

VIRGINIA:

Before Chief Justice Hassell and  
Justices Lemons.

*In the Supreme Court of Virginia held at the Supreme Court Building in the  
City of Richmond on* Wednesday *the* 20th *day of* June, 2007.

GeoMet Operating Company, Inc., et al., Petitioners,

against Record No. 071212  
Circuit Court No. 337-06

CNX Gas Company LLC, Respondent.

Upon a Petition under Code § 8.01-626

This matter is before the Court upon a petition for review pursuant to Code § 8.01-626.

GeoMet Operating Company, Inc. ("GeoMet") and Pocahontas Mining Limited Liability Company ("PMC") filed an action for declaratory judgment to interpret a Coalseam Gas Lease agreement (the "Lease") between PMC and CNX as successor in interest. CNX filed a counterclaim for declaratory judgment seeking a declaration of the rights of the parties, particularly with reference to the Lease. Subsequently PMC and GeoMet amended their pleadings to allege fraud in the inducement of the lease, mistake, and breach of contract, and requesting rescission and/or reformation of the lease.

The trial court granted summary judgment to CNX on its counterclaim for declaratory judgment and entered an order on May 23, 2007, which is the subject of this petition for review pursuant to Code § 8.01-626.

It is clear from the record that the order of May 23, 2007, is not a final appealable order. The record reveals extended discussion between counsel and the trial court over the potential for interlocutory appeal of the order under the special provisions of Code § 8.01-670.1. Furthermore, the matter remains on the

docket for further proceedings on PMC's and GeoMet's amended pleadings alleging fraud in the inducement and breach of contract. Nonetheless, the trial court required bond and other conditions of PMC and GeoMet in order to suspend execution of the order of May 23, 2007.

The order of May 23, 2007, contains injunctive relief that was not requested in CNX's counterclaim. Furthermore, the record does not reflect that the trial court considered the factors necessary for the issuance of temporary injunctive relief. Black & White Cars, Inc. v. Groome Transportation, 247 Va. 426, 431, 442 S.E.2d 391, 395 (1994), Wright v. Castles, 232 Va. 218, 224, 349 S.E.2d 125, 129 (1986). Additionally, the order of May 23, 2007, does not comply with Code § 8.01-624 requiring that the duration of temporary injunctions be fixed. Neither does the order comply with Code § 8.01-631 regarding the posting of bond by the party obtaining injunctive relief, namely CNX.

Accordingly, the provisions of the trial court's order of May 23, 2007, granting injunctive relief and conditions of suspension, namely paragraphs 8, 9 and 11 of the order, are vacated. The case is remanded to the trial court for further proceedings consistent with this order.

This order shall be certified to the Circuit Court of Buchanan County.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By:



Deputy Clerk