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INTRODUCTION[1]

The Louisiana Civil Code recognizes an array of nominate contracts. In contrast to innominate contracts (which are not adorned with a "special designation" in the Civil Code), these are consensual legal relationships which create rights and obligations and are "given a special designation such as sale, [and] lease . . ."[2] Within this distinct family of nominate contracts is the contract of lease and its important subset, the mineral lease.

Indisputably commonplace in commercial transactions involving immovable property, the import and functionality of both the sale and the lease are well known and understood in Louisiana law. The essential differences between the institutions of sale and of lease are profound and easily understood.

In the sale, ownership of the thing transfers to a vendee such that the vendor has little or no particular concern or interest as to how the sold thing is managed or used by the new owner.[3]

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1. Portions of this article represent adaptations of material contained in PATRICK S. OTTINGER, LOUISIANA MINERAL LEASES: A TREATISE (Claitor's Law Books & Publishing Division, Inc., 2016).

2. LA. CIV. CODE ANN. art. 1914 (2022).

3. Of course, there are exceptions to this observation, as when the sale is made on credit such that the vendor, until the sales price is fully paid, clearly has an interest in the status and condition of the object of the sale. *See* LA. CIV. CODE ANN. art. 2561 (2022). Also, if the vendor reserves a right of redemption, it is obvious that it would want the thing to be well maintained in case it is ever returned the vendor. *See* LA. CIV. CODE ANN. art. 2561 (2022).

In contrast, because the leased thing is in the possession of the lessee only for a term of time and will ultimately be returned to the owner-lessor at some future date, the contract of lease justifiably gives rise to the continuing interest of the lessor in monitoring and observing the use to which the leased thing is put and how it might be maintained by the lessee.

Louisiana law imposes distinct "principal" obligations on both the lessor and the lessee alike. At the same time, Louisiana embraces a robust policy of "freedom of contract," empowering contracting parties to construct such bargain or convention as they may desire.[4] Such consensual provisions will receive the full approbation of courts except to the extent that the contractual terms violate principles of public policy or unjustifiably and adversely affect the rights of third persons, disallowing the enforcement of the offending term.[5]

The lessor who is dissatisfied with the performance of the lessee's obligations under the lease might have occasion to seek to conclude the lease relationship and take the property back, unburdened by the lease and, concomitantly, by the rights of the lessee to use or possess the leased thing. Similarly, the lessee may have concerns about the lessor failing to comply with its obligations under the lease, whether they are legal or contractual in origin.

When unique consensual provisions are contained in a lease contract, a violation of such clauses or of a statutorily imposed "principal" obligation, may give rise to a default or breach. However, a court has discretion, "according to the circumstances," to withhold an order of lease dissolution unless the breach is both material and serious.[6]

Hence, not every violation of a lease obligation mechanically results in dissolution of the contract. Even an indisputable breach must be evaluated as to its materiality and whether it caused real damage or injury to the counterparty to the lease. This is the doctrine of judicial control.

Part I of this article examines the basic tenets of the Louisiana law of lease, noting articles in the Louisiana Civil Code on the topic of leases in general, as well as relevant precepts reposing in the Louisiana Mineral Code concerning the mineral lease. In Part II, the author reviews various aspects or principles that embody the important notion of "freedom of contract," as it pertains to contracts in general, and the mineral lease in particular. The panoply of remedies available to an aggrieved party for a breach or violation of the lease is set forth in Part III. Finally, Part IV of

4. *See infra* pt. II.

5. "Persons may not by their juridical acts derogate from laws enacted for the protection of the public interest. Any act in derogation of such laws is an absolute nullity." LA. CIV. CODE ANN. art. 7 (2022).

6. LA. CIV. CODE ANN. art. 2013 (2022).

this article considers the jurisprudential development of the doctrine of judicial control, particularly noting the instances when the doctrine was invoked to tolerate an alleged violation of a mineral lease.

I. LOUISIANA LAW OF LEASE

A. Leases in General

The Louisiana Civil Code defines a lease as "a synallagmatic contract by which one party, the lessor, binds himself to give to the other party, the lessee, the use and enjoyment of a thing for a term in exchange for a rent that the lessee binds himself to pay."[7]

A lease must have a term as "may be agreed to by the parties or supplied by law."[8] "The term may be fixed or indeterminate."[9] Thus, it is deemed "fixed when the parties agree that the lease will terminate at a designated date or upon the occurrence of a designated event."[10]

During the term of the lease, the lessee has the right to use and enjoy the leased thing, subject to strictures of the lease contract. Typically, the purposes for which the "thing" might be used and possessed by the lessee are set forth in the "Granting Clause" of the lease.[11]

"A lease with a fixed term terminates upon the expiration of that term, without need of notice, unless the lease is reconducted or extended" as provided by law.[12] "The lessee is bound: [t]o return the thing at the end of the lease."[13]

B. Mineral Leases

1. Prior to the Adoption of the Louisiana Mineral Code

Prior to the adoption of the Louisiana Mineral Code in 1974, effective on January 1, 1975,[14] and over a number of decades, the courts undertook to discern and provide jurisprudential guidance as to the juridical nature

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7. LA. CIV. CODE ANN. art. 2668 (2022).
8. LA. CIV. CODE ANN. art. 2678 (2022).
9. *Id.*
10. *Id.*
11. Concerning the law applicable to the "Granting Clause" of a mineral lease, *see* Patrick S. Ottinger, *The "Granting Clause" of a Mineral Lease: What Do You Mean I Can't Do That?*, 68 ANN. INST. ON MIN. LAW (2021).
12. LA. CIV. CODE ANN. art. 2720 (2022).
13. LA. CIV. CODE ANN. art. 2683 (2022).
14. Act No. 50, 1975 La. Acts.

of contracts for the exploration and production of oil and gas. In so doing, the courts consistently recognized that such agreements were to be treated and construed as leases.

