

<b>DISTRICT COURT</b>  <b>CITY AND COUNTY OF DENVER, COLORADO</b>	EFILED Document CO Denver County District Court 2nd JD Filing Date: Dec 15 2006 1:39PM MST Filing ID: 13210926 Review Clerk: Nancy E Magdaleno  ▲ COURT USE ONLY ▲
Plaintiffs:  <b>ELIZABETH MOBALDI and STEVE MOBALDI</b>  Defendants:  <b>CER CORPORATION; MACTEC, INC.; SANDIA CORPORATION; BARRETT RESOURCES CORPORATION; WILLIAMS PRODUCTION RMT COMPANY; HALLIBURTON ENERGY SERVICES, INC.; MONUMENT WELL SERVICE CO.; ROCKY MOUNTAIN WIRELINE SERVICE, INC.; THE SUPERIOR OIL COMPANY; and NICOR DRILLING COMPANY</b>	
<b><u>ORDER RE: DEFENDANT SANDIA CORPORATION'S MOTION TO DISMISS</u></b>	

THE COURT, having considered defendant Sandia Corporation's motion to dismiss, the response, the reply, the court file and relevant authorities, and being sufficiently advised in the premises, finds, concludes and orders as follows.

1. This is an action to recover damages for personal injuries and property damage allegedly resulting from toxic contamination of plaintiffs' water well which was allegedly caused by the fracing operations conducted by defendant, CER Corporation (CER) in the immediate vicinity of plaintiffs' property. Defendant, Sandia Corporation (Sandia), moves to dismiss pursuant to C.R.C.P. 12(b)(5) contending that, among other things, plaintiffs' first amended complaint fails to state a claim against Sandia for vicarious liability. The factual allegations in the complaint show that any liability of Sandia would be based on Sandia's vicarious liability for the conduct of CER.

2. Although plaintiffs have submitted several exhibits in response to this motion, the court may only consider the allegations of the First Amended Complaint (Complaint) and the 1981 agreement between CER and defendant, The Superior Oil Company, which is referred to in the Complaint and submitted as Exhibit 1 to plaintiffs' response. *See Yadon v. Lowry*, 126 P.3d

332, 336 (Colo. App. 2005) (allowing consideration of documents attached to Rule 12(b)(5) motions that were expressly referred to in the complaint).

3. The only factual allegation in the Complaint relating to Sandia's purported vicarious liability is that the contract between Superior and CER (Exhibit 1) was derivative of a contract between CER and Sandia of an unspecified date whereby Sandia was reputed to be acting by and through Sandia Laboratories. Complaint, para. 14.

4. In their Response, plaintiffs rely primarily upon paragraphs 1 and 2 of the 1981 agreement between CER and Superior. These paragraphs provide, in substance, that CER and Sandia are both going to participate in experimental fracing on lands in the vicinity of the property later purchased by the plaintiff. Paragraph 4.1 of that agreement provides, however, for a term of five years from January 30, 1981. The Complaint, on the other hand, alleges that the fracing experiments which ultimately led to contamination of plaintiffs' water well commenced in 1993. Complaint, para. 12 and unnumbered paragraph at p. 8. The Complaint contains no factual allegations from which it may be inferred that Sandia was participating in the experimental fracing in 1993 or is otherwise vicariously liable for CER's conduct at that time.

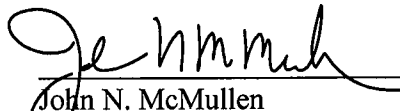
5. Accordingly, the court grants Sandia's motion to dismiss the claims against it pursuant to C.R.C.P. 12(b)(5). That being the case, the court finds it unnecessary to address this motion to the extent that it is directed at specific claims.

6. Judgment enters in favor of Sandia Corporation and against the plaintiffs on all claims asserted against Sandia Corporation in plaintiffs' First Amended Complaint.

SO ORDERED.

Dated this 15 day of December, 2006.

BY THE COURT:

  
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John N. McMullen  
District Court Judge

cc: All parties.