

STATE OF NEW YORK
SUPREME COURT : COUNTY OF OTSEGO

COOPERSTOWN HOLSTEIN CORPORATION,

Plaintiff

VERIFIED COMPLAINT

Index No.

vs.

RJI No.

TOWN OF MIDDLEFIELD,

Defendant

Plaintiff, Cooperstown Holstein Corporation, by its attorneys, Levene, Gouldin & Thompson, LLP, complaining of the defendant, Town of Middlefield (“Middlefield”), respectfully alleges:

1. At all times hereinafter mentioned, plaintiff Cooperstown Holstein Corporation was and still is a corporation organized and existing under the laws of the State of New York with its principal place of business being located in the Town of Middlefield, County of Otsego, State of New York.
2. At all times hereinafter mentioned, defendant, Town of Middlefield, was and still is a municipal corporation in the State of New York, County of Otsego.
3. At all times hereinafter mentioned, plaintiff Cooperstown Holstein Corporation was and still is the owner of certain real property located within the Town of Middlefield as to which property Plaintiff has previously entered into certain oil and gas leases.
4. Plaintiff executed the following two (2) oil and gas leases with Elexco Land Services, Inc.:
(A) lease dated February 22, 2007 a memorandum of which was recorded in the Otsego County Clerk’s Office on May 22, 2007, in book 1104 of deeds at page 412 for premises located in the Town of Middlefield, Tax Map No.: 162-2-8.01, containing 305.1 acres which was thereafter assigned to Covalent Energy Corporation by Assignment of Oil & Gas Leases dated April 29, 2008 and recorded in the Otsego County Clerk’s Office on July 21, 2008 in Book 1116 of deeds at page 266 and further

assigned to Utica Energy, LLC by Assignment dated November 8, 2010 and recorded on November 12, 2010, Instrument No.: 2010-5343 and partially assigned to Gastem USA, Inc. by Partial Assignment dated November 8, 2010 and recorded in the Otsego County Clerk's Office on November 17, 2010, Instrument No.: 2010-5422, and

(B) lease dated March 8, 2007 a memorandum of which was recorded in the Otsego County Clerk's Office on May 22, 2007, in book 1104 of deeds at page 426 for premises located in the Town of Middlefield, Tax Map No.: 146-3-15.01, containing 74.02 acres, which was thereafter assigned to Covalent Energy Corporation by Assignment of Oil & Gas Leases dated April 29, 2008 and recorded in the Otsego County Clerk's Office on July 21, 2008 in Book 1116 of deeds at page 266 and further assigned to Utica Energy, LLC by Assignment dated November 8, 2010 and recorded in the Otsego County Clerk's Office on November 12, 2010, Instrument No.: 2010-5344 and partially assigned to Gastem USA, Inc. by Partial Assignment dated November 8, 2010 and recorded in the Otsego County Clerk's Office on November 17, 2010, Instrument No.: 2010-5423,

(the above premises are collectively referred to herein as the "Premises" and the leases are collectively referred to herein as the "Leases").

5. The surface and minerals of the Premises are owned by plaintiff.

6. Pursuant to the Leases, plaintiff granted, leased and letted to its lessee all of the oil and gas and their constituents in the Premises together with the right to explore, develop, produce, measure and market production from the Premises using methods and techniques including, but not limited to, drilling, installation of roads, electric power facilities and construction of pipelines and appurtenant facilities for use in the production and transportation of products from the Premises.

7. On or about June 14, 2011, Middlefield enacted an ordinance which repealed its existing zoning ordinance and enacted a new local law, The Town of Middlefield Zoning Law (the "Zoning Law").

8. Following the enactment of the Zoning Law, on June 28, 2011, a copy of the Zoning Law, certified by the Town Attorney for the Town of Middlefield, was filed with the Secretary of State such that the Zoning Law became effective as of June 28, 2011.

9. Zoning Law Article II, B(7) Definitions provides:

Gas, Oil, or Solution Drilling or Mining: The process of exploration and drilling through wells or subsurface excavations for oil or gas, and extraction, production, transportation, purchase, processing, and storage of oil or gas, including, but not limited to the following:

- i. A new well and the surrounding well site, built and operated to produce oil or gas, including auxiliary equipment required for production (separators, dehydrators, pumping units, tank batteries, tanks, metering stations, and other related equipment;
- ii. Any equipment involved in the re-working of an existing well;
- iii. A water or fluid injection station(s) including associated facilities;
- iv. A storage or construction staging yard associated with an oil or gas facility;
- v. Gas pipes, water lines, or other gathering systems and components including but not limited to drip station, vent station, chemical injection station, valve boxes.