On numerous occasions, the Louisiana Supreme Court decried the fact that it was relegated to addressing important issues brought before it without the benefit of legislative guidance, based on an ancient Civil Code that contained no reference whatsoever to oil, gas or minerals.

Indeed, in Professor Harriet Spiller Daggett's seminal treatise *Mineral Rights in Louisiana*,[15] she noted that the first Louisiana oil and gas case was decided in 1870,[16] and described the "law of oil and gas" as "new and without precedent,"[17] "[t]he vocabulary dealing with it" as "new,"[18] and the decisions of other states of "small value because Louisiana is a civil-law state with an old civil code."[19]

Thus, in *Rives v. Gulf Refining Co.*,[20] the Louisiana Supreme Court stated that:

> Gas and oil leases and contracts are a part by themselves. There is scarcely any comparison between them and the ordinary farm or house lease, although there is some resemblance in them to coal or solid mineral leases. The Code is silent as to such contracts; for the reason, doubtless, that minerals under and within the soil of Louisiana were not in the contemplation of the lawmakers at the time that the Code was adopted. The Legislature up to this time has been silent upon the subject of mineral rights and contracts. The law with reference to sales and leases found in the Code cannot be unreservedly applied to these contracts. Such contracts partake of the nature of both sale and lease, and they have features that are not applicable to either.[21]

Next, in *Spence v. Lucas*,[22] the court cited earlier decisions "to the effect that mineral leases will be construed as leases, and not sales, and that the law with reference to leases will be applied thereto in so far as they may be,"[23] noting further, as follows:

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15. HARRIET SPILLER DAGGETT, MINERAL RIGHTS IN LOUISIANA xxix (1949).
16. Escoubas v. La. Petrol. & Coal Oil Co., 22 La. Ann. 280 (La. 1870).
17. DAGGETT, *supra* note 15.
18. *Id.*
19. *Id.*
20. Rives v. Gulf Ref. Co. of La., 62 So. 623 (La. 1913).
21. *Id.* at 624–25.
22. Spence v. Lucas, 70 So. 796 (La. 1916).
23. *Id.* at 798.

> Mining is a new industry in this State. . . . Until the Legislature shall have passed laws specially applicable to the industry of mining, which is a new one in this state, the parties engaged in those pursuits and the courts of the state will adhere to the jurisprudence on the subject, and treat mineral contracts as leases.[24]

Concerning the interpretation of oil and gas contracts, the Supreme Court stated in *Tyson v. Surf Oil Co.*:[25]

> This court has consistently applied the codal provisions, whenever applicable, to oil and gas leases for many years. Having declined to enact laws for the regulation of the oil industry and, particularly, having declined to adopt a Mineral Code, the Legislature has placed the stamp of approval upon the system of interpretation of oil and gas contracts which this court has followed for so many years.[26]

No discussion of the jurisprudential evolution of the mineral lease would be complete without consideration of the important case of *Gulf Refining Co. of La. v. Glassell*.[27]

In *Glassell*, the Supreme Court observed that the

> lessee in the usual mineral and oil lease based upon a cash or royalty consideration, or both, merely obtains an obligatory or personal right but not a real right—a jus in re.[28] Therefore, he is in the same position as an ordinary lessee of realty and is not entitled to institute a petitory action in his own right.[29]

The decision in *Glassell* caused a great deal of consternation to mineral lessees, as the ruling meant that mineral lessees were not able to protect their rights against interference by third persons. It was understandable that a lessee who expended significant amounts of capital

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24. *Id.*
25. Tyson v. Surf Oil Co., 196 So. 336 (La. 1940).
26. *Id.* at 343.
27. Gulf Refining Co. of La. v. Glassell, 171 So. 846 (La. 1936).
28. A *jus in rem* is defined as "a right enforceable against anyone in the world interfering with that right founded on some specific relationship, status, or particular property accorded legal protection from interference by anyone." *Jus in Rem*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/jus%20in%20rem [https://perma.cc/997J-X8F3] (last visited Apr. 1, 2023).
29. *Gulf Refining Co. of La*., 171 So. at 849 (footnote added).

to drill a well and discover significant reserves of oil and gas had to be concerned with the possibility of being displaced of possession with no available remedy.[30]

Finally, in *St. Martin Land Co. v. Pickney*, the Supreme Court stated:

> [T]he Civil Code was adopted [when] the oil industry was not in existence. Consequently, the framers of the Code did not contemplate the various questions and problems arising in the course of the industry. The Legislature has not seen fit to adopt statutes sufficient to guide the courts in determining the various controversies arising in this industry. Under such circumstances, the court was compelled to apply the articles of the Civil Code that were most applicable to the nature of the rights asserted . . . It must be borne in mind that we had no exact rule to apply and consequently applied the articles of the Code most applicable to the nature of the right involved.[31]

2. Subsequent to the Adoption of the Louisiana Mineral Code

As the result of a multi-decade effort by leaders of the mineral bar in the State of Louisiana, the Louisiana Mineral Code was enacted in 1974, establishing a codified approach to mineral law.[32] For the most part, the Mineral Code codified—and, in some particular instances, clarified or changed—the rules which had been developed jurisprudentially.[33]

As noted by one respected commentator, "[t]he Mineral Code has been conceived as a specialized extension of the Civil Code in matters of mineral law. Therefore, it must be interpreted and applied as a true code against the background of the Civil Code and the Louisiana civilian tradition."[34]

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30. *See* OTTINGER, *supra* note 1, at § 1-04.

31. St. Martin Land Co. v. Pickney, 33 So. 2d 169, 172–73 (La. 1947). This case did not involve a mineral lease, but considered the rules pertinent to prescription accruing against a mineral royalty.

32. For a discussion of the history of the multi-decade effort to develop and enact a Mineral Code, *see* Patrick S. Ottinger, *From the Courts to the Code: The Origin and Development of the Law of Louisiana on Mineral Rights*, 1 LSU J. OF ENERGY L. & RESOURCES 5 (2012).

