

PAMELA ELLIS, Individually and on Behalf of All Others Similarly Situated	§	IN THE DISTRICT COURT
	§	
	§	
v.	§	348 th JUDICIAL DISTRICT
	§	
GLENCREST RESOURCES, LLC and LEONARD EDWARD BRISCOE, JR., DORIS BRISCOE, and ROSANNA BRISCOE, AS HEIRS TO THE ESTATE OF LEONARD BRISCOE, SR.	§ § § § §	TARRANT COUNTY, TEXAS

ORDER GRANTING PLAINTIFF'S MOTION and REPLY AND
SUPPLEMENTAL MOTION FOR CLASS CERTIFICATION and
ORDER APPOINTING CLASS COUNSEL

On the 1st, 2nd and 5th days of August, 2011, came to be heard and considered Plaintiff's Motion and Reply and Supplemental Motion for Class Certification in the above-styled and numbered cause. Plaintiff's Motion and Reply and Supplemental Motion for Class Certification pursuant to Texas Rule of Civil Procedure 42(b)(3) is GRANTED.

A. Class Definition Pursuant to Tex. R. Civ. Pro. 42(b)(3) as Required by Tex. R. Civ. Pro. 42(c)(1)(B)

The class is defined as any person who, from January 1, 2006 through April 30, 2008, entered into an Oil, Gas and Mineral Lease with Glencrest Resources, LLC, and has not received a bonus payment. This class does not include those persons who:

1. Executed or signed top leases or competing leases with third-party companies/ individuals during the effective dates of the Oil, Gas and Mineral Lease in favor of Glencrest Resources, LLC;
2. Were actually paid the bonus payment of \$3,000.00 per acre, with a minimum of \$750.00, for the three-year primary term lease;

3. Executed an Amendment, Ratification, Reinstatement and Memorandum of Oil, Gas and Mineral Lease for a five-year primary term with a different bonus sometime after execution of the original three-year primary term lease; or
4. Had any title issues with the leased property which would have prevented the person from actually conveying its rights in the property subject to the Oil, Gas and Mineral Lease at the time of execution of the lease.

B. Class Claim

This is a breach of contract claim in which it is alleged by Plaintiff that Defendant Glencrest Resources, LLC offered landowners a bonus payment of \$3,000.00 per acre, with a minimum of \$750.00, in exchange for the execution of an Oil, Gas and Mineral Lease in favor of Glencrest Resources, LLC. Plaintiff alleged this was uniformly offered both orally at large group meetings of landowners as well as through written communication to the landowners. Plaintiff alleged that those persons who are members of the class accepted this offer by executing an Oil, Gas and Mineral Lease in favor of Glencrest Resources, LLC. It is Plaintiff's contention that Defendant Glencrest Resources, LLC did not pay the class members the bonus payment as promised for the class member's consideration of the executed lease and as such breached this contract.

Plaintiff alleged that the class has sufficient members and meets all other elements for class certification on this breach of contract claim.

C. Elements of the Class Claims

The elements of the class claim are:

1. Was there an offer by Defendant Glencrest Resources, LLC to pay landowners a bonus payment of \$3,000.00 per acre, with a minimum of \$750.00, in exchange for

consideration of execution of an Oil, Gas and Mineral Lease in favor of Glencrest Resources, LLC?;

2. Did the landowner accept this offer?;
3. Did Glencrest Resources, LLC receive the consideration of an executed Oil, Gas and Mineral Lease called for in the offer?;
4. Did Defendant Glencrest Resources, LLC breach the contract by not paying the promised bonus payment?; and
5. Did the landowner suffer damages as a result of this breach?

D. Defendant's Defenses

Defendant Glencrest Resources, LLC argued that Plaintiff could not meet the element of commonality for class certification alleged that the claims and losses suffered by the class members were not substantially the same.

In addition, Defendant Glencrest Resources, LLC argued that Plaintiff could not meet the element of typicality for class certification because class certification would confuse the issues and interfere with Defendant's ability to present any defense that it may have against any particular landowner.

Defendant also argued that there are questions of law or fact that are not common or typical to the class members and that the questions of law or fact common to the class members did not predominate over any questions affecting individual potential class members.

Defendant argued that class certification is not a superior method of adjudication of this matter. Defendant argued that it intends to raise defenses against the named Plaintiff and other class members that make class certification improper for this case.

