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Wagoner v. Chevron II

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**BACK TO BASICS: DISTINGUISHING REAL AND
PERSONAL RIGHTS IN *WAGONER V. CHEVRON USA
INCORPORATED II***

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I. INTRODUCTION

No discussion of oil and gas operations in Louisiana would be complete without the discussion of “legacy” litigation. In Louisiana legacy suits have proliferated. A legacy lawsuit refers to a suit by a landowner claiming that oil and gas operations caused damage to his property through contamination or pollution.

Legacy suits impose substantial burdens on the oil and gas operators allegedly responsible for damage to contaminated property and production sites. Even before a legislative response was made to these economically damaging suits, Louisiana courts developed and refined a jurisprudential rule referred to as the “Subsequent Purchaser Doctrine.” This judicially-created doctrine provides that a purchaser cannot recover from a third-party for damage inflicted prior to the sale.¹ The distinction between real and personal rights is fundamental for a proper understanding of the doctrine. This paper will discuss the operation of the Subsequent Purchaser Doctrine, and the importance of the distinction between real and personal rights, through the lens of the influential *Wagoner v. Chevron USA Incorporated*² (“*Wagoner II*”) decision.

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1. Ashley M. Liuzza, *Buyer Beware: How Purchasers are Left Holding the Bag When it comes to Property Damages*, 57 LOY. L. REV. 375, 381 (2011).

2. *Wagoner v. Chevron USA, Inc.*, 48,119 (La. App. 2 Cir. 7/24/13), 121 So. 3d 727 [hereinafter *Wagoner II*].

II. BACKGROUND

A. *Wagoner v. Chevron USA Incorporated* (“*Wagoner I*”)

Understanding the breadth and purport of the *Wagoner II* decision requires insight into the earlier related judgment, *Wagoner I*.³ In *Wagoner I*, the Louisiana Second Circuit Court of Appeals reviewed a surface owners’ claim for damages against lessees for contamination of the land that took place prior to the surface owners’ acquisition of the same. The court, articulating the Subsequent Purchaser Doctrine stated:

The general rule, often referred to as the subsequent purchaser doctrine, is that a purchaser cannot recover from a third party for property damage inflicted prior to the sale. It is the *landowner at the time of the alleged damages* who has a real and actual interest to assert a claim.⁴

More importantly, for the purposes of this note, the court premised their decision on the following analysis:

The right to damages conferred by a lease, whether arising under a mineral lease or a predial lease, is a personal right, not a property right . . . it does not pass to the new owners of the land when there is no specific conveyance of that right in the instrument of sale.⁵

Relying upon the Subsequent Purchaser Doctrine, the court ruled in favor of the defendant lessees, based on an exception of no right of action. The court noted that the plaintiffs were not parties to the mineral leases obtained by the operator who damaged the land and the landowner who held the real right of ownership at the time of the injury.⁶ However, the court suggested, *in dicta*, that the subsequent landowners could have brought a claim for these damages if they had secured an express assignment of the right to

3. *Wagoner v. Chevron USA Incorporated*, 55 So. 3d 12 (La.App. 2 Cir. 2010) [hereinafter *Wagoner I*].

4. *Id.* at 22-23 (citations omitted) (emphasis added).

5. *Id.* at 23.

6. *Id.*

sue the mineral lessees for property damage that took place before their purchase of the property.⁷

B. Wagoner v. Chevron USA Incorporated (“Wagoner II”)

After the *Wagoner I* decision, the plaintiffs (“assignees”) obtained an assignment of 99% of the rights from the owners of the mineral servitudes (“assignors”), and for a second time brought suit to recover for damages to the property caused by oil exploration and production by the lessees.⁸ Significantly, the assignors, unlike the assignees, had a real right in the land at the time the property was damaged by the lessees’ operations. The assignors conveyed a personal right (the right to request damages) through the assignments to their assignee, the subsequent surface owners.

In *Wagoner II*, the primary issue before the court was whether the assignees’ acquisition of the assignors’ right to sue for damages to the property changed the capacity in which the subsequent surface owners appeared, such that the assignee could defeat the defendants’ claims of *res judicata*. At first blush, the question before the court was purely procedural, and the court dispensed with the issue concluding that in *Wagoner II*, the subsequent surface owners, through the aforementioned assignments, “stepped into the shoes” of the prior assignees who had a real interest in the property at the time of the damage.⁹ The court reasoned that in *Wagoner I* the subsequent surface owners filed suit in their capacity as present surface owners who acquired the property after the damage occurred. However, in *Wagoner II*, the subsequent surface owners sued in their capacity as assignees of the rights of the prior mineral servitude owners. This change in capacity was sufficient to defeat the defendants’ claims of *res judicata*.

7. *Id.*

8. *Wagoner II*, 121 So. 3d at 727.

9. *Id.* at 729.

The Second Circuit affirmed the trial court's finding in favor of the defendants' exception of *res judicata* in relation to the claims brought by the plaintiffs in their capacity as "surface owners" as adjudicated in *Wagoner I*.¹⁰ These claims were dismissed with prejudice. However, the assignees' claims brought in their capacity as the mineral servitude owners' assignees survived the defendants' exceptions of *res judicata*. The matter was remanded for further proceedings on those claims.¹¹ Dispensing with the procedural issue at hand, *Wagoner II* demonstrated the application of the *dicta* from *Wagoner I*. The distinction between real and personal rights was an outcome-determinative feature in the *Wagoner* decisions.