33. "The Mineral Code is designed in large measure to supplant by way of codification the extensive jurisprudence that developed in this area of the law." GEORGE W. HARDY, III, *EXPOSÉ DES MOTIFS:* SUGGESTED PRINCIPLES OF LOUISIANA MINERAL LAW—A BASIS FOR REFORM 3 (1971).

34. 3 A.N. YIANNOPOULOS, 3 LOUISIANA CIVIL LAW TREATISE, PERSONAL SERVITUDES § 2:19 (5th ed. 2011).

Article 16 of the Mineral Code provides, in relevant part (and as made pertinent to the mineral lease), as follows:

> The basic mineral rights that may be created by a landowner are the mineral servitude, the mineral royalty, and the mineral lease. . . . Mineral [leases] are real rights and are subject . . . to special rules of law governing the term of their existence.[35]

A mineral lease is defined in article 114 of the Mineral Code as "a contract by which the lessee is granted the right to explore for and produce minerals."[36]

Unlike the other "basic" mineral rights, which are subject to the prescription of nonuse, a mineral lease must have a term that cannot exceed ten years without operations or production.[37]

Three decades after the adoption of the Mineral Code, the Louisiana law of lease was comprehensively amended and reenacted in 2004, effective January 1, 2005.[38]

As reenacted, article 2671 of the Louisiana Civil Code now characterizes a lease according to the "agreed use of the leased thing"; thusly, "[d]epending on the agreed use of the leased thing, a lease is characterized as: . . . mineral, when the thing is to be used for the production of minerals."[39]

Concordant with the above statement, article 2672 of the Louisiana Civil Code provides that a "mineral lease is governed by the Mineral Code."

Accommodating this instruction, article 2 of the Mineral Code reads, as follows:

> The provisions of this Code are supplementary to those of the

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35. LA. REV. STAT. ANN. § 31:16 (2022).

36. LA. REV. STAT. ANN. § 31:114 (2022).

37. LA. REV. STAT. ANN. § 31:115(A) (2022).

> The interest of a mineral lessee is not subject to the prescription of nonuse, but the lease must have a term. Except as provided in this Article, a lease shall not be continued for a period of more than ten years without drilling or mining operations or production. Except as provided in this Article, if a mineral lease permits continuance for a period greater than ten years without drilling or mining operations or production, the period is reduced to ten years.

38. Act No. 821, 2004 La. Acts 2556.

39. LA. CIV. CODE ANN. art. 2671 (2022). The other "types" of lease are residential, agricultural, commercial, and consumer, but the listing is not exclusive.

> Louisiana Civil Code and are applicable specifically to the subject matter of mineral law. In the event of conflict between the provisions of this Code and those of the Civil Code or other laws the provisions of this Code shall prevail. If this Code does not expressly or impliedly provide for a particular situation, the Civil Code or other laws are applicable.[40]

The net effect of articles 2671 and 2672 of the Civil Code, when considered in tandem with article 2 of the Mineral Code, is to recognize a mineral lease as a nominate "type" of lease, but later withdraw it from the regulatory precepts of the Civil Code to the extent that a matter or rule concerning the mineral lease is addressed either in the Mineral Code,[41] or in the contract itself.

An example of the continued pertinence of the Civil Code provisions as applied to a mineral lease can be seen in the case of *Terrebonne Par. Sch. Bd. v. Castex Energy, Inc.*[42] In that significant case, the Supreme Court took up the question of whether the "prudent operator" standard articulated in article 122 of the Mineral Code imposed upon a mineral lessee an implied duty to restore the leased premises after conducting production activities.[43] Finding that no such duty was imposed by the text of Mineral Code article 122, the court then stated, as follows:

> Of relevance here, the text of this provision does not impose an express duty to restore the surface. Rather, it simply adapts the general, "good administrator" standard of La. Civ.Code art. 2710, applicable to all leases, to the specific context of a mineral lease.[44]

Conversely, the provisions of the Civil Code pertinent to leases do not apply to a mineral lease if the Mineral Code contains a provision addressing the issue at hand. Thus, in *Regions Bank v. Questar Exploration & Production Corp.*,[45] the court refused to apply Civil Code article 2679, which imposes a 99-year maximum lease term,[46] to a mineral

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40. LA. REV. STAT. ANN. § 31:2 (2022).

41. *See* OTTINGER, *supra* note 1, at *Chapter Three*.

42. Terrebonne Par. Sch. Bd. v. Castex Energy, Inc., 893 So. 2d 789 (La. 2005).

43. *See* OTTINGER, *supra* note 1, at § 3-13(e)(7).

44. *Terrebonne Par. Sch. Bd.*, 893 So. 2d at 797.

45. Regions Bank v. Questar Expl. & Prod. Corp., 184 So. 3d 260 (La. Ct. App. 2d), *writ den'd* 206 So. 3d 882 (La. 2016).

46. LA. CIV. CODE ANN. art. 2679 (2022).

lease granted in 1907 inasmuch as the Mineral Code expressly addressed the issue of term.[47]

C. Principal Obligations of the Lessor and of the Lessee

1. Obligations Imposed by Law

The Civil Code enumerates certain "principal" obligations of both the lessor and the lessee.

Thus, article 2682 of the Civil Code specifies the following "principal" obligations of the lessor, as follows:

> The lessor is bound:
>
> (1) To deliver the thing to the lessee;
> (2) To maintain the thing in a condition suitable for the purpose of which it was leased; and
> (3) To protect the lessee's peaceful possession for the duration of the lease.[48]

In reference to the mineral lease, the Mineral Code assigns certain particularized obligations to the lessor. Thus, article l19 of the Mineral Code states that a "mineral lessor is bound to deliver the premises that he has leased for use by the lessee, to refrain from disturbing the lessee's possession, and to perform the contract in good faith."[49]

If there is any tension between the lessor's "principal" obligations under the Civil Code and the lessor's particularized obligations under the Mineral Code, article 2 of the Mineral Code dictates that it should take precedence.

