COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF PROPERTY

OGDENSBURG GUN CLUB, a Pennsylvania nonprofit corporation, Plaintiff	:	Docket No. BP-03-0002
vs.	:	
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, Defendant	:	

MEMORANDUM AND ORDER

This is an action to determine the validity of a claim to mineral rights asserted to have resulted from a 1966 Deed from the Commonwealth to the Plaintiffs in a land exchange in Tioga County. Presently before the Board of Property ("Board") are cross motions for summary judgment.

PROCEDURAL HISTORY

Plaintiff Ogdensburg Gun Club ("Gun Club") initiated this action by a Petition for Review in the Nature of a Complaint in Equity in the Commonwealth Court of Pennsylvania on February 7, 2003. It asked that the Court order the Defendant, Department of Conservation and Natural Resources ("DCNR"), to convey to the Gun Club mineral rights to land which the Commonwealth conveyed to the Gun Club in a 1966 land exchange.

On February 26, 2003, the Commonwealth filed preliminary objections asserting, *inter alia*, that subject matter jurisdiction over the complaint was within the exclusive jurisdiction of the Board of Property under Section 1207 of the Administrative Code of 1929, Act of April 9,

1929, P.L. 177, *as amended*, 71 P. S. § 337. On March 11, 2003, the Court entered an order sustaining the preliminary objection as to jurisdiction and ordering the matter, including the remaining preliminary objections, transferred to the Board.

DCNR requested that the Board rule on the two preliminary objections on which the Court did not rule.[1] Following the filing of supporting briefs by the parties, the Board entered a Memorandum and Order on January 28, 2004 overruling the preliminary objections and directing that DCNR file an answer.

On March 3, 2004, DCNR filed an Answer and New Matter in which DCNR raised affirmative defenses of the statute of limitations under 42 Pa. C. S. § 5530 and laches.

Board counsel convened a prehearing conference on March 3, 2004 in accordance with 1 Pa. Code §§ 35.111, 35.112. At the conference, counsel for the parties indicated that each wished to file summary judgment motions prior to hearing; a filing and briefing schedule was set.[2] The parties filed the instant cross motions for summary judgment on May 14, and 17, 2004. Responses to the motions, supporting briefs and reply briefs were filed and briefing closed on September 10, 2004. The motions are presently before the Board for disposition.

FACTS

Gun Club is a Pennsylvania non-profit corporation with an office in Wellsboro, Tioga County, Pennsylvania. (Complaint ¶ 1) DCNR is an administrative department of the Commonwealth of Pennsylvania under the Section 301 of the Act of June 28, 1995, P.L. 89, 71

[1] The preliminary objections asserted that the Gun Club's claim was barred by sovereign immunity and the applicable statute of limitations at 42 Pa. C.S. § 5530.

[2] The Gun Club was also granted leave to file a motion to amend its complaint. On April 4, 2004, the Gun Club filed its motion to amend the complaint seeking to style the complaint as an action in equity and seeking declaratory relief primarily for the purpose of raising the claim of estoppel by deed. On September 9, 2004, the Board granted the motion.

P.S. § 1340.301, and a successor in interest to the Department of Forest and Waters. As pertinent to this matter, Gun Club and the Commonwealth owned various parcels of land in Tioga County, Pennsylvania from 1954 to the present action.

The Commonwealth acquired the land it exchanged in this case in 1954 from Blossburg Coal Company (Blossburg). By Deed dated November 10, 1954, Blossburg, for a stated consideration of $148, 407.85 conveyed 10 parcels of land in Tioga County to the Commonwealth. Two of the parcels located in Union Township, Tioga County, contained the 237 acres at issue in this case. In its deed, Blossburg reserved to itself, its successors and assigns, all coal, natural gas, oil petroleum and other minerals together with the right of mining and removing the same and to drill wells, lay pipes and erect structures on the surface. The Deed was recorded in Tioga County Deed Book Vol. 272 page 284.