Defendant identified specific defenses in its pleadings regarding Plaintiff's alleged breach of contract which included generally:

1. Title issues prevented certain landowner's ability to convey the property identified in the Oil, Gas and Mineral lease;
2. The lease terms provided landowners with the only remedies available to them;
3. Defendant was excused from performance;
4. Landowners refused to accept performance when it was offered by Defendant; and
5. The communications with landowners, including the terms of the bonus, were not uniformly made to all potential class members.

E. Elements of Defendant's Defenses

Defendant Glencrest Resources, LLC argued that there are potential class members who did not own clear title to their property and therefore could not convey the mineral interests to Glencrest Resources, LLC. The elements of this defense include identification of those landowners who had a clouded title at the time of the execution of the Oil, Gas and Mineral Lease and what type of cloud existed on the title to the property.

Next, Defendant Glencrest Resources, LLC argued that multiple remedies were available to each landowner under the lease. Defendant argued that Plaintiff could not elect a remedy for all class members because under the lease terms the landowners have several available remedies, such as delay rentals or shut-in royalties. Defendant argued that the lease itself contained the remedies for non-performance by a party and the class members have not shown performance of the conditions precedent to filing a lawsuit on a breach of contract claim regarding the lease terms. The elements of this defense include identification of the remedies available, such as shut-in royalties and delay rentals, identification of those landowners who did not receive any of

these remedies, identification of those landowners who did or did not perform the conditions precedent to filing a lawsuit against Glencrest Resources, LLC and identification of those landowners who would choose a different remedy than requested in this class action.

The third defense raised by Defendant was that it was excused from performance of the contract. Defendant Glencrest Resources, LLC argued that it was excused from performance under the lease terms because landowners signed competing and/or top leases with other companies or individuals. The elements of this defense include identifying each class member who signed a competing lease during the original term of the Oil, Gas and Mineral Lease and when the competing lease was executed.

Defendant has also argued that title issues with certain landowner's property excused it from performance of the contract. The elements of this defense include identifying the title issue, which lease it relates to and that proof of the title issue existed at the time of execution of the original Oil, Gas and Mineral lease.

Defendant also argued that landowners had engaged in activities which prevented Defendant from drilling on the property when it determined it was an appropriate time to begin drilling operations. The elements of this defense include identifying the activity engaged in by the landowners which prevented performance, that this activity was taken prior to the time Defendant attempted to begin drilling operations for the property, that this activity was in effect at the time Defendant attempted to begin drilling operations for the property, that Defendant still had the right to drill on the property and what attempts were made to advise the landowner of the issue so that it could be rectified.

Defendant next argued landowners refused to accept performance by Glencrest Resources, LLC of the contract. The elements of this defense include an offer of performance on the original contract, how it was offered, when it was offered and the refusal of the offer.

Finally, Defendant argued that the lease agreements were executed at different times and under different prevailing circumstances. The elements of this defense include showing that a different offer was made to landowners at different times and that landowners had different understandings of the offer by Defendant Glencrest Resources, LLC regarding the bonus payment.

F. Plaintiff's Responses to Defendant's Defenses

Plaintiff responded to the defenses raised by Defendant as follows:

1. The offer of the bonus payment was made in uniformly identical terms at all group meetings and through written communication to the landowners, so there were not different prevailing circumstances at the time of execution of any of the Oil, Gas and Mineral leases;
2. The defenses asserted by Defendant relating to specific terms of the lease itself are inapplicable to this breach of contract claim that is based solely on the promise to pay a bonus. The offer was for a bonus payment in exchange for the execution of the lease in favor of Defendant. The contract was complete upon execution of the Oil, Gas and Mineral Lease by the landowner. The other terms of the lease do not apply to this breach of contract claim;
3. Glencrest Resources, LLC's defense that landowners executed top leases or competing leases has already been affirmatively addressed by Plaintiff in the class definition. These lessors have been excluded from the class as stated in the class

definition. If additional landowners who executed a top or competing lease are identified, they would by definition not be included in the class;

4. Defendant's claim that Glencrest Resources, LLC offered performance to the landowners which was refused is based on offers by Defendant with different terms than those contained in the original offer that is the basis for this suit. Defendant's attempted performance was an offer to pay landowners a different bonus payment only if they executed an Amendment, Ratification, Reinstatement and Memorandum of Oil, Gas and Mineral Lease extending the lease term to five years. The landowners were not advised at the time of execution of the three year term lease that this amendment extending the lease term to five years would be required for the landowners to receive their bonus payment and was part of the contract on which this suit is based; and
5. Plaintiff has agreed that any landowner who could not convey clear title at the time of the landowner's execution of the lease and acceptance of Defendant's offer should not be included in the class. These individuals are excluded from the class by definition. Any landowner who subsequently had a title issue develop is not excluded from the class if their title was clear at the time of execution of the original lease.