The "principal" obligations of the lessee are set forth in Civil Code article 2683, as follows:

> The lessee is bound:
>
> (1) To pay the rent in accordance with the agreed terms;
> (2) To use the thing as a prudent administrator and in accordance with the purpose for which it was leased; and
> (3) To return the thing at the end of the lease in a condition that

47. LA. REV. STAT. ANN. § 31:115(A) (2022), quoted *supra* note 37.
48. LA. CIV. CODE ANN. art. 2682 (2022).
49. LA. REV. STAT. ANN. § 31:119 (2022). *See* OTTINGER, *supra* note 1, at § 3-10.

> is the same as it was when the thing was delivered to him, except for normal wear and tear or as otherwise provided hereafter.[50]

Again, the Louisiana Mineral Code amplifies these "principal" obligations by which a lessee under a mineral lease is bound. Thus, the Civil Code's obligation "to pay the rent in accordance with the agreed terms" is formulated in Mineral Code article 123 as the duty "to make timely payment of rent according to the terms of the contract or the custom of the mining industry in question if the contract is silent."[51]

The Civil Code's instruction that a lessee must act as a "prudent administrator" is particularized in the Mineral Code as the mineral lessee being "bound to perform the contract in good faith and to develop and operate the property leased as a reasonably prudent operator for the mutual benefit of himself and his lessor."[52]

As in the case of conflict between the lessor's "principal" obligations under the Civil Code and the lessor's particularized obligations under the Mineral Code, the Mineral Code would take precedence with respect to tensions pertinent to the lessee's duties.

The obligation "to perform the contract in good faith," as pertinent to both the mineral lessor and lessee alike, is concordant with the obligation applicable to all contracts, as articulated in the Louisiana Civil Code.[53]

The Supreme Court in *Frey v. Amoco Prod. Co.*,[54] has stated that "where the Louisiana Mineral Code, *see* La. Rev. Stat. § 31:1–§ 31:215, neither expressly nor impliedly provides for a particular situation, resort is made to the Louisiana Civil Code or other laws, either directly or by analogy."[55]

2. Obligations Imposed by Contract

Parties are free to stipulate other duties and requirements by way of contract. This topic—called "freedom of contract"—is taken up in Part II of this article.

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50. LA. CIV. CODE ANN. art. 2683 (2022).

51. LA. REV. STAT. ANN. § 31:123 (2022). *See* OTTINGER, *supra* note 1, at § 3-14.

52. LA. REV. STAT. ANN. § 31:122 (2022). *See* OTTINGER, *supra* note 1, at § 3-13.

53. "Contracts must be performed in good faith." LA. CIV. CODE ANN. art. 1983 (2022).

54. Frey v. Amoco Prod. Co., 603 So. 2d 166 (La. 1992).

55. *Id*. at 171.

II. "FREEDOM OF CONTRACT"[56]

A. Preface

While certain "principal" obligations are prescribed by express provisions in the Civil Code, and then particularized in the Mineral Code, they are susceptible to being modified, expanded or even suppressed by contracting parties in the exercise of rights under the suppletive tenet of "freedom of contract."[57]

Thus, article 1971 assures contracting parties that they "are free to contract for any object that is lawful, possible, and determined or determinable."[58]

"'Freedom of contract' signifies that parties to an agreement have the right and power to construct their own bargains. . . . In a free enterprise system, parties are free to contract except for those instances where the government places restrictions for reasons of public policy."[59]

The above statements are necessary corollaries of the precept enunciated in article 1983 of the Louisiana Civil Code, which informs that "[c]ontracts have the effect of law for the parties."[60]

The important notion of "freedom of contract" is enshrined in article 3 of the Mineral Code which states, as follows:

> Unless expressly or impliedly prohibited from doing so, individuals may renounce or modify what is established in their favor by the provisions of this Code if the renunciation or modification does not affect the rights of others and is not contrary to the public good.[61]

In an important decision concerning the doctrine of judicial control as it pertains to a lease,[62] the Louisiana Supreme Court explained the interrelationship between the precepts of lease contained in the Civil Code and the distinct agreements embodied by the parties in the exercise of "freedom of contract," thusly:

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56. The topic of "freedom of contract" is thoroughly covered in Chapter Two of OTTINGER, *supra* note 1.

57. LA. REV. STAT. ANN. § 31:3 (2022).

58. LA. CIV. CODE ANN. art. 1971 (2022).

59. La. Smoked Prods., Inc. v. Savoie Sausage & Food Prods., Inc., 696 So. 2d 1373, 1380 (La. 1997).

60. LA. CIV. CODE ANN. art. 1983 (2022).

61. LA. REV. STAT. ANN. § 31:3 (2022).

62. Carriere v. Bank of La., 702 So. 2d 648 (La. 1997).

> The Civil Code, however, while defining and governing the relationship of the parties to a lease, still leaves the parties free to contractually agree to alter or deviate from all but the most fundamental provisions of the Code which govern their lease relationship:
>
> However, the codal articles and statutes defining the rights and obligations of lessors and lessees are not prohibitory laws which are unalterable by contractual agreement, but are simply intended to regulate the relationship between the lessor and lessee when there is no contractual stipulation imposed in the lease.
>
> * * *
>
> Our jurisprudence is that the usual warranties and obligations imposed under the codal articles and statutes dealing with lease may be waived or otherwise provided for by contractual agreement of the parties as long as such waiver or renunciation does not affect the rights of others and is not contrary to the public good.[63]

B. Province of the Court

The courts of Louisiana have long stated that it "is not within the province of any court to relieve a litigant of a bad bargain. Its only province is to render judgment in conformity with the law and evidence."[64] Nevertheless, as might be concluded, the doctrine of judicial control operates to modify this dogmatic rule in the situation in which a court deems the exercise of discretion to be appropriate, "according to the circumstances."