On October 28, 1965, the Pennsylvania Forest Commission approved a land exchange between the Gun Club and the Department of Forest and Waters. (Complaint ¶ 3) The parties consummated the land exchange by deeds dated August 25, 1966. (Complaint Exhibits B and C) The deeds were recorded on the same date, August 25, 1966, at Tioga County Deed Book Vol. 326, at pages 178 and 173, respectively. (*Id.*)

The deed from the Commonwealth, acting by and through the Department of Forests and Waters, recited as consideration the conveyance of 237 acres of State Forest Land in Union Township, Tioga County to the Gun Club in exchange for the 291 acres of Gun Club land in Liberty and Hamilton and Union townships in Tioga County. (Complaint Exhibit B)[3]

[3] The deed from the Gun Club to the Commonwealth does not reference the recording of the deed to the Gun Club. The deed from the Commonwealth has no warranty language; the deed from the Gun Club does. The Gun Club in its brief states that both deeds were prepared by the Commonwealth (Brief at 5). However, no evidence supports this assertion.

The deed from the Commonwealth describes the conveyance as follows:

> Being all those two (2) certain parcels of land described in Parcels Number 5 and Number 6 in a deed of conveyance from the Blossburg Coal Company to the Commonwealth of Pennsylvania by their deed dated November 10, 1954, and recorded in the office of Record of Deeds in and for Tioga County in Deed Book Volume 272 page 284.
>
> Together with all and singular the tenements, hereditaments and appurtenances to the same belonging to or in anywise appertaining and reversion and reversions, remainder and remainders, rents, issues and profits thereof; AND ALSO all the estate, right, title interest property claim and demand whatsoever, both in law and equity of the said Grantor, of, in to or out of the said premises, and every part and\ parcel thereof.[4]

(Complaint ¶ 6 & 7)

On April 15, 1981, Northwestern Mining and Exchange Company of Erie Pennsylvania by quitclaim deed conveyed to DCNR for stated consideration of $98, 515.89 "all of the natural gas, oil, petroleum and rights thereto" in the eleven (11) parcels of land which the Commonwealth acquired from Blossburg Coal Company in 1954. (Exhibit D, DCNR Motion for Summary Judgment) The deed was recorded in Tioga County Deed Book 405 at page 658-79. (Complaint ¶'s 9, 10) On December 28, 1984, Robert M. Jones and Raymond T. Brague, t/d/b/a Jones and Brague Mining Company, by deed conveyed "the coal, sand, gravel and other similar minerals" to DCNR for a consideration of $1.00. The deed recorded in Tioga County Deed Book 465 at page 544. (Exhibit E, DCNR Motion for Summary Judgment)[5]

In support of its motion, Gun Club has filed an Affidavit executed by Theodore Schmeltzle and William Hart. The Affidavit avers that they are presently, and were at the time of the land exchange, members of the Gun Club. Attached to the Affidavit was a letter dated

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[4] Identical language appears in the conveyance from the Commonwealth to Gun Club.

[5] A corrective deed was recorded on August 14, 1987 which added the wives of Jones and Brague. (Exhibit F,

November 18, 1965 from the Department of Forest and Waters to Maynard Schmeltzle informing Mr. Schmeltzle that "the land exchange proposal submitted by [Gun] Club has been approved." The letter states:

> This is to advise you that the land exchange proposal submitted by your Club has been approved by the State Forest Commission and the Governor....
>
> In order that the Department may now undertake the mechanics of the actual transfer of these lands, kindly complete in duplicate the tract ownership data forms and ...return them....If you have additional information pertaining to the lands you will be conveying to the Commonwealth enclose same, i.e. maps, abstracts of title, old deeds, etc.
>
> After the above information is supplied the Department will undertake the required title searches, surveys, etc, required to complete this transaction.

Schmeltzle and Hart state in their Affidavit that the "Gun Club's intention and expectation was that it would receive from the Commonwealth fee simple title to the Commonwealth property" and that based on the Department's letter the Gun Club believed that the Commonwealth would perform title searches on both properties.

DISPOSITION

In a motion for summary judgment, the moving party must show that no material issue of fact exists and that it is entitled to judgment as a matter of law. *Santoro v. City of Philadelphia,* 429 A. 2d 113 (Pa. Cmwlth. 1981). In considering the motion, the Board must examine the whole record, including pleadings, any depositions, answers to interrogatories, admissions of record and any affidavits. *United Health Care Benefits Trust v. Insurance Commissioner*, 620 A.2d 81 (Pa. Cmwlth. 1993).