III. COMMENTARY

A. Patrimonial Rights and their Subdivision

A patrimonial right is one susceptible to monetary evaluation.¹² Patrimonial rights are further divided into real rights and personal rights (credit rights), and it is this distinction that was determinative in *Wagoner II*.¹³ Real rights, unlike personal rights, require only one subject, the holder of the right.¹⁴ This holder exerts "a direct and immediate power over the thing which is the object of the right."¹⁵ In contrast, a personal right, such as a credit-right, "presupposes an active subject, the creditor or obligee, and a passive one, the debtor or obligor."¹⁶ Because a real right is exerted directly over a thing, it is considered "absolute" (in the sense that the holder of a real right can hold it against everyone).¹⁷

10. *Id.* at 735-36.

11. *Id.* at 736.

12. ALAIN A. LEVASSEUR, LOUISIANA LAW OF OBLIGATIONS IN GENERAL: A PRÉCIS 25 (LexisNexis 2006).

13. *Id.*

14. *Id.* at 8 (§1.5).

15. *Id.*

16. *Id.*

17. *Id.* at 9.

In contrast, a credit-right is relative because its holder may only demand performance from a specific debtor.¹⁸

The distinction between real and personal rights is muddled in practical application. This distinction is particularly problematic “when the performance relates to a thing, especially an immovable thing.”¹⁹ Professor Litvinoff provided an example of this difficulty and set forth the proper analysis to navigate the problem. He articulated:

Thus, the indemnity owed to an owner for the expropriation of a part of his immovable property, and the damages owed to the owner of a thing for its partial destruction or for an interference with his rights in it, belong to the person who was owner at the time of the expropriation, destruction, or interference, as the right to demand indemnity or to demand damages is a *personal right that is not transferred together with the thing*.²⁰

In the case of ownership or other real rights the actor has direct power over a thing, which may be held against the world; whereas, in the case of personal rights, such as the right to damages arising out of damage to an immovable, the actor’s right is relative (in the sense that the actor is entitled to receive a performance from only one or more persons in particular). In the instant case, the right to claim damages arising out of the pollution of a landowner’s immovable property is a personal right.

B. Application: Personal Rights in the Wagoner Decisions

The *Wagoner* decisions represent prominent examples of the problem identified above: instances when the performance of an obligation relates to a thing, especially an immovable thing. Consequently, the determination of the nature of the rights in *Wagoner I* and *II* is as essential as it is challenging. In the *Wagoner*

18. *Id.*

19. SAÚL LITVINOFF, 5 LOUISIANA CIVIL LAW TREATISE. THE LAW OF OBLIGATIONS 46 (§3.3) (2d ed., West 2001).

20. *Id.*, *citing* comment (e) to LA. CIV. CODE art. 1764 (emphasis added).

decisions, the courts accurately concluded that the right to damages arising out of the lease agreement between the lessee and the original landowner was a personal right, not a real right. As reproduced above, the *Wagoner I* court stated:

The right to damages conferred by a lease, whether arising under a mineral lease or a predial lease, is a personal right, not a property right; it does not pass to the new owners of the land when there is no specific conveyance of that right in the instrument of sale.²¹

This holding is consistent with the nature of the right springing from the damages to the land caused by the lessees' conduct. As noted in the example provided above, damages owed to the owner of a thing for its partial destruction belong to the person who was owner at the time of the destruction, as the right to demand damages *is a personal right that is not transferred together with the thing*. This is the very conclusion the court reached in *Wagoner I*, when it determined that, absent a specific assignment of that personal right to collect damages from the previous owners, the subsequent landowners did not have a valid claim.

The determination that the rights to claim damages under the lease were personal rather than real was significant. Namely, the subsequent landowners did not acquire a right to the action through their purchase of the land, as they would have if the right had been deemed "real," in the sense that it "runs with the land."²² As a consequence of the personal nature of the right, the subsequent owners needed to purchase the right to claim damages from the original owners.

The right to sue for damages vested in the patrimony of the original owners and was not transferred with the property, and that is why an assignment of right to claim damages was necessary for the subsequent owners to bring a suit. It also explains why the plaintiffs sued in a different capacity after acquiring this right.

21. *Wagoner I*, 55 So. 3d at 23.

22. *See* LA. CIV. CODE arts. 1763 & 1764.

Effectively, the subsequent landowners tested the *dicta* articulated by the *Wagoner I* court to the effect that a specific conveyance of that right would permit them to exercise the personal right to damages against the lessees. The subsequent landowners' efforts were successful in that respect.

IV. CONCLUSION

The exploration of the characteristics of real and personal rights is not a purely academic exercise; rather, this distinction can have significant consequences. Principally, for landowners, the lesson is that an act of conveyance should include a specific conveyance of any and all personal rights arising out of the ownership of the immovable. Prudent landowners who wish to acquire personal rights are cautioned by the *Wagoner* decisions to make these personal rights part and parcel to their bargain with the original landowner. For oil and gas operators, this decision could prove bothersome, as it demonstrates that a subsequent landowner, through an assignment of the personal right to claim damages, can acquire and effectively exercise that right even if the assignment does not occur in the original act of conveyance. These assignments do not increase an operator's liability. However, they may provide a right to sue for damages to a more litigious landowner.