Concerning the province of the court to respect the rights of contracting parties, in *Terrebonne Par. Sch. Bd. v. Castex Energy, Inc.*,[65] the Louisiana Supreme Court viewed the case as one which "presents the equally important concerns of adherence to the law and respect for the rights of contracting parties."[66] The court deemed the agreement between

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63. *Id.* at 666, citing Tassin v. Slidell Mini-Storage, Inc., 396 So. 2d 1261, 1264 (La. 1981).

64. Hinterlang v. Usner, 41 So. 2d 455 (La. 1949). *See* also Patrick S. Ottinger, *Principles of Contractual Interpretation*, 60 LA. L. REV. 765 (Spring 2000).

65. Terrebonne Par. Sch. Bd. v. Castex Energy, Inc., 893 So. 2d 789 (La. 2005).

66. *Id.* at 792.

a lessor and lessee as being paramount to significant public policy considerations, noting:

> Although the temptation may be to thrust a great part of the solution to the problem of coastal restoration upon the oil and gas companies and other private parties, rather than the state and federal governments currently faced with underwriting the expense of restoration, we decline to do so out of respect for the terms of the mineral lease to which these parties agreed.[67]

III. REMEDIES FOR BREACH OF A LEASE

A. General

Regardless of the source of the obligation, a failure on the part of the lessor or the lessee to perform its obligations owed to the other party gives rise to a breach or violation, and a corresponding right of the obligee to seek relief, including (in a proper case) dissolution of the lease.[68]

As noted above, while both the lessor and the lessee have certain "principal" obligations as imposed by both the Civil Code and the Mineral Code, it is common for parties to amplify the obligations by specific contractual provisions. A violation of a requirement of the lease—whether codal or contractual—gives rise to the issue of the remedies available to the aggrieved party.

1. The Remedy of Lease Dissolution

The Louisiana Civil Code instructs that, "[w]hen a party to the lease fails to perform his obligations under the lease or under this Title, the other party may obtain dissolution of the lease pursuant to the provisions of the

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67. *Id.*

68. The proper characterization of the remedy for breach of a lease is *dissolution*. However, courts have been inconsistent in referring to the remedy by which a lease is to be judicially rendered and decreed at an end. Thus, in Campo v. LaNasa, 173 So. 2d 365 (La. Ct. App. 4th 1964), the court decreed that the lease be "rescinded," while in another case, Lacour v. Myer, 98 So. 2d 308 (La. Ct. App. 1st 1957), the court ordered the "cancellation" of the lease. In Lillard v. Hulbert, 9 So. 2d 852 (La. Ct. App. 1st 1942), the court rendered a judgment "annulling" the lease. There is a technical difference between those identified remedies and the "dissolving" or "dissolution" of a lease. *See* OTTINGER, *supra* note 1, at § 13-08(e)(2).

Title of 'Conventional Obligations or Contracts.'"[69] Hence, the remedy of dissolution is available to both the lessor and the lessee alike.

Revision Comment (c) to Civil Code article 2719 (as revised in 2004) expounds on the right to seek dissolution of a lease, as follows:

> Civil Code Article 2719 (Rev. 2004) applies when a party "fails to perform" his obligations under the lease or under this Title. Failure to perform is defined by Civil Code Article 1994 (Rev. 1984) as "nonperformance, defective performance, or delay in performance." However, under Civil Code Article 2014 (Rev. 1984), "[a] contract may not be dissolved when the obligor has rendered a substantial part of the performance and the part not rendered does not substantially impair the interest of the obligee." This is consistent with the position of the jurisprudence that has refused to dissolve leases for minor violations, a position that is often synopsized in the phrase "abrogation of leases is not favored by law." [Internal citations omitted.]. This jurisprudence continues to be relevant in granting judicial dissolution under Civil Code Article 2719 (Rev. 2004). *A fortiori*, this jurisprudence is relevant in judging the propriety of extra-judicial dissolution.[70]

Immediately following the definition of lease in the Civil Code, article 2669 states that, "[i]n all matters not provided for in this Title, the contract of lease is governed by the rules of the Titles of 'Obligations in General' and 'Conventional Obligations or Contracts.'"[71]

Contained in Chapter 9 of Title IV of Book III of the Civil Code, article 2013 provides guidance on the right of an aggrieved party to seek dissolution of a contract:

> When the obligor fails to perform, the obligee has a right to the judicial dissolution of the contract or, according to the circumstances, to regard the contract as dissolved. In either case, the obligee may recover damages.

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69. LA. CIV. CODE ANN. art. 2719 (2022). The reference to "*this* Title," as contained in article 2719, is to Title IX of Book III of the Civil Code, pertaining to "lease." The second reference therein to a Title of the Civil Code is an allusion to Title IV of Book III of the Civil Code, regulating "Conventional Obligations or Contracts."

70. LA. CIV. CODE ANN. art. 2719, cmt. (c) (2022).

71. LA. CIV. CODE ANN. art. 2669 (2022).

In an action involving judicial dissolution, the obligor who failed to perform may be granted, according to the circumstances, an additional time to perform.[72]

Further, Civil Code article 2014 informs that a "contract may not be dissolved when the obligor has rendered a substantial part of the performance and the part not rendered does not substantially impair the interest of the obligee."[73]

Thus, as stated by one court, "La. C.C. art. 2014 sets up two criteria for preventing dissolution in spite of a breach: (1) substantial performance by the obligor . . . and (2) no substantial impairment of the interest of the oblige."[74]

2. The Remedy of Damages

"Conventional Obligations or Contracts," regulated by Title IV of Book III of the Civil Code, refers to article 2669 which provides, in pertinent part, that damages may be recovered for a "failure to perform a conventional obligation," and further, that a "failure to perform results from nonperformance, defective performance, or delay in performance."[75]

"Damages for delay in the performance of an obligation are owed from the time the obligor is put in default. Other damages are owed from the time the obligor has failed to perform."[76]

Hence, dissolution is but one of the remedies available for a breach of lease, and its employment addresses the discretion of the court in a particular case, "according to the circumstances."[77]

