UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

CLB PROPERTIES, INC.	:	DOCKET NO. 3:16-cv-1271
VERSUS NO.	:	JUDGE ELIZABETH FOOTE
MRD OPERATING, LLC AND HUNTER TEMPLE	:	MAGISTRATE KAREN HAYES

OPPOSITION TO DEFENDANT'S 12(b) MOTION TO DISMISS

MAY IT PLEASE THE COURT:

Defendant, MRD OPERATING, LLC ("MRD") has filed a FRCP 12(b)(6) Motion to dismiss alleging Plaintiff, CLB PROPERTIES ("CLB") failed to state a cause of action. Beyond this opening paragraph CLB will ignore the vitriolic attacks on its owner and legal counsel. CLB will not reciprocate in the personal attacks, speculation, hyperbole, outlandish analogies and clever fairy tale comparisons. Despite MRD's assertions that Plaintiff made "incorrect assertions", "several" deliberate "material misrepresentations" of the facts, "intentional" "omissions" of the facts and "feigned ignorance" all in an attempt "to manufacture a claim" resulting in "vexation" that now needs to be "disinfect[ed]". When the facts did not support the narrative MRD is attempting to create, it devoted the majority of its Motion to Dismiss to inappropriate personal insults and speculation. After pointing out just some of the vitriolic personal attacks above, CLB will now only point out the **facts** and **law** in this Opposition.

I. FACTS

Below are the facts that have been ignored by MRD, but they have not and cannot be

disputed.

1. MRD has **not** paid all amounts owed to CLB under the mineral lease.

2. While not pertinent to this suit, the previous lawsuit that was dismissed **without prejudice** has no legal bearing on this matter and was only dismissed as premature, rather than any reason guessed by MRD in its motion. However, it is interesting to note that MRD could have forced a dismissal with prejudice by filing an answer with its previous motion. For some reason MRD chose not to do so.

3. MRD, the operator and lessee of CLB's minerals, completed the James R. Dowling 30-31 H 002 and 003 wells in January of 2016.

4. MRD **never** notified Plaintiff that the wells were completed.

5. MRD **never** notified CLB that the wells were producing.

6. CLB discovered the James R. Dowling 30-31 H 002 and 003 wells were completed and producing when its owner, Chris Bowman ("Bowman"), went and checked the well meters in January of 2016.

7. For six (6) months, CLB, through Bowman, attempted to work with MRD to find out the level of production and to get his royalties paid.

8. Despite repeated attempts by CLB, MRD did not pay CLB royalties on the minerals being produced until after legal action was taken, approximately six (6) months after production began.

9. MRD did **not** report to the State of Louisiana Department of Natural Resources that the wells were completed[1] until **after** CLB took legal action, approximately **six (6) months after production began**.

10. As of this filing, MRD has **never** reported production to the State of Louisiana Department of Natural Resources, as required.

11. MRD did **not** report completion of the James R. Dowling 30-31 H 002 and 003 wells until after it and Defendant Hunter Temple received Louisiana Attorney General Notice of La. R.S. 51:1401 Complaint, approximately s**ix (6) months after** production began.

1 The required reporting completion to the State is just that...the operator reports to the State that the well is completed. This is different from the required production reports to the State, which has NEVER been done by MRD. In production reports, the operator of a well (such as MRD) provides information such as how much minerals have been produced from the well. This information is available to the public through the Louisiana Department of Conservation's website, sonris.com. As such, the above facts are ascertainable by the Court.

12. To date, and despite multiple, adequate written demands (from which, incidentally, more than 60 days have passed), MRD has never paid interest on the late royalties.

13. Because Bowman checked the well meters and discovered the non-payment of royalties, MRD no longer allows property owners and mineral interest owners to access to the meters.

14. Other than relying on MRD, who refused to pay royalties until legal action was initiated and who refuses to engage in the required reporting to the State and who has not paid royalty interest and who never informed CLB the wells were producing, CLB has no way to determine how much the wells at issue have produced or if the correct amount of royalties have been paid.

15. MRD has **not** paid CLB the contractually and statutorily required royalty interest. As above, even if the interest were paid, CLB would have no way of knowing if the amount was correct.

16. In the past, CLB has engaged in the sale of water to MRD's predecessor via contract.

17. On behalf of CLB, Bowman signed a new water contract on May 26, 2016, as requested by MRD through its non-employee, contract field man, Hunter Temple.

