IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION

ENERPLUS RESOURCES (USA) CORPORATION, a Delaware Corporation,	)	Case No. 1:16-cv-00103-DLH-CSM
Plaintiff,	)	DEFENDANTS WILKINSON'S AND SODERSTROM'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
vs.	)	
WILBUR D. WILKINSON, et al.,	)	
Defendants.	)	

Defendants Wilbur D. Wilkinson ("Wilkinson") and Reed A. Soderstrom, pro se, ("Soderstrom") submit their response to Plaintiff Enerplus Resources (USA) Corporation's ("Enerplus") Motion for Summary Judgment. For the reasons set forth below, Enerplus' Motion should be denied

INTRODUCTION

This is a case stemming from an accounting and Quiet Title action in the Fort Berthold Tribal Court concerning royalty payments on an Overriding Royalty Interest ("ORRI") on Indian Reservation Trust lands. Wilkinson received the ORRI in connection with a settlement between Wilkinson and Peak North Dakota, LLC ("Peak North"). Peak North later "merged" with Enerplus, with Enerplus making the royalty payments to Wilkinson. For over a year, Enerplus did not notice an alleged overpayment to Wilkinson in an amount totaling $2,961,511.15, which has since been deposited into the Court.

Enerplus requested the monies be returned. In response, Wilkinson filed an accounting and Quiet Title action in Tribal Court concerning the matter. Wilkinson also requested the BIA Lease Merger and Assignment approval from Enerplus, a document required for leases on Indian lands. To date, despite repeated requests, Enerplus has

not provided this document. Without this document, Enerplus lacks standing to litigate this matter in court.

Enerplus instead filed an action against Wilkinson and others in Federal Court, successfully seeking to enjoin Wilkinson from pursuing action in Tribal Court and to prohibit the Fort Berthold District Court from exercising jurisdiction over Enerplus. Now, before discovery has even begun, Enerplus seeks Summary Judgment for return of the monies. Summary Judgment in this case is premature because the parties have only just started discovery. Even on the record as it stands, there are genuine issues of material fact which places Enerplus' standing in question in this court. The valid conveyance of the Lease on Indian lands must be proven before Enerplus can bring suit in this court. Enerplus has not satisfied this requirement. This alone should preclude the entry of Summary Judgment. As such, Enerplus' Motion for Summary Judgment should be denied.

ARGUMENT

A. Summary Judgment Standard.

"[S]ummary judgments should be cautiously invoked so that no person will be improperly deprived a trial of disputed factual issues." *Arkansas Right to Life v. Butler*, 983 F. Supp. 1209, 1215 (W.D. Ark. 1997), *aff'd* 146 F.3d 558 (8th Cir. 1998). "[A] district court in passing on a Rule 56 motion performs what amounts to what may be called a negative discretionary function. The court has no discretion to *grant* a motion for summary judgment, but even if the court is convinced that the moving party is entitled to such a judgment the exercise of sound judicial discretion may dictate that the motion should be *denied*, and the case more fully developed." *McLain v. Meier,* 612

F.2d 349, 356 (8th Cir. 1979) (emphasis in original). Thus, whether or not the summary judgment burden is met, a court may always deny summary judgment in its own discretion.

B. Summary Judgment Should Be Denied as Premature Because Discovery Has Just Started.

Enerplus' Motion for Summary Judgment is premature because discovery has only just started. The Discovery process has barely begun in this matter, and Defendants have not had a reasonable opportunity to present all available facts in support of their position. "As a general rule, summary judgment is proper 'only after the nonmovant has had an adequate time for discovery.'" *Iverson v. Johnson Gas Appliance Co.*, 172 F.3d 524, 530 (8th Cir. 1999) (quoting *In re TMJ Litigation*, 113 F.3d 1484, 1490 (8th Cir. 1997)).

Even the Federal Rules of Civil Procedure assumes access to discovery prior to responding to a Motion for Summary Judgment. Rule 56(c) of the Federal Rules of Civil Procedure states that the Court should consider, inter alia, the "depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, interrogatory answers or other materials" in assessing whether summary judgment is appropriate. The Supreme Court has stated that "the plain language of Rule 56(c) mandates the entry of summary judgment, *after adequate time for discovery* and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

The facts Defendants need in order to fully respond to Enerplus' Motion for Summary Judgment, namely the BIA Lease Merger and Assignment approval, are

solely in possession of Enerplus and Enerplus has resisted requests for disclosure of the information. As such, because discovery has only just started, Enerplus' Motion for Summary Judgment is premature and should be denied.

C. There Are Genuine Issues of Material Fact, Including Whether Plaintiff Has Standing, That Disentitles Plaintiff to Summary Judgment.

Even with the record as it stands, prior to discovery, this case presents a genuine issue of material fact that precludes the entry of summary judgment. Under Federal Rule of Civil Procedure 56(a), a moving party may prevail on a motion for summary judgment only if it "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." A fact is "material" it "might affect the outcome" of a case. *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986).

In considering Motions for Summary Judgment, courts must view the evidence in the light most favorable to the nonmoving party. *Carrington v. City of Des Moines, Iowa*, 481 F.3d 1046, 1050 (8th Cir. 2007). All interferences from the facts must also be drawn in favor of the non-movant. *Matsushita Electrical Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

Here, it is questionable if Enerplus has standing in this matter. The assignment of allotted Indian Lands and Minerals is prohibited absent approval from the Secretary of the Interior. Oil and Gas Lessees of Allotted Indian Lands agree that they shall not assign leases, interests, nor sublet any portion of leased premises without approval of the Secretary of the Interior. Whether Enerplus has standing to bring suit in Federal Court is determined by whether there was a valid conveyance of the lease concerning Indian lands. To date, Enerplus has not proven a valid conveyance of this lease in

question and has refused all requests for proof of such. Without proof of a valid conveyance, Enerplus has no standing to bring this issue before Federal Court.

Enerplus has repeatedly failed to produce the BIA Mineral Lease and Assignment Approval, which is required from the Secretary of the Interior for leases on Indian Lands. Absent such proof, the lease assignment between Peak North and Enerplus is voidable and the transaction, at the very least, must be considered suspect at this time.

Enerplus has claimed that the BIA has waived such requirements for its shut-in wells, but has failed to produce any evidence of a waiver. (Dkt. Nos. 10-6, 10-7). Further, the Mineral Lease and Assignment does not allow producing wells to be shut in. (Dkt. No. 10-2). Failure to produce either the approval from the Secretary of the Interior or a waiver regarding its lease assignments makes Enerplus' standing in this matter in Federal Court specious at best. Disputes regarding Mineral Leases within the exterior boundaries of the Fort Berthold Indian Reservation is best suited to be adjudicated by the Fort Berthold Tribal Court.

Further, the monies have been deposited into Court and are in good hands. Any concern over the availability of the money is misplaced.

Despite repeated requests, Enerplus has not provided proof of either approval from the Secretary of the Interior or a waiver regarding its lease assignments, placing its standing in this matter in question. As such, Enerplus' Motion for Summary Judgment should be denied.

CONCLUSION

For the reasons stated above, Defendants respectfully request that this Court deny Plaintiff's Motion for Summary Judgment.

Dated this 2nd day of February, 2017.

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CERTIFICATE OF SERVICE

I certify that on the 3rd day of February, 2017, the following documents:

Defendants Response in Opposition to Plaintiff's Motion for Summary Judgment

was filed electronically with the Clerk of Court through ECF and the ECF will send a Notice of Filing (NEF) to the following:

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