general matter, Texas law, like the common law more generally, permits a party who owes a debt to setoff amounts

owed to it against the amount it owes.[100] As the Supreme Court put it, the doctrine is intended to avoid "the absurdity of making A pay B when B owes A."[101]

Chenault-Vaughan argues that even if Centennial is right and the payments made on the Unit B lease were not in fact due and were paid by mistake, Centennial still was not entitled to engage in self-help by setting of the overpayments against amounts that it otherwise owed on Unit A. D.I. 68 at 27-28. The basis for this argument is the principle that a "voluntary payment" cannot be recovered on the ground that the payor operated on a misunderstanding of law.[102] The voluntary-payment doctrine operates, in essence, to provide that if a party pays a purported obligation despite knowing all of the facts that might give rise to a potential defense, it cannot thereafter seek to recover the amounts it paid based on the defense. The party's knowledge of the relevant facts at the time it made the payment renders the payment a "voluntary" one that cannot later be recovered.

That doctrine, however, has no application to the facts of this case. Unlike a payor who makes a payment with full knowledge of facts that might give rise to a defense to its liability on the obligation it is paying, there is no dispute in this record that Centennial was unaware of the fact that MDC had not executed the Unit B joint operating agreement at the time it made the royalty payments to Chenault-

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[100] *See Gulf Oil Corp v. Lone Star Producing Co.*, 322 F.2d 28, 33 (5th Cir. 1963) (recognizing, under Texas law, that amounts previously overpaid operate as "a good defense" to amounts the payor otherwise owes the payee).

[101] *Studley v. Boylston Nat'l Bank of Boston*, 229 U.S. 523, 528 (1913).

[102] *See Samson Exploration LLC v. T.S. Reed Properties, Inc.*, 521 S.W.3d 766, 779-780 (Tex. 2017).

Vaughan.[103] Centennial is thus entitled to summary judgment on the claim that it wrongfully deducted its overpayments on Unit B from amounts it otherwise owed to Chenault-Vaughan on Unit A.

IV. Chenault-Vaughan is not entitled to a declaratory judgment (Counts III and IV).

Count III of Chenault-Vaughan's Complaint seeks a declaratory judgment under the Texas Civil Practice and Remedies Code and Count IV seeks a declaratory judgment under the Federal Declaratory Judgment Act.

It is settled law that in cases arising under a federal court's diversity jurisdiction, the question whether to grant declaratory relief is "a procedural question of federal law".[104] The same is true when the basis for jurisdiction is, as it is here, that the cases is "related to" a bankruptcy case. Centennial is accordingly entitled to summary judgment on Count III because the Texas state declaratory judgment statute is inapplicable to this proceeding.

The claim for a declaratory judgment under the Federal Declaratory Judgment Act (Count IV) fares no better. At bottom, this count sought declaratory relief related to the substantive relief Chenault-Vaughan sought for its claims arising under the

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[103] Cent. App. at 561.

[104] *Golden Eagle Ins. Co. v. Travelers Companies*, 103 F.3d 750, 753 (9th Cir. 1996); *see also Kelly v. Maxum Specialty Ins. Gr.*, 868 F.3d 274, 281 n.4 (3d Cir. 2017) (explaining that "because federal courts apply federal procedural law in federal actions, the [Federal Declaratory Judgment Act] and not state declaratory judgment law supplies the procedural law that governs this case"); *Reifer v. Westport Ins. Corp.*, 751 F.3d 129, 134 n.4 (3d Cir. 2014) (same); Charles Alan Wright, *et al.*, Federal Practice and Procedure § 4505 (2021) (same).

Texas Property Code and the Texas Natural Resources Code. The claim for declaratory relief thus fails on the ground that, as described above, Chenault-Vaughan is not entitled to the substantive relief it seeks.

V. Chenault-Vaughan's claim for conversion fails (Count V).

Count V of Chenault-Vaughan's Complaint alleged that Centennial had converted Chenault-Vaughan's property by failing to pay royalties that were due and owning upon its demand. But as described above, Centennial is entitled to summary judgment on Chenault-Vaughan's various claims under which it asserts an entitlement to the royalties, except perhaps for royalties arising after MDC's abandonment of the lease, to the extent that (i) the circumstances suggest that the recovery of costs should be determined on a well-by-well basis and (ii) the value of the production for one or more wells exceeded the costs thereof.