G. Issues of Law or Fact Common to the Class Members

Plaintiff alleged facts that give rise to common questions of both fact and law that are central to this claim. These included whether the failure to pay the promised bonus of \$3,000.00 per acre, with a minimum of \$750.00, after acceptance of the offer by the class member and consideration made by executing an Oil, Gas and Mineral Lease in favor of Glencrest Resources, LLC is a breach of contract and whether the landowners were harmed by this breach.

H. Any Issues of Law or Fact Affecting Only Individual Class Members

No issues of law or fact that would affect only individual class members exist due to the exclusions in the class definition of class members with individualized issues.

I. Issues that Will be the Object of Most of the Efforts of the Litigants and the Court

The issue that will be the object of most of the efforts of the litigants and the court will be the determination of the breach of contract claim.

J. Other Available Methods of Adjudication that Exist for the Controversy

The only other available method for adjudication of this matter is multiple individual lawsuits filed by each landowner who executed an Oil, Gas and Mineral Lease in favor of Glencrest Resources, LLC who did not receive a bonus payment as promised. Based upon available information regarding the number of class members, this would be approximately 700 individual claims.

K. Why the Issues Common to the Members of the Class Do or Do Not Predominate over Individual Issues

The issues common to all class members would predominate over issues affecting only individual class members in this matter. All of the issues as to the breach of contract claim are common to the class and subject to classwide proof.

Whether the offer was made by Defendant Glencrest Resources, LLC uniformly to all class members; the class members' acceptance by signing identical leases as called for in the offer as consideration; consideration; and the alleged lack of payment are common to all of the class members. The leases signed were all the same with respect to the terms and language, the only difference being the lessors' names and signatures and the property described. Breach of Defendant's obligation to pay the bonus was identical for all class members, none of whom were paid. The facts relevant to the breach of contract claim are the same, and the resolution of these

issues would settle the entire litigation for all class members, leaving only the determination of each class member's damages.

Damages are uniform as to all class members. The damages for each class member are susceptible to a unitary class trial. Since the contracted-for bonus for every lease was \$3,000.00 per acre, with a minimum of \$750.00, it will only require a simple mathematical calculation to multiply the number of acres owned by each class member by \$3,000.00. The bonus would be the higher of this value or \$750.00. Plaintiff believes that the acreage owned by each class member is known by or available to the Defendant, as this would have been central to its entry into the lease. In any event, the acreage is available in public records which, if necessary, could be compiled.

The contract can be proven for each class member by the entry into evidence of all of the leases, the brochure that was provided to class members that described the bonus and by testimony of the terms offered at the group meetings of area landowners. Defendant has previously unequivocally stated that it entered into such leases. The breach of contract can be proven for each class member by introducing into evidence the records of the Defendant showing that no payments of bonuses have been made to class members.

There are no individual issues relating to the class which would predominate over common issues.

L. Why a Class Action Is or Is Not Superior to Other Available Methods for the Fair and Efficient Adjudication of the Controversy

The adjudication of this claim as a class action is superior to other available methods. Concentration of the litigation in a single forum is highly desirable. The necessity for individual suits by each of the class members in which the same evidence as to the conduct of Defendant

Glencrest Resources, LLC is presented would be wasteful of both litigant and judicial resources and poses the risk of inconsistent judgments in like cases.

M. How the Class Claims and Any Issues Affecting Only Individual Members Raised by the Claims or Defenses Asserted in the Pleadings, Will be Tried in a Manageable, Time Efficient Manner

This suit can be adequately managed as a class action by this court. As has been described, the predominant common issues can be tried in a common trial and are susceptible to classwide proof.

This is not a case where resolution of the key legal issues will depend on individualized determinations for each class member because the claims are based on Defendant's uniform failure to pay each class member the identical bonus as consideration for execution of identical leases. The contractual amount of the bonus to be paid was the same as to every lease executed.