In *Rauch v. Mike-Mayer*, 783 A.2d 815, 821 (Pa. Super. 2001), the Court summarized the standard for deciding summary judgment as follows:

> Pennsylvania law provides that summary judgment may be granted only in those cases in which the record clearly shows that no genuine issues of material fact exist, and that the moving party is entitled to judgment as a matter of law. . . . The moving party has the burden of proving that no genuine issues of material fact exist. . . . In determining whether to grant summary judgment, the trial court must view the record in the light most favorable to the non-moving party and must resolve all doubts as to the existence of a genuine issue of material fact against the moving party. . . . Thus, summary judgment is proper only when the uncontroverted allegations in the pleadings, depositions, answers to interrogatories, admissions of record, and submitted affidavits demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. . . . In sum, only when the facts are so clear that reasonable minds cannot differ, may a trial court properly enter summary judgment. . . .

The threshold issue in this case is the construction of a deed. Our Supreme Court has instructed that the language of a deed should be considered in its entirety, giving effect to terms and provisions and construing the language in light of the conditions existing at the time of its execution. *United States Steel Corp. v. Hoge,* 503 Pa. 140, 148-49, 468 A. 2d 1380, 1384 (1983) (citations omitted.). Further, only when the language is ambiguous may parole evidence be considered.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

As pertinent to its motion, Complaint alleges that in the course of negotiations preceding the approval for the exchange, there was no mention or indication by the Commonwealth that it did not own title to the minerals under the land it would convey to the Gun Club. (Complaint ¶ 4)

It further alleges that sometime after April 15, 1981, the Gun Club learned that the Commonwealth did not own the minerals when it deeded the land to the Club. (Complaint ¶ 10) The Gun Club also alleges that at the time of the land exchange Commonwealth officials knew

that the Commonwealth did not own the minerals and misled, misinformed and defrauded the Gun Club. (Complaint ¶ 11) In the alternative, the Gun Club alleges that the failure to convey the minerals was a mutual mistake. (Complaint ¶ 12)

Estoppel by Deed

Under the Doctrine of Estoppel by Deed a grantor will be estopped in an action by his grantee of asserting that he did not own property the deed purports to convey if he later acquires the property. Under this theory, the Gun Club argues the fact that the Commonwealth did not own the minerals on August 25, 1966, the date of the deed, is immaterial. It contends that under the doctrine of "estoppel by deed" the Commonwealth is estopped from denying its ownership of the mineral rights as against the Gun Club which it later acquired in 1981 and 1984. In response, the Commonwealth argues that it could not convey the mineral estate to the Gun Club when it did not own the estate on August 25, 1966.

The Gun Club contends that under rules of construction of the Act of April 1, 1909, P.L. 91, *as amended*, 21 P.S. § 1 et seq., the language of the deed from the Commonwealth purports to convey fee simple title to both the surface and subsurface of the land, including the oil, gas and minerals. It asserts that the fact that the Commonwealth did not then own the oil, gas and mineral estates and did not reference the reservation of its grantor, either resulted from a mistake of the Commonwealth that it owned the minerals or from "active fraud" on the part of the Commonwealth that it did in order to induce the Gun Club to make the land exchange.

The first issue presented by the Gun Club's motion is the legal sufficiency of its contention that the words "grant and convey" in the Commonwealth's deed resulted in an express

covenant that it owned and therefore conveyed by its deed a "fee simple" interest in the minerals. The Gun Club relies on Sections 2, 3, and 4 of the 1909 Act, 21 P.S. §§ 2,3,4.

The Act of April 1, 1909 sets forth the requirements of agreements and the construction of language in agreements relating to real property including deeds. Section 2 of the Act, 21 P.S. § 2, provides that after the effective date of the act the words 'grant and convey' operate to pass to the grantee(s) fee simple title to the premises conveyed if the grantor(s) possessed such title, even though no words of inheritance are used. Prior to 1909 no fee simple title could be conveyed without words of inheritance. *See Calhoun v. Harp*, 155 Pa. Super. 519, 39 A.2d 307 (1944). Section 3 provides that unless an exception or reservation is made the grant is to be construed to include all the estates in and interest of the grantor(s) of "any nature whatsoever".