3. The Remedy of Injunctive Relief

In *Tolar v. Spillers*,[78] a lease was granted by the plaintiff to the defendant in order "to provide hunting, fishing and other outdoor recreational activity privilege on the lease premises during the term of this lease."[79] The plaintiff sought to dissolve the lease, and evict the defendant,

72. LA. CIV. CODE ANN. art. 2013 (2022).
73. LA. CIV. CODE ANN. art. 2014 (2022).
74. Karno v. Bourbon Burlesque Club, Inc., 931 So. 2d 1111, 1116 (La. Ct. App. 4th 2006).
75. LA. CIV. CODE ANN. art. 1994 (2022).
76. LA. CIV. CODE ANN. art. 1989 (2022).
77. LA. CIV. CODE ANN. art. 2013 (2022).
78. So. 3d 560 (La. Ct. App. 2d 2009).
79. *Id*. at 561.

due to uses made under the lease contract that were not authorized by the lease.

While the court did not mention the doctrine of judicial control, it did cite cases for the propositions that "[l]ease cancellation is not favored," and that a "lease will be dissolved only when a lessor proves clear entitlement to dissolution."[80]

Although the court exercised its discretion to decline to dissolve the lease, it did issue an injunction to enjoin certain actions that were not permitted under the lease.

As authority for this remedy, the court relied on article 2686 of the Civil Code that provides, as follows:

> If the lessee uses the thing for a purpose other than that for which it was leased or in a manner that may cause damage to the thing, the lessor may obtain injunctive relief, dissolution of the lease, and any damages he may have sustained.[81]

B. Law of Dissolution Applicable to Mineral Leases[82]

1. Prior to the Adoption of the Louisiana Mineral Code

Prior to the adoption of the Louisiana Mineral Code, the courts would not hesitate, in a proper case, to dissolve a producing mineral lease if the lessee failed to pay royalties to its lessor.[83]

As explained by one court,[84] the "[f]ailure to pay mineral royalties to a lessor is a grievous wrong which results in the harsh but necessary expedient of lease cancellation. . . . In order to avoid cancellation, lessee

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80. *Id*. at 563–64.

81. LA. CIV. CODE ANN. art. 2686 (2022).

82. Portions of this section are an adaption of material contained in OTTINGER, *supra* note 1, at § 13-17.

83. *See, e.g.*, Melancon v. Tex.Co., 89 So. 2d 135 (La. 1956) (coercive conduct on part of lessee in withholding royalties in order to pressure lessor into giving consent to formation of voluntary units); Bollinger v. Tex. Co., 95 So. 2d 132 (La. 1957) (same as *Melancon*); Bailey v. Meadows, 130 So. 2d 501 (La. Ct. App. 2d 1961) (lessee withheld royalties because it had not settled a well-cost dispute with the operator); Pierce v. Atlantic Refining Co., 140 So. 2d 19 (La. Ct. App. 3d 1962) (delay caused by internal reorganization), and Sellers v. Cont'l Oil Co., 168 So. 2d 435 (La. Ct. App. 3d 1964) (lessee paid royalties on leased premises contained in only one of two producing units).

84. Hibbert v. Mudd, 272 So. 2d 697 (La. Ct. App. 3d 1973), *later rev'd* 294 So. 2d 520 (La. 1974).

must carry the awesome burden of establishing that his failure to pay was justified."[85]

Most alarming to a lessee was the jurisprudential rule that if the lessee failed to pay royalties for an appreciable length of time without justification, it constituted an "active" breach of the mineral lease, and no pre-suit notice to the lessee was necessary. In other words, what was at first a "passive" breach—requiring a "putting in default"—was, by the mere lapse of time, converted to an "active" breach, not requiring a "putting in default."

Thus, a lessee who had expended significant capital, and established production, would not know about a problem with the payment of royalties until it was served with a lawsuit seeking lease dissolution.[86]

2. Subsequent to the Adoption of the Louisiana Mineral Code

As pertains to mineral leases, article 134 of the Mineral Code states that "[i]f a mineral lease is violated, an aggrieved party is entitled to any appropriate relief provided by law."[87]

Prior to 1984, the relevant articles of the Louisiana Civil Code made a distinction between breaches that were considered merely "passive," and those which were "active." A "passive" breach required the obligor to be "put in default" prior to filing suit, while a breach deemed to be "active" dispensed with the requirement that the lessee be "placed in default."

In 1984, the Louisiana law of obligations, in Title III of Books III and IV of the Louisiana Civil Code, was comprehensively revised, amended and reenacted.[88] Among other things, the new law suppressed the prior codal distinction between breaches that were "passive," and those that were "active."[89]

Nevertheless, the comments to article 1989 of the Civil Code state that this article "does not repeal R.S. 31:135-31:139 (of the Louisiana Mineral Code) which provide special legislative exceptions to the general rule that a putting in default is not a prerequisite to filing suit."[90]

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85. *Id.* at 704.

86. The cases preceding adoption of the Mineral Code and addressing the lessor's remedy for nonpayment of royalty are examined in OTTINGER, *supra* note 1, at § 13-29(d).

87. LA. REV. STAT. ANN. § 31:134 (2022).

88. Act No. 331, 1984 La. Acts 718, consisting of Civil Code articles 1756 through 2057.

89. "The distinction between active and passive breach has been abandoned." LA. CIV. CODE ANN. art. 1989, cmt. (f) (2022).

90. LA. CIV. CODE ANN. art. 1989, cmt. (e) (2022).

The effect and consequence of this legislative amendment and reenactment, as pertains to a mineral lease, were considered in *Hunt v. Stacy*.[91] In *Hunt*, the lessors filed suit against their lessee seeking dissolution of the mineral lease, "alleging that defendants failed to explore and develop the leased property."[92] Lessee filed a dilatory exception raising the objections of prematurity and of want of amicable demand, contending that the lessor had not placed the lessee in default prior to filing suit.