18. On May 26, 2016, MRD's non-employee, contract field man, Hunter Temple, told Bowman not to push for the royalty payments (to which CLB was contractually entitled) because the water contract was sitting on the desk of Thomas Landry, MRD's Senior Landman waiting to be signed. Bowman asked Hunter Temple if this was an attempt to extort him.

19. Until May 26, 2016, Bowman had never discussed or dealt with the non-payment of royalties with Hunter Temple, as Hunter Temple's only involvement with CLB had been the water contract.

20. MRD had not signed the water contract on that date.

21. On June 24, counsel or MRD inexplicably contacted Bob Baldwin, the law partner of the undersigned, to discuss this case. Although Mr. Baldwin is not involved with this litigation in any manner, counsel for MRD informed Mr. Baldwin that the water contract had not been signed by MRD. Curiously, the alleged date MRD signed the water contract was June 3, 2016, three (3) weeks before this conversation occurred.

22. MRD never notified CLB that it had executed the water contract.

23. MRD never mailed CLB an executed copy of the water contract.

24. MRD never e-mailed CLB notifying it that the water contract had been executed.

25. MRD never sent its non-employee, contract field man, Hunter Temple, to CLB with any notification that the water contract had been signed.

26. MRD, in complete derogation of its normal practice, never filed with the Clerk of Court, a copy of the executed water contract.

27. MRD never purchased any water from CLB pursuant to the water contract.

28. MRD purchased water from a neighbor of CLB and pumped it several miles further than CLB's water for an MRD hydraulic fracturing job.

29. CLB first discovered that the water contract had been executed by MRD from seeing it attached to the Motion to Dismiss.

The facts above are not and cannot be denied by MRD. Even though there is evidence to support each and every one of these facts, MRD attempts to paint CLB's owner and local attorney as the bad guy in this litigation.

II. LAW AND ARGUMENT

Pursuant to FRRCP 12(b)(6), MRD has asked the Court to dismiss each and every one of CLB's claims for failure to state a cause of action. In so doing, MRD attempts to disprove each of CLB's claims. However, as will be shown, that is improper under Rule 12(b)(6). Further, CLB is not required to "prove" its claims in defense of MRD's motion. For the following reasons, MRD's motion must be denied as a matter of law.

a. Federal Rule of Civil Procedure 12(b)(6) Motion to Dismiss Standard

The standard for dismissing a claim for failure to state a cause of action was aptly set forth by the U.S. Supreme Court in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554–56, 127 S. Ct. 1955, 1964–65, 167 L. Ed. 2d 929 (2007). Therein, the Court held:

> Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief," in order to "give the defendant fair notice of what the ... claim is and the grounds upon which it rests," *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, ibid.; *Sanjuan v. American Bd. of Psychiatry and Neurology, Inc.*, 40 F.3d 247, 251 (C.A.7 1994), a plaintiff's obligation to provide the "grounds" of his "entitle[ment] to relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do, see *Papasan v. Allain*, 478 U.S. 265, 286, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986) (on a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation"). Factual allegations must be enough to raise a right to relief above the speculative level, see 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp. 235–236 (3d ed.2004) (hereinafter Wright & Miller) ("[T]he pleading must contain something more ... than ... a statement of facts that merely creates a suspicion [of] a legally cognizable right of action"), on the assumption that all the allegations in the complaint are true (even if doubtful in fact), see, e.g., *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 508, n. 1, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002); *Neitzke v. Williams*, 490 U.S. 319, 327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989) ("Rule 12(b)(6) does not countenance ... dismissals based on a judge's disbelief of a complaint's factual allegations"); *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974) (a well-pleaded complaint may proceed even if it appears "that a recovery is very remote and unlikely").

In this matter, the question is whether CLB pled enough "facts" to show that it is entitled to relief pursuant to the law. Again, in it's motion, MRD attempted to disprove some of the facts alleged by CLB. That is not proper procedure for a FRCP 12(b)(6) motion because the facts pled are taken as true. While the recitation of facts in the Complaint does not need to be "detailed", they must be more than merely legal conclusion couched as a factual allegation. As seen in the **FACTS** section above and in Plaintiff's Petition, the pled facts are not legal conclusions, rather they are very detailed facts with dates, actions of the parties and the substance of conversations. If the facts alleged are taken as true by the Court, the question then becomes, "given the facts alleged, is there relief available under the law". Contrary to MRD's allegations, CLB does not

have to prove the above facts are true in this opposition (that is what discovery and trial is for), just that there is a right to recovery if they are true. *Id*., at 1966. If MRD is confident in the law and facts, summary judgment would be its appropriate remedy, not a 12(b)(6) motion.

b. CLB's Right to Recovery Under the Law

So, if the facts as pled are true, does CLB have right to recovery?