Contrary to the Gun Club's assertion, the rules of construction in the 1909 Act do not result in the conclusion that the Commonwealth's deed purports to convey the mineral estate. The term "fee simple" is used to describe an estate with rights of inheritance without any condition or limitation on that right. *See Black's Law Dictionary* 614-15 (Sixth Ed. 1990). Pennsylvania recognizes the creation of fee simple estates in minerals severed from the surface. *Smith v. Glen Alden Coal Co.*, 347 Pa. 290, 304, 32 A. 2d 227, 234-35 (1941). As such, the owner of the surface and the owner of the gas, oil and minerals had the right to convey a "fee simple" estate in the interests held by each.

Thus under Section 2, 21 P.S. § 2, the Commonwealth conveyed all of its estate in the land that the Commonwealth then held title to and by Section 4 the Commonwealth warranted that conveyance of all that it held, except for that expressly reserved to itself. The

Commonwealth then, i.e. on August 25, 1966, held title to the surface. It could not warrant, any more than it could convey, the gas, oil and minerals reserved by Blossburg.

The Gun Club relies on *Wood v. Evanitsky*, 168 Pa. Super. 484, 79 A.2d 213 (1951), for the proposition that by failing to include the reservation the Commonwealth impliedly warranted that fee simple title was being conveyed. It then asserts that the deed constituted a mutual mistake that the Commonwealth was unaware that it did not own the minerals or an active fraud, as shown by the Affidavit of the Gun Club. In *Wood*, the Superior Court held that the words "grant and convey" in a short form deed import a covenant that the premises conveyed are free from encumbrances. However, *Wood* does not hold that a grantor may convey an estate which the grantee does not own.

The Club relies on *Daly v. Hornbaker,* 325 Pa. Super. 172, 472 A.2d 704 (1984). There, appellants were administrators of the estates of Melvin and Mary Jane Hornbaker, husband and wife. On February 20, 1981 Mary Jane executed a deed and forged the signature of Melvin purporting to convey, as tenants by the entireties, 73 acres of real property to her grandson and his wife. Melvin died the next day. Mary Jane died 14 days later. Their administrators sought to have the deed to grandson and his wife declared null and void and the property conveyed back to the estate of Mary Jane. The Court held that although an estate by the entireties is incapable of dissolution by one of the owners without the consent of the other, the doctrine of estoppel by deed would have barred Mary Jane from asserting the forgery against her grantees; therefore, the doctrine similarly barred her administrators from doing so as her successor in interest. The Court also noted that the doctrine of estoppel by deed applies whether the party assuming to convey title acted under an honest mistake or committed fraud. *Id.* at 177, 472 at 706.

The principle of the doctrine of estoppel by deed is that if an actor causes another to believe in the existence of certain facts and induces another to rely on them, he will thereafter be barred from asserting the contrary as against the person or his predecessor who relied on his assertions. As applied to this case estoppel by deed prevents a grantor from denying the validity of the deed as to property the grantor later acquires. *Jordan v. Chambers*, 226 Pa. 573, 75 A. 956 (1910).

Whether a mistake in the language of a deed may be corrected by reformation depends on whether the mistake was unilateral or mutual.

> Mutual mistake will afford a basis for reforming a contract. Mutual mistake exists, however, only where "both parties to a contract [are] mistaken as to existing facts ***at the time of execution***." Moreover, to obtain reformation of a contract because of mutual mistake, the moving party is required to show the existence of the mutual mistake by evidence that is clear, precise and convincing.

Vonada v. Long, 852 A.2d 331 (Pa. Super. 2004). (Citations omitted. Emphasis added.)

> If a mistake is not mutual but unilateral and is not due to the fault of the party not mistaken, but to the negligence of the one who acted under the mistake, it affords no basis for relief in rescinding the contract[.]

Smith v. Thomas Jefferson University Hospital, 424 Pa. Super. 41, 621 A.2d 1030, 1032 (1993).

In this case, the Gun Club has failed to show the mutuality of the asserted mistake by evidence that is "clear, precise and convincing." Nothing in the record, including the Affidavit intimates, much less demonstrates by a clear and convincing standard, that the Commonwealth in 1966 was mistaken as to the contents of the deed conveying the land to it in 1954. At most the

Affidavit establishes that Schmeltzle and Hart ***thought*** the Commonwealth owned and would convey in the exchange the mineral estate under the land subject to the swap.

