

BOARD OF OIL AND GAS REVIEW

DIVISION OF OIL AND GAS

DEPARTMENT OF NATURAL RESOURCES, STATE OF OHIO

GOSHEN, INC.
6390 McGuire Road
London, Ohio 43140

Appellant

APPEAL NO. 415

VS

SCOTT R. KELL, ACTING CHIEF
Division of Oil & Gas
Ohio Department of Natural Resources
Fountain Square, Columbus
Ohio 43224

Appellee

Appearances:

For Appellant: Mr. Thomas H. Lagos
Attorney at Law
Lagos and Lagos
Suite 500, McAdams Bldg.
31 East High Street
Springfield, Ohio
45502-1259

For Appellee: Anthony J. Celebrezze, Jr
Attorney General
By: Raymond Studer
Assist. Attorney General
Fountain Square, Columbus
Ohio 43224

ENTRY

This matter came on for hearing before the Oil and Gas Board of Review on January 27, 1992, in the Conference Room of Building E., Fountain Square, Columbus, Ohio pursuant to a Notice of Appeal filed by the Appellant. The appeal was taken from the Order of the Chief, Division of Oil and Gas, No. 90-471 to Goshen, Inc, ordering the plugging of the KAGS Cotten #1A well, Permit No. 1586, Meigsville Township, Morgan County, Ohio.

Background

The history of the Cotten well begins with a permit issued by the Division of Oil and Gas in June, 1977 to Lee Taylor, Mt. Gilead, Ohio, who then became the owner, pursuant to Chapter 1509 ORC, of the well to be drilled on the Cotten lease. In July, 1978, Lee Taylor requested the Division of Oil and Gas transfer ownership of the now drilled Cotten #1A (P-1586) to KAGS Oil and Gas Co. "C" Limited, in Columbus, Ohio. This and other wells were listed on the Division's transfer form and transfer of ownership with the Division and transfer of the permits for the wells were accomplished. KAGS Oil and Gas Company, at the time, had a blanket surety bond issued by The Ohio Casualty Insurance Company. Ohio Casualty executed a "Stipulation" on behalf of KAGS Oil and Gas Company in May, 1978 for bond # 2-019-976-3 in which the name of the principal was changed to KAGS Oil and Gas Company-A. Limited, B-Limited and C-Limited. Testimony and exhibits indicate that thereafter KAGS was in receivership for the two year period prior to 1981. As part of the resolution of that matter, the Trustee sold to a newly formed corporation Goshen, Inc. several, but not all, of the KAGS wells. The bond

for these wells was continued by the Ohio Casualty Insurance Company who, on behalf of KAGS Oil and Gas Company, issued a second "Stipulation" on August 24, 1981 changing the name of the principal on the bond to Goshen, Inc. The "Stipulation" was made about two months prior to the actual transfer of interest from KAGS to Goshen. This second stipulation was a key link in the chain of confusion, because the bond covered more wells than would be subsequently transferred to Goshen, Inc.

The Assignment of Oil and Gas Lease from G. Richard Harvey, Receiver, pursuant to an Order of the Franklin County, Ohio Court of Common Pleas, sold, assigned, transferred and set over to Goshen, Inc. all of its interest in a certain lease, the John and Juanita Egnot Lease, Center Township, Morgan County, Ohio. The Receiver executed the Assignment on behalf of KAGS Oil and Gas Company "A" Limited. on October 23rd, 1981.

The crucial Request for Change of Ownership (Form 7) from KAGS Oil and Gas Company, by Richard Harvey Trustee, to Goshen, Inc. by Donald Becker, President was executed November 30, 1981 and listed four (4) wells for transfer of ownership, The names of the wells to be transferred were typed on the Form 7 and the list showed the following wells: Egnot # 1, #2, #3 and #4 wells, all in Center Township, Morgan County, Ohio consistent with the Assignment which was attached to the Form 7, as required (ORC 1509.31).

The Division of Oil and Gas copy of this Form 7 has three handwritten changes to the well list. The third well on the list, the Egnot #2 is changed to the Cotton #1A and the

Permit number changed to correspond to the Cotton Permit number, that is, P-1586. The Egnot # 1 Permit number is also changed. Testimony showed the handwriting to be that of Shirley Dorn, surety examiner in the Division of Oil and Gas, who initialed the front of the Form 7 to show that there was compliance with the bonding requirements.

Various ODNR notes on the bonding situation show that there was some confusion at the time of the transfer. One sheet shows Goshen, Inc. to have bonded four wells (P-1657, P-1658, P-1582 and P-1586), including one transfer from a Virgil Watson and one from Lee Taylor, but without underlying Form 7 documentation. Subsequent correspondence in December, 1981 between the Division and Goshen, Inc. showed still another list of wells (P-1657, P-1658, P-1582 (the Cotten Well) and P-702. In the correspondence regarding bonding, it is not made clear by either Division of Oil and Gas or Goshen that the wells listed by permit number (not name) are not the same four Egnot wells for which a change of ownership form had been executed.