This matter can be resolved in a unitary proceeding. This case can be handled in a three step process as defined by Plaintiff's trial plan. Plaintiff anticipates that she will file a summary judgment motion on the breach of contract claim as it is identified above. Plaintiff believes that the breach of contract question can be appropriately adjudicated on a summary judgment motion. Plaintiff anticipates that if this motion is granted by the Court, a simple ministerial determination of the damages for each class member could be undertaken and then a claims process initiated and completed.

If the court were to deny Plaintiff's motion for summary judgment, a classwide trial could still resolve all matters regarding the breach of contract claim. The jury would have sufficient evidence introduced on a classwide basis to determine if Defendant offered landowners a bonus payment in exchange for the execution of an oil, gas and mineral lease, whether the landowner accepted Defendant's offer, whether there was consideration and whether or not the

landowners were paid a bonus payment. The jury would also be able to easily determine the bonus payment due to each landowner in the class through evidence of property size and the offered bonus of \$3,000.00 an acre, with a minimum of \$750.00. This classwide trial would proceed in three phases:

1. Determination of the existence of the contract and whether it was breached by Defendant;
2. Defenses presented by Defendant to individual class members, if any; and
3. Damages:
 - a. Determination of bonus payment due to each class member; and
 - b. Determination of attorney's fees.

The final step to the resolution of this matter would be a claims process for those eligible class members. Notice would be sent to each landowner who can be identified through reasonable efforts via individual letters, publication in the *Fort Worth Star Telegram*, a website and an 800 toll free number. The notice would concisely and clearly state the nature of the action, the definition of the class certified, the class claims, issues or defenses, that the class member may enter an appearance through counsel if the member so desires, that the court will exclude from the class any member who requests exclusion, when and how members may elect to be excluded, and the binding effect of the class judgment on class members. This notice will be sent to all landowners who meet the class definition.

N. Adequacy of Representation

This class action meets the adequacy of representation requirement of Rule 42(a)(4). There is no conflict or antagonism between the interests of the named plaintiff, Pamela Ellis, and the other class members. The class representative, Pamela Ellis, has been actively involved in the

conduct of this case and appears to be strongly motivated to serve as class representative. The competence and conscientiousness of the class representative's counsel, John David Hart and the Law Offices of John David Hart, in vigorously prosecuting the claims of the class members is sufficient to meet this requirement. The reputation and credentials of the class representative's counsel are of high quality, and his experience in complex litigation is extensive and varied, fully qualifying him to represent the class in this suit. The class representative's counsel has adequate financial resources to pursue this case in the interests of the class.

O. Appointment of Class Counsel Pursuant to Rule 42(g)

John David Hart and his firm, The Law Offices of John David Hart, are appointed class counsel. It has been shown that the requirements of Rule 42(g)(1)(B) and (C) are met. Mr. Hart has indicated that he can and will fairly and adequately represent the interests of the class, and no evidence has been presented to the contrary. In addition, Mr. Hart has investigated and identified potential claims in this matter, has extensive experience in complex litigation and mass tort litigation, and is willing to commit the appropriate and necessary resources in representing the class.

For the reasons stated above, Plaintiff's Motion and Reply and Supplemental Motion for Class Certification are GRANTED.

The class certified is defined as any person who, from January 1, 2006 through April 30, 2008, entered into an Oil, Gas and Mineral Lease with Glencrest Resources, LLC, and has not received a bonus payment. This class does not include those persons who:

1. Executed or signed top leases or competing leases with third-party companies/ individuals during the effective dates of the Oil, Gas and Mineral Lease in favor of Glencrest Resources, LLC;
2. Were actually paid the bonus payment of \$3,000.00 per acre, with a minimum of \$750.00, for the three-year primary term lease;
3. Executed an Amendment, Ratification, Reinstatement and Memorandum of Oil, Gas and Mineral Lease for a five-year primary term with a different bonus sometime after execution of the original three-year primary term lease; or
4. Had any title issues with the leased property which would have prevented the person from actually conveying its rights in the property subject to the Oil, Gas and Mineral Lease at the time of execution of the lease.

Plaintiff Pamela Ellis is named as class representative. John David Hart and his firm, The Law Offices of John David Hart, are appointed class counsel.

The parties are to meet and confer with regard to a scheduling order regarding the classwide trial, which includes deadlines for dispositive motions and discovery, within fourteen days of the date of this Order.

SIGNED, ORDERED AND ENTERED this the 24th day of January,
2012. ^(Ser)

Dana M. Homack
PRESIDING JUDGE