For these reasons, the Board finds that the doctrine of estoppel by deed has no applicability to the facts in this case.

Fraud

The Gun Club's Brief states that in this action, "citizens of the Commonwealth are asking the State Board of Property to correct a wrong perpetrated by the Commonwealth in 1966." (Brief at 6)

The Gun Club argues that it is entitled to summary judgment because the undisputed facts show that the Commonwealth perpetrated a fraud upon the Gun Club. It asserts that the Commonwealth must be charged with the knowledge that it did not own the minerals at the time of the land exchange. It contends the Commonwealth had an affirmative duty to disclose that it did not own the minerals and did not do so.

The Gun Club relies of *Skurnowicz v. Lucci,* 798 A.2d 788 (Pa. Super. 2002). In that case, plaintiff homeowners brought an action for fraudulent misrepresentation and for violation of the Unfair Trade Practices and Consumer Protection Law. Citing *Bortz v. Noon,* 556 Pa. 489, 729 A.2d 555, 560 (1999), the Court noted that to maintain a cause of action for fraudulent misrepresentation a plaintiff must demonstrate by "clear and convincing evidence":

> (1) a representation;
> (2) which is material to the transaction at hand;
> (3) made falsely, with the knowledge of its falsity or recklessness as to whether it is true or false;
> (4) with the intent of misleading another into relying on it;
> (5) justifiable reliance on the misrepresentation; and
> (6) the resulting injury was proximately caused by the reliance.
> (Citations omitted.)

Thus, the Gun Club's motion ultimately rests on the affidavit of Schmelzle and Hart. The Affidavit in turn relies on a statement in the November 18, 1965 letter of John C. Rex,[6] Chief of the Division of Land Acquisition of the Department of Forest and Waters to the Gun Club's Maynard Schmelzle informing Maynard Schmelzle that the land exchange had been approved by the State Forest Commission and the Governor[7]. Schmelzle and Hart assert that the Gun Club relied on the fact that Rex represented that once the Club supplied ownership data, "the Department would undertake the required title searches, surveys, etc. required to complete this transaction." In particular, the Club contends that by the use of the plural searches the Commonwealth misled the Club into believing that it would perform a title search of its own land as well as the Gun Club's.

In the Affidavit, Schmelzle and Hart state "at the time of the exchange, it was the intention of the Gun Club to convey to the Commonwealth fee simple title to the Gun Club Property and it was likewise the Gun Club's intention and expectation that it would receive from the Commonwealth fee simple title to the Commonwealth Property." The Affidavit then states that the Club approved the sale at a meeting in September 1965.[8]

The Affidavit, however, does not state that conveyance of the gas, oil and mineral rights in addition to the land were material to its agreement to exchange lands, much less that the Commonwealth knew that the Gun Club's intended to convey its land in which the mineral estate was not severed unless the Commonwealth could convey the identical estates. The Gun Club's assertion regarding its knowledge of the property is puzzling inasmuch as the Commonwealth's

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[6] The letter is signed by A.R. Fine, Land Survey Engineer.

7 In this instance, William Scranton.

8 The Affidavit does not explain the significance of this event. In any case it does not assert that minutes or any other contemporaneous document supports its assertion of the intent of the parties.

letter attached to its Affidavit states that it was the Gun Club, rather than the Commonwealth, who proposed the exchange. Further, the only contemporaneous evidence regarding any condition on the exchange are the minutes of the State Forest Commission of October 28, 1965 in which the Commission made the exchange contingent upon the ability Club to furnish good and marketable title free and clear of liens. (Complaint, Exhibit A) Plainly, the condition does not relate to mineral estates, interests or reservations running with the land. Thus, evidence of materiality, which the Court found in *Skurnowicz,* is not present here.