CLB's Petition states:

21.

> Willfully and without reasonable grounds, CLB was not paid the outstanding royalties within thirty (30) days of written demand, entitling it to damages, interest on the late paid royalties from the date due and reasonable attorney fees.

22.

> To date, CLB has not received interest payments on the royalty payments in accordance with Louisiana law.

23.

> In connection with all of the above, Hunter Temple and MRD held good to their word. Because of the attempts by CLB, and Bowman on its behalf, to obtain the royalty payments to which CLB was rightfully and legally entitled, Defendants did not give CLB the water contract which it had been promised, resulting in substantial losses to CLB.

26.

> In addition, pursuant to its leases with CLB, MRD had 90 days from the date of production to pay royalties, and some of the production for which it paid on June 24, 2016, was production which occurred before March 25, meaning more than 90 days elapsed from the due date until payment entitling CLB to double damages, interest and attorney's fees under the provisions of La. R.S. 31:139 and pursuant to the Lease as the conduct of MRD in failing to timely pay was willful and without reasonable grounds, and no reasonable grounds or explanation from MRD has been provided to CLB.

Louisiana R.S. 31:139 provides as follows:

> If the lessee pays the royalties due in response to the required notice, the remedy of dissolution shall be unavailable unless it be found that the original failure to pay was fraudulent. **The court may award as damages double the amount of royalties due, interest on that sum from the date due, and a reasonable attorney's fee, provided the original failure to pay royalties was *either* fraudulent or willful and without reasonable grounds.** In all other cases, such as mere oversight or neglect, damages shall be limited to interest on the royalties computed from the date due, and a reasonable attorney's fee if such interest is not paid within thirty days of written demand therefor. Emphasis supplied.

For this statute alone, MRD's motion must be dismissed. According to the plain language of the statute, even if MRD pays the royalties due per the notice, all of the stated remedies remain available if CLB proves the original failure to pay the royalties was ***either*** fraudulent, or willful and without reasonable grounds. Given the facts associated with the attempts to get its royalties paid, MRD pled the failure as willful and without reasonable grounds. Further, interest on the royalties ***still remains unpaid***. A fact that MRD has ignored in its request that this Court dismiss all of its claims. Thus, under the facts as pled, the law provides a remedy to CLB. For this reason alone MRD's motion must be dismissed.

Further, in *Alyce Gaines Johnson Special Trust v. El Paso E & P Co. L.P.*, No. CIV.A. 11-1992, 2013 WL 686580, at *1–3 (W.D. La. Feb. 24, 2013), this Court issued an unreported opinion that is precisely on point with regard to the remedies available under the law pursuant to the facts as alleged by CLB. Therein, this Court noted the remedies available by stating:

> La. R.S. 31: 139 spells out the plaintiff's remedies if payment is made **within** the thirty day period. The Court presumes that the statute means the correct amount of payment. (The statute uses the term "the royalties due".) Those remedies are as follows:
>
> I. If the correct amount of payment is made within the thirty day period, the

plaintiff is entitled to the following relief:

A. If the original failure to pay the royalties due is found by the jury to be fraudulent, then the following remedies are available to the plaintiff:

1.) Dissolution of the lease may be available to the plaintiff in accordance with the statutes dealing with dissolution (La. R.S. 31:141 and 142).

2.) Double the amount of royalties due, interest on that amount from the date due, and reasonable attorneys fees.

B. If the original failure to pay was willful and without reasonable grounds, then the following remedies are available to the plaintiff:

Double the amount of royalties due, interest on that amount from the date due, and reasonable attorneys fees.

C. In all other cases, including where the original failure to pay was due to mere oversight or neglect, only the following remedies are available to the plaintiff:

1.) Interest on the royalties from the date due.

3.) Reasonable attorneys fees if the interest was not paid within the thirty days.

