IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

TARECO PROPERTIES, INC.	§	
	§	
	§	
	§	
v.	§	**CIVIL ACTION NO. 6:16-CV-482**
	§	
	§	
	§	
L&S MINERALS, LLC, *et al.*	§	
	§	

MEMORANDUM OPINION AND ORDER

Before the Court are Defendant Steve Morriss and Karen Morriss' Motion for Summary Judgment (ECF 31), Plaintiff Tareco Properties, Inc.'s Motion for Summary Judgment (ECF 36), Plaintiff Tareco Properties, Inc.'s Motion to Strike Defendants' Reply (ECF 39), and Plaintiff's Second Motion for Summary Judgment on Defendants' Newly Asserted Affirmative Defenses (ECF 45). The Court conducted a hearing on the motions on June 22, 2017. At the hearing, L&S Minerals stated that it does not take a position on the pending motions. Having considered the briefing and arguments of counsel, Defendants' Motion for Summary Judgment is **DENIED** and Plaintiff's Motions for Summary Judgment are **GRANTED**.

BACKGROUND

Plaintiff initiated this lawsuit by filing an Application for Turnover Order on June 1, 2016. In the Application for Turnover Order, Plaintiff asserts that it is the judgment creditor for two judgments registered in this Court: (1) Civil Action No. 6:00-mc-24, *Tareco Properties, Inc. v. Steve Morriss, et al*. (referred to as "the Steve judgment"); and (2) Civil Action No. 6:07-mc-6, *Tareco Properties, Inc. v. Karen Morriss, et al*. (referred to as "the Karen judgment"). As of

January 10, 2017, the amount due on the Steve judgment is $4,431,666.88 and the amount due on the Karen judgment is $856,561.96. No payments have been made on the Steve judgment and only $95.49 has been paid on the Karen judgment.

The Steve judgment arises out of a promissory note that was guaranteed by Steve Morriss. FDIC acquired the promissory note when the lender failed. Judgment on the note was originally entered in the Southern District of Texas, Laredo Division. The judgment was assigned by FDIC to Plaintiff on September 30, 1999. The Karen judgment arises out of a judgment obtained by Plaintiff against Karen Morriss in the Middle District of Tennessee, Nashville Division, dated September 30, 2004.

Plaintiff argues that Defendants Steve and Karen Morriss have failed to make payments on the judgments and have avoided payment on the judgments by way of property transfers to hinder collection. On June 16, 2014, Steve and Karen Morriss executed a quitclaim deed of 92.71 acres of property in Smith County to Defendant L&S Minerals. As a result, Plaintiff seeks to use the identified property to satisfy the judgments pursuant to TEX. CIV. PRACT. & REM. CODE § 31.002. According to Plaintiff, Defendants admitted that they transferred the land in Smith County to L&S only to "hold" it for them and no consideration was exchanged. L&S Minerals was established to hold mineral interests owned by Lisa Ray and Steve Morriss. The Morrisses have allegedly asked L&S Minerals to pay a bonus of $41,719.50 and to quitclaim deed the property back to them.

Defendants Steve and Karen Morriss ("the Morrisses") filed a motion for summary judgment asserting that the identified property is not in their possession and is not subject to their control. In addition, the Morrisses submit that the Steve judgment has lapsed and is no longer valid or subsisting. The Morrisses state that they transferred the property to L&S Minerals via quitclaim deed on June 16, 2014, effective June 2, 2014. They assert that they subsequently

requested a return of the property on September 18, 2015, but L&S Minerals refused to return the property. According to the Morrisses, the transfer ended their ownership interest in the property and they have no control over the property. L&S Minerals is a Limited Liability Corporation with one member—Lisa J. Ray as trustee of the Bud Morriss Family Trust. In addition, the Morrisses argue that the Steve Judgment has lapsed because it was originally entered on June 23, 1993. The Morrisses submit that the judgment was only effective for 20 years pursuant to 28 U.S.C. § 3201(c)(1). The Morrisses assert that Plaintiff has not provided any evidence that it obtained a valid lien and/or renewed that lien.