The objections were sustained by the trial court, and an appeal followed. On appeal, the lessor contended that, because of the 1984 revisions to the Civil Code articles on obligations,[93] "the distinction between passive and active breaches was abrogated in 1984 when the Civil Code was revised."[94]

The court found that, while the distinction between "passive" and "active" breaches was abrogated as a general proposition, the distinction, as applied to mineral leases, was preserved by article 135 of the Louisiana Mineral Code. This was explicitly recognized by comment (e) to article 1989 of the Louisiana Civil Code (quoted above), and by the comments to article 135 of the Louisiana Mineral Code where it was stated, as follows:

> It is, therefore, the intent of Article 135 generally to preserve the existing jurisprudence interpreting the Civil Code articles on default in connection with actions for nonperformance of the obligations of a mineral lease.[95]

Having determined that "passive breaches do still exist" in reference to mineral leases,[96] the court next considered whether the alleged breach was a "passive" breach, requiring a "putting in default."

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91. Hunt v. Stacy, 632 So. 2d 872 (La. Ct. App. 2d 1994).

92. *Id.* at 873.

93. Act No. 331, 1984 La. Acts 718, consisting of Civil Code articles 1756 through 2057.

94. Hunt v. Stacy, 632 So. 2d at 874 (La. Ct. App. 2d 1994).

95. LA. REV. STAT. ANN. § 31:135 (2022).

96. *Hunt*, 632 So. 2d at 875.

In reliance on *Taussig v. GoldKing Properties Co.*,[97] the court held that "the alleged failure to develop is a passive breach and thus requires a placing in default prior to judicial demand for cancellation of the lease."[98]

Finally, the court held that the plaintiffs "did not place defendants in default," and, consequently, "the trial court correctly sustained the exception of want of amicable demand as well as the exception of prematurity."[99]

The requirement that the lessor place the lessee in default was next reviewed in *McDowell v. PG&E Resources Co.*,[100] in which the plaintiff "brought suit seeking a judicial declaration that, as a result of a 90-day cessation of production, the two older leases had expired by their own terms."[101] While that was the basis of plaintiff's suit, the trial court, "upon discerning a breach of the implied covenant to market diligently . . . ordered the two leases cancelled."[102]

On appeal, the court considered the lessee's contention that the lessor had failed to put it in default in a suit to dissolve the mineral lease based upon the lessee's "discerned" failure to comply with an implied covenant. The court explained, as follows:

> First of all, we agree with defendants' well-stated position that the trial court should never have reached the implied covenant question. To cancel a lease for breach of an implied covenant, the plaintiff is required to place the defendant formally in default prior to seeking judicial intervention. [Internal citations omitted.]. Such a "putting in default" never occurred in the present case. Nor is this merely a preliminary matter to be addressed by exception prior to answer. Instead, without a putting in default, no cause of action is disclosed. *Pipes v. Payne*, 156 La. 791, 101 So. 144 (1924). This is especially true here, where plaintiffs' petition did not rely upon the breach of an implied covenant, thus presenting defendants with no reason, certainly no reason before answer, to

97. Taussig v. GoldKing Props. Co., 495 So. 2d 1008 (La. Ct. App. 3d 1986), *writ den'd* 502 So. 2d 111 (La. 1987), at 1014–15 ("Since the duty to develop is an implied obligation, the jurisprudence has consistently held that a breach of this duty is passive, and a formal placing in default is required before judicial intervention may be sought.").

98. *Hunt*, 632 So. 2d at 876.

99. *Id.* at 877.

100. McDowell v. PG&E Res. Co., 658 So. 2d 779 (La. Ct. App. 2d), *writ den'd* 661 So. 2d 1382 (La. 1995).

101. *Id.* at 782.

102. *Id.*

raise a "putting in default" objection.[103]

The decision in *McDowell* is supported by the jurisprudence.[104]

Thus, the harshness of the pre-Code rule has been tempered by the remedy contained in the Mineral Code for a lessor seeking relief due to the failure of its lessee to pay royalties.[105] Although that important subject matter is beyond the scope of this article,[106] it is noteworthy that article 141 of the Mineral Code now provides:

> In a case where notice of failure to pay royalties is required, dissolution should be granted only if the conduct of the lessee, either in failing to pay originally or in failing to pay in response to the required notice, is such that the remedy of damages is inadequate to do justice.[107]

While certainly not stated in such terms, this formulation is entirely consistent with the prerogative of a court to exercise discretion in constructing an appropriate remedy for nonpayment of royalties, "according to the circumstances."

Hence, a court's assessment of whether or not the severe remedy of dissolution should be imposed is concordant with the associated decision, as to whether or not monetary damages should be assessed against a lessee for nonpayment of royalties under articles of the Louisiana Mineral Code. With respect to those articles stating that the court "may award" damages,[108] the courts have recognized that the award of damages is discretionary and not mandatory.[109]

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103. *Id*. at 783.

104. Pipes v. Payne, 101 So. 144, 146 (La. 1924) ("As plaintiff's petition does not allege that defendants were put in default, we are of the opinion that it discloses no cause of action.").

105. LA. REV. STAT. ANN. §§ 31:136–41 (2022).

106. *See* OTTINGER, *supra* note 1, at § 13-29(d).

107. LA. REV. STAT. ANN. § 31:141 (2022).

108. *Id*. at §§ 31:139-40.

109. *See*, *e.g*., Wegman v. Central Transmission, Inc., 499 So. 2d 436, 451 (La. Ct. App. 2d 1986), *writ den'd* 503 So. 2d 478 (La. 1987) ("Under R.S. 31:140 if the lessee fails to pay royalties due or fails to inform the lessor of a reasonable cause for failure to pay in response to the required notice, the court *may* award as damages double the amount of royalty due. Hence the award is discretionary."), and Matthews v. Sun Expl. & Prod. Co., 521 So. 2d 1192, 1196 (La. Ct. App. 2d 1988) ("LSA-R.S. 31:140 provides the trial court with great discretion in awarding damages. It does not mandate that any award be given in excess of the royalties due."). *See* OTTINGER, *supra* note 1, at § 13-30(c).