La. R.S. 31: 140 spells out the remedies available if the correct payment is not made with the thirty days OR if the lessor fails to provide a reasonable cause for failure to pay. These include double the amount of royalties due and attorneys fees as well as possible dissolution. But the use of the word "or" in this statute is troubling, to say the least. For example, what happens if payment is not made but a reasonable explanation is given? If we interpret the statute to say that if the lessee fails to pay within the thirty days OR if the lessee fails to give a reasonable notice within that time period, that is, if EITHER of these circumstances are met, then the plaintiff would be entitled to the penalty of double the amount of the royalties and attorneys fees. This reading is inconsistent with the statute's later language that this remedy is available "regardless of the cause for the original failure to pay royalties." Indeed, Louisiana state courts have interpreted this statue to mean that if a reasonable cause or explanation is given within the thirty days for the failure to make the correct payment, then the only remedy available to the plaintiff is interest on the amount of the royalties owed. As is discussed in more detail below, this is the holding in *Arceneaux v. Hawkins*, 376 So.2d 362 (La.App. 3 Cir., 1979) and other state court decisions. The holding in this case necessitates

the following reinterpretation of the R.S. La. 31: 140 in three scenarios: one in which the lessee does not make payment or any response to the lessor's demand (where the lessee simply ignores the lessor's demand); one in which payment is not made and the lessee's explanation is deemed to be unreasonable; and one in which payment is not made but the explanation is deemed to be reasonable. The court will instruct the jury with law consistent with the following:

II. If within the thirty days the correct payment is not made and no explanation is made for the failure to pay, then the following remedies are available to the plaintiff:

> A. Double the amount of the royalties due, interest on that sum, and reasonable attorneys fees. This remedy is available regardless of the reasonableness or unreasonableness of the original failure to pay the royalties.
>
> B. Dissolution may be awarded in accordance with the standards set forth in La. R.S. 141 and 142.

III. If the correct payment is not made but an explanation is furnished by the defendant within the 30 day period, the jury shall determine whether that explanation is a reasonable cause for the failure to pay.

If the jury determines that the explanation is a reasonable cause, then the only remedy available to the plaintiff is payment of the royalties plus interest on the amount of royalties due.

If the jury finds that the explanation is NOT a reasonable cause for the failure to pay, then the plaintiff has available the following remedies:

> A. Double the amount of the royalties due, interest on that sum, and reasonable attorneys fees.
>
> B. Dissolution may be awarded in accordance with the standards set forth in La. R.S. 141 and 142.

The Court notes that despite the difficulties that occur with the use of the word “or” in La. R.S. 31: 140, it is clear that the statute envisions situations in which the plaintiff would be entitled to double the amount of royalties due, interest, attorneys fees, and possible dissolution short of the more stringent requirements of a fraudulent or willful and unreasonable failure to pay enunciated in La. R.S. 31: 139. The difference is that La. R.S. 31:139 enunciates the penalties for the situations in which full payment is promptly made while La. R.S. 31: 140 enunciates the penalties for the situations in which payment in NOT made within

the thirty days.

The above law coupled with the facts as pled by CLB shows there are a multitude of potential remedies. Simply put, CLB has a cause of action (if not multiple causes of action) for the facts as alleged. As such, MRD's Motion to Dismiss for no of cause of action must be denied.

c. Louisiana Unfair Trade Practices Act (LUTPA)

In its Rule 12(b)(6) Motion to Dismiss, MRD misses the mark by alleging there are no proper mineral lease cases brought under LUTPA. Undersigned counsel did not research that issue because that is not the claim. The facts are stated in paragraphs 14 and 23 and the cause of action in 24 of CLB's Petition as:

14.

> On May 26, 2016, Bowman, received a call from Hunter Temple, MRD's land manager, who requested Mr. Bowman to come by his office in Ruston, Louisiana. Upon arriving at the office of Hunter Temple with the expectation of receiving a copy of the signed water contract, Bowman was informed by Hunter Temple that he had better back off his demands to MRD for the royalty payments to CLB because the water contract was sitting on the desk of Thomas Landry (MRD Senior Landman), waiting to be signed. Bowman asked Hunter Temple if this was an attempt to extort him.

23.

> In connection with all of the above, Hunter Temple and MRD held good to their word. Because of the attempts by CLB, and Bowman on its behalf, to obtain the royalty payments to which CLB was rightfully and legally entitled, Defendants did not give CLB the water contract which it had been promised, resulting in substantial losses to CLB.