In response, Plaintiff notes that the Morrisses do not contest that Tareco Properties, Inc. owns the judgments at issue. Even though the Morrisses are not the current owners of the property at issue, Plaintiff contends that they have a claim to the property because the transaction to transfer the property lacked consideration. To evidence that claim, Plaintiff submitted a copy of a letter dated September 18, 2015 that was sent by the Morrisses' attorney to counsel for Lisa Ray. Among other things, the letter states that the agreement between the Morrisses and L&S Minerals at the time of the quitclaim deed was that the Morrisses would be paid a bonus, valued at $41, 719.50, in exchange for the donation of the property.[1] The Morrisses sought payment for their share of the

[1] *See* Plaintiff, Tareco Properties, Inc.'s, Response to Steve Morriss and Karen Morriss' Motion for Summary Judgment and Brief in Support Thereof, ECF 34-17, Exhibit 18, at *3. The letter states in relevant part:

> As you know, Lisa and Steve have established L&S Minerals, LLC to hold their joint mineral interests. In order to simplify some of these mineral holdings and payment of bonus' [sic], Steve and Karen quitclaimed some mineral interests, which they owned individually outside of either Lisa and Steve's father's or mother's estate to L&S. Subsequently, Carrizo Oil & Gas, Inc. paid a bonus for mineral interests in L&S Minerals, LLC which included the 92.71 acres which had been quitclaimed by Steve and Karen. I have attached the relevant documentation of this transaction.
>
> Steve and Karen were willing to donate the mineral interests themselves to L&S but, consistent with the agreement Steve and Lisa had at the time of the Quitclaim deed, did need to be paid the bonus money. Keith Dollahite reviewed this and notified Lisa that Steve and Karen were entitled to the $41,719.50 in bonus.

bonus and the return of the property.[2] Plaintiff submits that a debtor cannot assert a claim to property and then seek to protect that claim from creditors at the same time. The Morrisses' claim to the property is an unadjudicated cause of action that is "property" as contemplated by the turnover statute. Plaintiff argues that the Morrisses' claim to the property is subject to turnover. In addition, Plaintiff submits that the statute relied on by the Morrisses to argue that the Steve judgment lapsed—28 U.S.C. § 3201—only applies to procedures for the United States to collect its debts. Plaintiff argues that a writ of execution every ten years maintains a judgment under Texas law.

The Morrisses filed a reply adding a new allegation that they signed a release of any claim they may have to the property that was transferred to L&S Minerals. The release was to resolve issues during probate of the estate of Ima Jean Morriss. The release is dated November 16, 2016. The Morrisses argue that the release shows that they do not have any claim to the property.

Plaintiff filed a Motion to Strike Defendants' Reply. Plaintiff asserts that the reply improperly raises a defense concerning the release that was not previously disclosed. The Morrisses did not file a response to the motion to strike. Instead, the Morrisses filed an Amended Answer adding a defense concerning the release.

Plaintiff filed its own Motion for Summary Judgment against L&S Minerals and the Morrisses. For the same reasons previously raised in response to the Morrisses' motion for summary judgment, Plaintiff seeks a summary judgment for immediate turnover of the property. In response to the Amended Answer, Plaintiff also filed a Second Motion for Summary Judgment on Defendants' Newly asserted Affirmative Defenses. Defendants L&S Minerals and the Morrisses did not file a response to either motion for summary judgment filed by Plaintiff.

[2] *Id.* ("Accordingly, Steve and Karen want to be paid for their share of the bonus and have the minerals quitclaimed back to them").

Pursuant to Local Rule CV-7(d), "[a] party's failure to oppose a motion in the manner prescribed [] creates a presumption that the party does not controvert the facts set out by the movant and has no evidence to offer in opposition to the motion."

At the hearing on the motions, L&S Minerals stated that it did not respond to the motions because it does not take a position and it will do whatever the Court tells it to do with the property. L&S Minerals also stated that, due to the tense relationship between Steve Morriss and Lisa Ray, it did not believe anything was actually transferred by the quitclaim deed at the time of the transfer and it does not have a problem turning over the property.

SUMMARY JUDGMENT STANDARD

The Court may only grant a motion for summary judgment when there is no genuine dispute of material fact and the moving party is entitled to summary judgment as a matter of law. FED. R. CIV. P. 56(a). A genuine dispute as to a material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A "material fact" is one that might affect the outcome of the suit under governing law. *Id.* The party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986).

The moving party, however, "need not negate the elements of the nonmovant's case." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc). The movant's burden is only to point out the absence of evidence supporting the nonmoving party's case. *Stults v. Conoco,*

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