In addition, despite having included a claim for conversion in its Complaint, Chenault-Vaughan hardly mentioned the claim in its motion for summary judgment. D.I. 68 at 2. When Centennial responded by observing that Chenault-Vaughan appeared to have abandoned the claim, D.I. 81 at 5, Chenault-Vaughan replied by stating in a footnote that "Chenault does not forfeit its conversion claim." D.I. 83 at 1 n.1. But other than that footnote, Chenault-Vaughan made no mention of the claim at all. As other courts routinely hold, a conclusory statement contained in a footnote is insufficient to present or preserve an argument at the summary judgment stage.[105]

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[105] *See Commonwealth of Pa. v. HHS,* 101 F.3d 939, 945 (3d Cir.1996); *Robocast, Inc. v. Apple, Inc.*, No. 11-235 (RGA), 2014 WL 2622233 (D. Del. June 11, 2014), at *1; *Morrison v. Wells Fargo Bank, N.A.*, 711 F.Supp.2d 369, 384 (M.D. Pa. 2010). At argument on the motion for

Despite its statement that it did not intend to forfeit its claim for conversion, Chenault-Vaughan's failure to advance a substantive argument operates as a forfeiture.[106]

VI. Chenault-Vaughan's claim for reformation is moot (Count VI).

Count VI of the complaint sought reformation of the pool unit designation for Unit A. But in its opening summary judgment brief, Chenault-Vaughan acknowledged that this claim has been mooted by Centennial's filing of a corrected instrument.[107] The Court will accordingly grant summary judgment for Centennial, dismissing Count VI as moot.

VII. Summary judgment should be entered in favor of Centennial Development.

In addition to its claims against Centennial, the entity that was the operator under the joint operating agreements, Chenault-Vaughan also named Centennial Development, the parent of Centennial, as a defendant in this action. In its summary judgment papers, Chenault-Vaughan alleges that there is some evidence in the record suggesting that Centennial Development had some factual involvement in the

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summary judgment, counsel for Chenault-Vaughan noted that "we didn't argue [conversion] in our motion, but we don't forfeit it." Sept. 8, 2021 Hearing Tr. at 105. But as the cases cited in the prior sentence explain, a party that fails to present a claim to a court at summary judgment forfeits the claim.

[106] In fairness, this procedural default is likely of little consequence. As counsel for Chenault-Vaughan described at argument, the point of the count for conversion was to be able to assert a "legal" remedy in the event that Centennial argued that equitable relief was unavailable on account of the availability of a suitable legal remedy. Sept. 8, 2021 Hearing Tr. at 104-105. Because Chenault-Vaughan's claims fail for other reasons, however, the failure to press the claim for conversion does not appear to affect the availability of substantive relief.

[107] D.I. 68 at 2 n.4.

decision to stop paying its royalty. D.I. 68 at 28. But in the absence of a legal theory under which such factual involvement in the decision might be a source of liability, that is an insufficient basis to proceed against Centennial Development. The Court will accordingly grant summary judgment in favor of Centennial Development.

Conclusion

The foregoing analysis leaves open two loose ends. *First*, as noted, there is the question of whether Chenault-Vaughan may be entitled to the value of any production, in the period following the abandonment of the leases, to the extent the value of the production from any well may have exceeded the associated costs.

Second, MDC is named as a defendant. But, perhaps on account of having abandoned the leases in question, MDC did not seek summary judgment and Chenault-Vaughan has not sought summary judgment against MDC.

Because a court's judgment is not final and appealable unless and until it resolves all claims against all parties,[108] the Court believes it appropriate to determine whether these matters might be addressed (by agreement of the parties) such that the Court may enter a final judgment in this adversary proceeding. In the absence of an agreed (or otherwise appropriate) resolution of these issues, the Court would enter an interlocutory order resolving the issues addressed in this Memorandum Opinion and establish a procedure for addressing these remaining points. The Court will accordingly hold a status conference in this adversary

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[108] *Berckeley Investment Group, Ltd. v. Colkitt*, 259 F.3d 135, 140 (3d Cir. 2001).

proceeding on January 10, 2022 at 1:00 p.m. The parties are directed to meet-and-confer on these issues in advance of that status conference.

Dated: December 17, 2021

CRAIG T. GOLDBLATT
UNITED STATES BANKRUPTCY JUDGE