24.

> This coercive and unfair conduct of the Defendants set forth above violates the Louisiana Unfair Trade Practices Act, and, for this reason alone, Petitioner is entitled to receive damages reasonable in the premises, together with attorney's

fees and all costs of these proceedings.

Simply put, the claim under LUTPA is that MRD used the water contract with CLB as oppressive leverage and conspired with its non-employee, contract field man to stop CLB from pursuing royalty payments to which it was lawfully, contractually and rightfully owed. Put even simpler, it was a conspiracy between defendants in attempt to hold CLB's money hostage. That is an unfair trade practice and it has nothing to do with a mineral lease. Acts which constitute unfair or deceptive practices are not specifically defined in the statute that creates a private cause of action under the Louisiana Unfair Trade Practices Act for any person who suffers any ascertainable loss of money or movable property as a result of the use or employment by another person of an unfair or deceptive method, act, or practice, and are instead determined by courts on a case-by-case basis. *Newton v. Brenan*, App. 5 Cir.2014, 166 So.3d 285, 14-423 (La.App. 5 Cir. 12/16/14).

While citing the Louisiana Supreme Court, *Roustabouts, Inc. v. Hamer*, 447 So. 2d 543 (La. Ct. App. 1984), the Court held:

> Although the existence of a conspiracy to economically injure another company is often a difficult charge to substantiate, especially where the different parts in the plan are played by several people, in the case sub judice the trial judge had "no doubt" after weighing the credibility of the witnesses that the appellants conspired to do harm to the plaintiff. We think the actions of the appellants exhibited a clear intent to decimate the plaintiff's business for their own gain, and that the appellants engaged in basic business dishonesty of an unscrupulous and underhanded nature. The lower court felt the facts of the conspiracy were proven by a preponderance of the evidence and we see no manifest error in his conclusion. *Arceneaux v. Domingue*, 365 So.2d 1330 (La.1978).

The holding in *Roustabouts, Inc*., above, is applicable to the facts of this matter. MRD attempted to gain an economic advantage over CLB by refusing to purchase water from CLB if CLB demanded the money (royalty payments) it was contractually owed. Clearly a cause of

action has been stated.

For further analysis on oppressive use of economic advantage, see *Monroe Med. Clinic, Inc. v. Hosp. Corp. of Am.*, 522 So. 2d 1362, 1365 (La. Ct. App. 1988), where in the Court held:

> Considering the pronouncements of the law and the interpretative jurisprudence, we are of the view that the allegations of plaintiffs' petition, to include those we have noticed herein, are sufficient to state a cause of action. Broadly interpreted, these allegations assert that defendant is influencing patients' choices and the decisions of "favored" health care providers through the unethical and oppressive use of economic advantage to the detriment of the plaintiffs.

Although MRD has not argued that LUTPA does not apply to the coercive and conspiratorial actions of both defendants, as shown above, it easily applies to the facts as alleged. As such, MRD's Motion to Dismiss for failure to state a cause of action should be denied.

d. The Lease

MRD has alleged that CLB does not have a cause of action under the mineral lease because there is a 60 (sixty) day notice and cure provision. As alleged (and not denied), on May 25, 2016, May 27, 2016 and June 1, 2016, CLB sent demand for payment to MRD. The instant suit was filed August 8, 2016, (over 60 days later). **To date, CLB has not received full payment under the mineral lease. MRD cannot deny that it has not paid CLB in full.** In fact, CLB does not even know if MRD paid the correct of royalty amounts because MRD will not report production to the State, as statutorily required. Despite these facts, MRD argues that CLB admitted in its *Petition* that it had been paid in full. A simple review of the Petition will show this as false as MRD has not paid all amounts due and owing under the mineral lease. Thus, MRD's statement that CLB has no right of recovery under the Lease is false.

III. CONCLUSION

Given the above law and facts, it is clear that Plaintiff, CLB, alleged specific facts in its Petition and if taken as true, proper causes of action have been stated. As such, it is respectfully submitted that MRD's Motion to Dismiss for failure to state a cause of action must be denied.

Respectfully submitted by:

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of October, 2016, I caused to be electronically served through the Court's electronic filing system the foregoing Notice of Dismissal on

Russell A. Woodard, Jr.
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/s/ Johnny R. Huckabay II
Johnny R. Huckabay II