The Board finds the more analogous case is *Blumenstock v. Gibson*, 811 A.2d 1029 (Pa. Super. 2002), upon which the Commonwealth relies. In that case, the purchasers of residential property alleged fraud because they were told sump pumps were precautionary, when in fact the pumps functioned from time to time. Buyers asserted they would not have bought the property had they been informed that the pumps were needed to correct a "water problem" in the basement. In affirming the trial court's summary judgment for the sellers, the Court held buyers had failed to establish justifiable reliance on the alleged misrepresentation. To the contrary, the Court observed that the buyers relied on their own assumption rather than a fraud by the sellers. Therefore no justifiable reliance was established.

Here, as in *Blumenstock,* the evidence shows that the Gun Club assumed the swap of lands included minerals because the land they were exchanging included mineral rights and because the Commonwealth did not tell them that mineral rights were not included in the land the Commonwealth was exchanging. Nonetheless, the Gun Club contends that the Commonwealth had a duty to do so when it represented to the Gun Club that it would take the necessary actions to consummate the exchange. It asserts that by use of the plural "title searches"

in its letter the Commonwealth represented that it would search its own title as well as the Gun Club's title to determine the existence of any encumbrances. The use of the plural "searches" is the sole evidence that the Commonwealth intended to defraud the Gun Club by inducing it not to conduct its own search of the Commonwealth's title. To find intent to defraud on such a thin reed would render the meaning of the evidentiary standard for fraud—clear and convincing—meaningless.

The essence of fraud is intent by the perpetrator to deceive and to induce another to act on that deception. Unsupported allegations and conclusory accusations cannot create genuine issues of material fact as to the existence of fraud. The mere statement of Gun Club members that it was their belief and intent that the Commonwealth would convey both the surface and mineral estates is insufficient to establish that the conveyance of the mineral estates was material to the transaction. Since materiality is necessary to prove the elements of fraud, the Gun Club is not entitled to summary judgment. *Gruenwald v. Advanced Computer Applications, Inc.*, 730 A.2d 1004, 1014 (Pa. Super. 1999).

For the foregoing reasons, Gun Club's motion for summary judgment is denied.

DCNR's MOTION FOR SUMMARY JUDGMENT

DCNR contends that the Gun Club had a duty to perform a title search on the land it was acquiring in the exchange prior to the execution of the deeds and that it should be deemed to have constructive notice of the 1953 recorded deed from its grantor, Blossburg Coal Company, which reserved the oil, gas and mineral rights.

In its Complaint and Answer to New Matter, the Gun Club concedes that it did not perform a title search before the execution of the deeds exchanging the land. DCNR contends

that the Gun Club had an affirmative duty to perform a title search on the land prior to the exchange of deeds with the Commonwealth.

The exact nature of the Commonwealth's interest in the land it deeded to the Gun Club in 1966 was apparent in the Commonwealth's chain of title. The Gun Club concedes that the deed from Blossburg Coal to the Commonwealth was recorded. It does not contend that the recording was in any way defective with regard to the notice it gave to prospective purchasers of the Commonwealth that the Commonwealth did not own the minerals reserved and enumerated in the deed.

The effect of recording a deed or other document generally constitutes notice to prospective purchasers of the interest the seller purports to convey. *Southall v. Humbert*, 454 Pa. Super. 360, 685 A.2d 685 (1966).

In *First Citizens National Bank v. Sherwood*, 817 A.2d 501 (Pa. Super.2003) the bank acquired title to real property by sheriff's deed. Prior to acquiring the property the bank searched the index. The search did not reveal an existing mortgage which had been properly recorded because it was indexed under a wrong name. Thus, the issue in that case was whether a purchaser has constructive notice of the existence of a mortgage or other interest in property which is properly recorded, but defectively indexed. The Court held that if the fact finder concludes that a diligent search would have revealed the existence of an encumbrance then the result of that search shall constitute notice.

In *Southall*, property owners sought a declaration that the defendant owners did not have an easement for water lines across their property. The parties owned adjacent land acquired from predecessors in title from Smith, a common grantor. Smith's deed to the parties' prior owners

reserved to Smith, his heirs and assigns the right to lay and maintain water lines across the property conveyed. Appellants argued that the reservation in the prior deed did not give them notice of the easement. The Court held that the Southalls' grantor had no duty to inform them of the existence of the water lines on their property. The Court held that "the grantee is chargeable with notice of everything affecting his title which could be discovered by an examination of the records of deeds or other muniments of title of his grantor." 454 Pa. Super. at 369, 685 A.2d. at 578.