The error of transfer of the permit for the Cotten #1A well to Goshen, Inc. by handwritten notation on the Form 7 became embedded in the Division's records. When a new landowner of the Cotten premises asked the Division for an investigation as to the status of the Cotten well, Oil and Gas Inspector G. Hall, on April 6, 1989, found the Cotten #1A well to be lacking in equipment and idle. The well inspection report shows the well to be the Cotton # 1-A, Meigsville Township, Morgan County, Ohio. In July, 1990, the Chief issued an order to Goshen, Inc. to plug the well after a finding that Goshen, Inc. was the owner of the

Cotten #1A well. The Egnot # 1 well, also ordered to be plugged, is not the subject of this Appeal.

APPLICABLE STATUTES

Section 1509.01 Definitions(K) states:

"Owner", unless referring to a mine, means the person who has the right to drill on a tract or drilling unit and to drill into and produce from a pool and to appropriate the oil or gas that he produces therefrom either for himself or for others.

In addition, Section 1509.31 Notice of transfer of lease; responsibility of permit holder. provides (Paragraph 2):

The owner holding a permit under Section 1509.05 of the Revised Code is responsible for all obligations and liabilities imposed by Chapter 1509 . . . and no assignment or transfer by the owner relieves the owner of the obligations and liabilities until and unless the assignee or transferee files with the division of oil and gas the information described in divisions (A), (B), (C), (D), (E), (H), (K), (L), (M), and (N) of section 1509.06 of the Revised Code; files or has filed the Certificate of insurance required by section 1509.07 of the Revised Code, and executes and files a surety bond

ISSUE

The specific issue raised in this Appeal is whether the Chief of the Division of Oil and Gas lawfully and reasonably ordered Goshen, Inc. to plug the Cotten # 1A well, where as here, Goshen Inc., received no assignment of the Cotten #1A well and the Division of Oil and Gas relies on the bonding name change prior to the transfer of ownership by execution of Form 7. The question of ownership of the well may be reduced to the question of whether or not the handwritten changes on the Form 7 by S. Dorn in 1981 are sufficient to make Goshen, Inc. the owner or permit holder of the Cotten #1A Well and subject to the provision

of 1509.31, including the Order of the Chief to plug it?

FINDINGS OF FACT

Based on testimony of the witnesses and exhibits accepted by the Board into evidence, the Board finds that:

1. Goshen, Inc. never was and is not the owner of the Cotten # 1 A well, Permit-1598, Meigsville Township, Morgan County, Ohio.

2. Goshen, Inc. complied with the requirements of Section 1509.31 by submitting the Form 7 to the Division of Oil and Gas showing the aquisition by sale of the four Egnot wells in Center Township, Morgan County, Ohio.


3. The information and assumptions made by Division of Oil and Gas personnel that Goshen, Inc. had acquired an interest in the Cotten # 1, P-1598, Meigsville Township, and the handwritten alterations of the Form 7 to that effect wre in error.

4. It is no evidence that Goshen, Inc. had any notice of the change of the Form 7 by the Division to show that Goshen was the owner and holder of the permit for the Cotten #1A well. Goshen, Inc. purchased the four Egnot wells in Center Township, It operated these four wells and not the Cotten #1A well. The Cotten #1A well is owned by some other person.

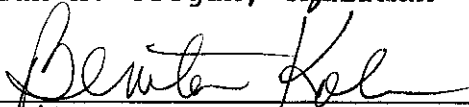
5. Order 90-471 of the Chief to Goshen, Inc. to plug the Cotten # 1 A well, Permit 1585, Meigsville, Township, Morgan County, Ohio is arbitrary and unreasonable because Goshen Inc. is not and never was the owner of the well.

Based on these findings of fact, the Board of Oil and Gas
Review

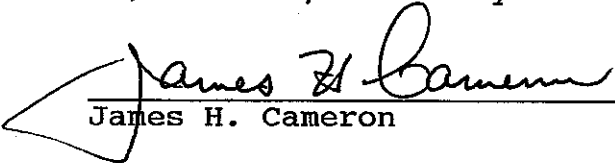
ORDERS, that Appeal is hereby **AFFIRMED** and that
Adjudication Order No. 90-471 be and and hereby is **OVERRULED**.



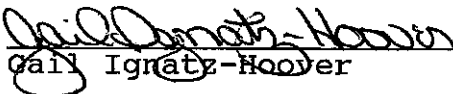
Alan H. Coogan, Chairman



Benita Kahn, Secretary



James H. Cameron



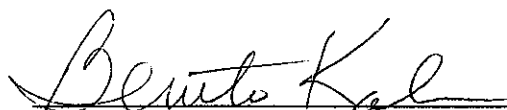
Gail Ignatz-Hoover



William G. Williams

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was served by certified U.S. Mail, postage prepaid this 17th day of July, 1992, upon Thomas H. Lagos, Suite 500, McAdams Bldg, 31 East High Street, Springfield, Ohio 45502-1259 and Joan Fishel, Assistant Attorney General, Division of Oil and Gas, Environmental Enforcement Section, Bldg. A, 4435 Fountain Square Drive, Columbus, Ohio 43224.


Benita Kahn
Secretary