10. Zoning Law Article II, B(8) Definitions provides:

Heavy Industry: a use characteristically employing some of, but not limited to the following:

smokestacks, tanks, distillation or reaction columns, chemical processing or storage equipment, scrubbing towers, waste-treatment or storage lagoons, reserve pits, derricks or rigs, whether temporary or permanent. Heavy industry has the potential for large-scale environmental pollution when equipment malfunction or human error occurs. Examples of heavy industry include, but are not limited to: chemical manufacturing, drilling of oil and gas wells, oil refineries, natural gas processing plants and compressor stations, petroleum and coal processing, coal mining, steel manufacturing. Generic examples of uses not included in the definition of "heavy industry" are such uses as: milk processing plants, dairy farms, garment factories, woodworking and cabinet shops, auto repair shops, wineries and breweries, warehouses, equipment repair and maintenance structures, office and communications buildings, helipads, parking lots, and parking garages and water wells serving otherwise allowed uses of the property. Agriculture and surface gravel and mining facilities shall not be considered heavy industry.

11. Zoning Law Article V - **GENERAL REGULATIONS APPLYING TO ALL**

DISTRICTS provides in paragraph A:

Prohibited Uses: Heavy industry and all oil, gas or solution mining and drilling are prohibited uses. Uses not specifically permitted under Article IV of this Local Law are prohibited, except that the Planning Board may find that a use is sufficiently similar to a permitted use as to be included within the definition of that use.

12. Zoning Law Article V - **GENERAL REGULATIONS APPLYING TO ALL**

DISTRICTS provides, in relevant part, in paragraph F, Temporary Uses, subparagraph(1):

Temporary uses may be allowed in any district upon issuance of a permit therefor by the Town Board. Under no circumstances shall any of the activities and/or uses prohibited by this Local Law be construed to be "temporary uses" as such is defined in Article II of the Town of Middlefield Zoning Law.

AS AND FOR A FIRST CAUSE OF ACTION:

13. Plaintiff repeats and realleges each and every allegation as hereinbefore set forth in paragraphs "1" through "12" as if fully set forth herein.

14. The Zoning Law purports to and expressly prohibits all oil and gas drilling operations in the Town of Middlefield.

15. By prohibiting all natural gas drilling and extraction activities within the Town of Middlefield, the Zoning Law attempts to regulate natural gas drilling and extraction activities which are exclusively regulated by the State.

16. The Zoning Law will prevent plaintiff and its lessee from being able to realize their respective rights under the Leases, frustrating the purposes of plaintiff's Leases and denying plaintiff the economic benefits of the Leases including the right to market its minerals including oil and natural gas.

17. Plaintiff seeks an order and judgment declaring that the the provisions of the Zoning Law pertaining to Gas, Oil, or Solution Drilling or Mining and the ban on Gas, Oil, or Solution Drilling or Mining within the Town of Middlefield are void by reason of preemption by New York State law.

18. The development, production and utilization of oil and gas resources in New York is governed and regulated exclusively by Environmental Conservation Law Article 23, the "Oil, Gas and Solution Mining Law".

19. The Department of Environmental Conservation ("DEC") exclusively administers the Environmental Conservation Law under Article 23 pursuant to ECL§ 23-0303.

20. ECL§ 23-0303(2) states: “The provisions of this article shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries; but shall not supersede local government jurisdiction over local roads or the rights of local governments under the real property tax law”.

22. By the plain language of ECL§ 23-0303(2), the statute’s express exclusion of two discrete subject areas, roads and property taxes, renders all other matters that are related or pertain to the oil, gas and solution mining industries within the scope of the supersedure provision.

23. Where a State law expressly states that its purpose is to supersede all local ordinances then the local government is precluded from legislating on the same subject matter unless it has received clear and explicit authority to the contrary.

24. ECL§ 23-0303(2) preempts not only inconsistent local legislation but also any local municipal law which purports to regulate gas and oil well drilling operations unless the law relates to local roads or real property taxes which are specifically excluded.

25. The Zoning Law is a local law or ordinance that purports to regulate gas and oil well drilling operations and solution mining and is in conflict with and is superseded by the provisions of ECL§ 23-0303(2).