The Court in *Southall* cited and relied upon *Owens v. Holzheid*, 335 Pa. Super. 235, 484 A. 2d 107 (1984), where deeds to the grantee and his immediate possessors in title did not reference the easement at issue. The Court held that the grantee had constructive notice of the easement because in Pennsylvania a grantee of a deed has a duty to search the chain of title, and takes subject to any restriction in the public records.

The principle of constructive notice applied in *Southall* and *Owens* is applicable in this case.

The Gun Club has admitted that it did not perform a title search before accepting the Commonwealth's deed in exchange for their own. Throughout its pleadings, motions and briefs, the Gun Club avers that the Commonwealth never told the Club that it did not own the minerals. The Affidavit of its members so states this fact as well. The Gun Club argues that by failing to do so the Commonwealth engaged in a misrepresentation by omission, which the Club argues, constituted an active fraud against the Commonwealth.

The Gun Club further avers that it relied on the Commonwealth to search its own title (as well as the title of the Gun Club). In its Complaint, Gun Club avers that "Commonwealth

officials knew that the Commonwealth did not own the minerals and specifically misled, misinformed and defrauded Plaintiff inasmuch as Plaintiff's conveyance to the Commonwealth included all minerals." (Complaint ¶ 11)

Alternatively, Gun Club averred that the "failure of the Commonwealth to convey the minerals resulted from an accident or mutual mistake." (Complaint ¶ 12) The Board finds no merit to this argument. This would mean that neither party to the transaction is chargeable with knowledge of the interests conveyed, or not, or, with notice of the chain of title in the land records. There appears no factual basis to support an accident or mutual mistake in what was an arms length transaction of an apparent bargained-for exchange.

Estoppel

The Commonwealth further argues that the Gun Club is estopped from claiming that the deed conveyed fee title to the mineral estate.

> Together with all and singular the tenements, hereditaments and appurtenances to the same belonging to or in anywise appertaining and reversion and reversions, remainder and remainders, rents, issues and profits thereof; AND ALSO ***all the estate, right, title interest property claim and demand whatsoever, both in law and equity of the said Grantor,*** of, in to or out of the said premises, and every part and parcel thereof. (Emphasis added.)

The Gun Club responds that it cannot be estopped from claiming fraud or mistake. This is certainly true as to the Commonwealth's motion for summary judgment. Had the Gun Club established evidence of the requisite elements for either, either the doctrine of estoppel by deed or reformation would have been the appropriate remedy.

Moreover, based upon the Board's conclusion that the Gun Club is charged with constructive notice of the Commonwealth's chain of title, further consideration of DCNR's argument is not warranted.

Statute of Limitations

DCNR next argues that the Gun Club Complaint is barred by the applicable statute of limitations, 42 Pa. C.S. § 5530, which states that an action for possession of real property must be commenced within 21 years.

Gun Club contends that the purpose of the action is to acquire ***title*** to the minerals, that the Club did not have to file an action for possession, since it has been in ***possession*** since the land exchange. The Gun Club also relies on *Consolidation Coal Co. v. Friedline*, 134 Pa. Super. 1, 3 A.2d 200 (1938), for the proposition that a statute of limitations begins to run from the date that the party becomes aware of an action hostile to its own presumed ownership.

The Board finds the statute of limitations of 42 Pa. C.S. § 5530 is inapplicable to an action in equity. Under the doctrine of estoppel by deed a party is barred in an action by its grantee from asserting that it did own property when it purported to convey it if it later acquires the property without regard to when the acquisition occurs.

Laches

The Commonwealth argues in the alternative to its statute of limitation argument, that the Gun Club action in equity is barred by the equitable doctrine of laches. The Commonwealth relies on *Belitskus v. Stratton*, 830 A.2d 610 (Pa. Cmwlth. 2003), *appeal denied*, 576 Pa. 726, 841 A.2d 533 (2003) and *Stilp v. Hafer*, 533 Pa. 128, 718 A.2d 290 (1998). In those cases, the

courts held that the test for a complaining party's due diligence was not what the party knew, but what the party might have known by the use of information within its reach.

The Commonwealth first contends that had the Gun Club conducted a title search of the Commonwealth land, it would have discovered that the gas and oil and other minerals were reserved by the grantor in its deed to the Commonwealth. Next it argues, even assuming that the Affidavit of Schmeltzle and Hart raises a question of credibility concerning the Club's reliance on the Commonwealth to conduct a title search of their property, the Gun Club by its own facts became aware that it did not own the gas, oil and mineral estates in 1983.

The Board notes that the Gun Club filed its petition for review (its Complaint here) on February 7, 2003 about 20 years after it concedes that it became aware of what it contends was either a mistake or fraud.

The Board is somewhat concerned that nowhere in the record does the Club offer an explanation for the 20 year delay in filing its complaint. Moreover in examining the question of due diligence by the Club it may be that the Board will conclude that the evidence supports DCNR's position that it knew or should have known of the existence of the reservation by the Commonwealth's grantor in 1966. However, the Board believes that the case law augurs against finding laches on a motion for summary judgment.

The legal principles of the application of the doctrine of laches were summarized by the Supreme Court in *Weinberg v. State Board of Examiners of Public Accountants*, 509 Pa. 143, 148, 501 A.2d 239, 242:

> The application of the equitable doctrine of laches does not depend upon the fact that a definite time has elapsed since the cause of action accrued, but whether, under the circumstances of the particular case, the complaining party is guilty of want of due diligence in failing to institute his action to another's prejudice. The prejudice

> required is established where, for example, witnesses die or become unavailable, records are lost or destroyed, and changes in position occur due to the anticipation that a party will not pursue a particular claim. Thus, it is clear that the application of the defense of laches requires not only an unjustified delay, but also that the opposing party's position or rights be prejudiced as a result of that delay. Moreover, "[t]he question of laches is factual and is determined by examining the circumstances of each case." Furthermore, the defense of laches is an affirmative defense and the burden of proving laches is, therefore, on the defendant/respondent. (Citations omitted.)

Where the delay becomes grossly unreasonable, the necessity for specifics regarding prejudice or injury becomes less crucial. *Gabster v. Mesaros*, 422 Pa. 116, 220 A. 2d 639 (1966). In that case the Court found a 30-year delay in bringing suit presumptively prejudicial.

Here the record is entirely silent both as to the justification for the delay of the Gun Club in failing to press its claim in 1983 when it discovered that the Commonwealth had acquired the mineral rights and as to the failure of DCNR to disclose the facts of the particular prejudice to the Commonwealth such as lost records or the death or unavailability of witness have yet to be disclosed.

For these reasons, DCNR's motion for summary judgment based on laches is denied.

Lack of Statutory Authority

Lastly, DCNR contends that it lacks statutory authority to transfer the oil, gas and minerals under Section 514 of the Administrative Code, Act of April 14 1929, 71 P.S. § 194, which prohibits the grant of any interest in Commonwealth lands without the specific authority of the General Assembly.

As noted above, the Gun Club's claim rests on either estoppel by deed or fraudulent concealment by the Commonwealth. These determinations are made in a court or in this case in the first instance by the Board. The power to hear and decide cases concurrent with, but not

necessarily governed by legislative acts. The Board finds that its decision in this matter is not barred by Section 514, 71 P.S. § 194.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF PROPERTY

OGDENSBURG GUN CLUB,	:	
a Pennsylvania nonprofit corporation,	:	
Plaintiff	:	**Docket No. BP-03-0002**
	:	
vs.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF CONSERVATION	:	
AND NATURAL RESOURCES,	:	
Defendant	:	

ORDER

AND NOW, this 7 day of July 2005, in consideration of the Cross Motions for Summary Judgment of the Plaintiff Ogdensburg Gun Club and the Commonwealth of Pennsylvania, Department of Conservation and Natural Resources, for the reasons stated in the foregoing Memorandum, it is ordered that the Motion of the Plaintiff Ogdensburg Gun Club be, and the same hereby is **DENIED** and that the Motion of Defendant Commonwealth of Pennsylvania, Department of Conservation and Natural Resources, be, and the same hereby is **GRANTED**.

Andrew Sislo, Chief of Staff
Department of State, designee of Pedro Cortés
Secretary of the Commonwealth
Chairman, Board of Property

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Date of Mailing: July 1, 2005