26. DEC regulates all oil and gas drilling and extraction activities in this State pursuant to the express State legislative grant of exclusive authority including all determinations of where gas and oil well drilling may or may not take place.

27. Middlefield, like every other municipality in the State, has no inherent powers but is a creature of the State, and can only perform those functions of government that have been conferred upon it by the Constitution of New York and delegated to it by the New York State Legislature.

28. The New York State Constitution Article IX section 2 (c)(ii) specifies that: “Every local

government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government.”

29. Neither the Constitution of New York nor the Legislature have conferred or delegated any oil and gas regulatory or environmental protection functions upon or to any New York municipalities.

30. All regulatory and environmental protection functions pertaining to the oil and gas industries within the State of New York have been expressly reserved to the State to be administered by the DEC.

31. Pursuant to ECL § 23-0301, the State has declared that it is “in the public interest to regulate the development, production and utilization of natural resources of oil and gas in this state in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be had, and that the correlative rights of all owners and the rights of all persons including landowners and the general public may be fully protected, and to provide in similar fashion for the underground storage of gas, the solution mining of salt and geothermal, stratigraphic and brine disposal wells.”

32. The provisions of the Zoning Law pertaining to Gas, Oil, or Solution Drilling or Mining and the ban on Gas, Oil, or Solution Drilling or Mining within the Town of Middlefield are inconsistent and in conflict with and will frustrate the public purpose and benefits intended by ECL§ 23-0301.

33. The DEC has adopted an extensive program for drilling in New York exemplified by the adoption of a Final Generic Environmental Impact Statement (GEIS) on the Oil, Gas and Solution Mining Regulatory Program in 1992 and, in 2008, the commencement of a process to supplement the GEIS (the “SGEIS”) with proposed drafts to the SGEIS in 2009 and 2011 and the solicitation and receipt of numerous

and extensive public comments with the final SGEIS not expected to be completed until 2012.

34. The provisions of the Zoning Law pertaining to Gas, Oil, or Solution Drilling or Mining are inconsistent and in conflict with the provisions of ECL§ 23-0303(2).

35. The provisions of the Zoning Law pertaining to Gas, Oil, or Solution Drilling or Mining are superseded by ECL§ 23-0303(2).

36. In addition to being expressly preempted under ECL§ 23-0303(2), the provisions of the Zoning Law pertaining to Gas, Oil, or Solution Drilling or Mining are void by reason of the New York State Legislature's implied intent to preempt local laws and ordinances that relate to the regulation of the oil, gas and solution mining industries.

37. Pursuant to the doctrine of conflict preemption, Middlefield may not exercise its power by adopting a local law inconsistent with constitutional or general law.

38. The New York Legislature sought to prevent the adoption of inconsistent and irreconcilable local laws when it delegated all oil and gas regulatory functions to DEC.

39. By reason of the foregoing, Plaintiff is entitled to an order of this Court declaring the provisions of the Zoning Law pertaining to Gas, Oil, or Solution Drilling or Mining and the ban on Gas, Oil, or Solution Drilling or Mining within the Town of Middlefield are void and are preempted by ECL§ 23-0303.

WHEREFORE, Plaintiff respectfully requests that the Court issue an order and judgment declaring the provisions of the Zoning Law pertaining to Gas, Oil, or Solution Drilling or Mining and the ban on Gas, Oil, or Solution Drilling or Mining within the Town of Middlefield to be void by reason of being preempted by ECL § 23-0303, and that the Court grant such other and further relief as the Court may deem just and proper.

Dated: September 15, 2011
Vestal, New York

LEVENE GOULDIN & THOMPSON, LLP

S/ Michael R. Wright
By: Michael R. Wright, Esq.

S/ Scott R. Kurkoski
By: Scott R. Kurkoski, Esq.
Attorney for Plaintiff
Office Address:
450 Plaza Drive
Vestal, NY 13850
Mailing Address:
P.O. Box F-1706
Binghamton, NY 13902-0106
Telephone: (607) 763-9200
Fax: (607) 763-9211

STATE OF NEW YORK)
)SS:
COUNTY OF OTSEGO)

Jennifer K. Huntington, being duly sworn deposes and says that I am the President of Cooperstown Holstein Corporation the corporation named in the within action. I have read the annexed complaint and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief as to those matters therein not stated upon knowledge is based upon my review of records.

S/ Jennifer K. Huntington
Jennifer K. Huntington

Sworn to before me this 15th
day of September, 2011.

Notary Public