IV. THE DOCTRINE OF JUDICIAL CONTROL

A. General

Courts have announced that "the abrogation of leases is not encouraged by the law, and a landlord is entitled to a dissolution of the lease only when his right thereto is clear beyond a doubt both of fact and of law."[110] Consequently, it is said that "abrogation of leases is not favored by the law of Louisiana."[111]

Thus, courts have long articulated that, whether a lessor has a right to dissolve a mineral lease on grounds provided by law "is subject to judicial control according to the circumstances."[112]

The important phrase "according to the circumstances," as is contained in Civil Code article 2013,[113] is clearly an invitation for the court to exercise discretion in evaluating whether the remedy of dissolution is justified or required in a particular case. That distinct phrase currently appears in six articles of the Civil Code. First introduced in two articles by the 1984 amendments to the articles on obligations,[114] the phrase was later added in subsequent years to four other articles unrelated to the precise topic under consideration.[115]

The Louisiana Civil Code of 1870 employed the expression "according to circumstances" in article 2047, regulating the dissolution of contracts, which was replaced in 1984 by article 2013 as a result of the legislative amendments.

The contours of the discretionary aspect of the doctrine of judicial control were cogently explained by Professor Litvinoff in his Treatise on Obligations. After noting that dissolution may only be granted after judicial demand, this respected commentator explained:

> The necessity of a judicial demand affords an opportunity for the exercise of the court's sovereign prerogative of weighing all these circumstances with large discretion. It is for the court to determine

110. Arbo v. Jankowski, 39 So. 2d 458, 460 (La. Ct. App. Or. 1949) (citing Pumillia v. Johnstone, 121 So. 198, 201 (La. Ct. App. Or. 1929)).

111. Stoltz v. McConnell, 202 So. 2d 451 (La. Ct. App. 4th 1967), Tullier v. Tanson Enters., Inc., 359 So. 2d 654, 659 (La. Ct. App. 1st 1978), *rev'd and rendered on other grounds* 367 So. 2d 773 (La. 1979) ("Notwithstanding La. C.C. Article 2712 (which provides that a lessee may be evicted for failure to pay rentals timely), our jurisprudence holds that abrogation of leases is not favored in law.").

112. Rudnick v. Union Producing Co., 25 So. 2d 906, 908 (La. 1946).

113. LA. CIV. CODE ANN. art. 2013 (2022).

114. LA. CIV. CODE ANN. arts. 2013, 2015 (2022).

115. LA. CIV. CODE ANN. arts. 1877, 2298, 2562, 2715 (2022).

> whether the rendering of only partial performance by the obligor, plus the delay attending a possible completion, or the failure in performing an accessory obligation, warrants dissolution. For this purpose, the court takes into consideration the extent and gravity of the failure to perform alleged by the complaining party, the nature of the obligor's fault, the good or bad faith of the parties involved, and also the surrounding economic circumstances that may make the dissolution opportune or not. Upon consideration of all such factors, a choice must be made among several courses of action. [116]

B. Jurisprudential Development of the Doctrine of Judicial Control

As will be demonstrated, courts have consistently embraced the proposition that, in order for a breach of lease to rise to a level that justifies dissolution, the violation must meet a certain threshold level of materiality or seriousness, and not be merely technical with no damages shown.

Hence, the doctrine of judicial control establishes the proposition that "Louisiana courts are vested with the discretion in certain circumstances to decline to grant a lessor cancellation of a lease although such right is otherwise available to him or her."[117]

The earliest Louisiana Supreme Court decision to allude to the doctrine of judicial control is *Sieward v. Denechaud*,[118] in which it was announced that the "right to dissolve a lease is subject to judicial control according to circumstances."[119] Curiously, the court cited *Prude v. Morris*[120] for this proposition, which did not involve a lease and made no reference to that concept.

The doctrine of judicial control has been described as "an equitable doctrine by which the courts will deny cancellation of the lease when lessee's breach is of minor importance, is caused by no fault of his own, or is based on a good faith mistake of fact."[121]

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116. 7 SAÚL LITVINOFF, LA. CIVIL LAW TREATISE: LAW OF OBLIGATIONS, § 270, 509 (1975).

117. Porter v. Miller, 782 So. 2d 1123, 1127 (La. Ct. App. 3d 2001).

118. Sieward v. Denechaud, 45 So. 561 (La. 1908).

119. *Id.* at 564.

120. Prude v. Morris, 38 La. Ann. 769 (La. 1886) (case involved a supposed sale alleged to be a simulation).

121. Rogers v. Restructure Petrol. Mktg. Servs., 811 So. 2d 1154, 1159 (La. Ct. App. 3d 2002) (judicial control doctrine did not save lease from dissolution for failure to make repairs as such covenant "was not of minor importance, but

It has also been stated that "our courts, on the basis of equity, are vested with discretion under some circumstances to decline to grant a lessor cancellation of a lease although such right appears to be otherwise available to him."[122]

A respected commentator on the subject of the Louisiana law of leases has advanced this explanation of the discretionary nature of the doctrine of judicial control, particularly in the face of the availability of the seemingly imperative remedy of lease dissolution as textually prescribed in the Civil Code:

> The court has considerable discretion in deciding whether a breach of the lease is sufficiently serious to justify dissolution. . . . The discretionary preferences of the courts have been expressed in the form of a presumption against granting dissolution. The attitude may be seen in the typical expressions from the bench: the "abrogation of leases is not favored in law;" "[l]ease contracts do not lend themselves so readily to 'automatic' cancellation, and are not lightly set aside by the courts;" dissolution will be decreed only when it is shown that the lessor is clearly entitled thereto. Thus, an aggrieved party cannot claim an indefeasible right or entitlement to dissolution, for the remedy is subject to judicial control according to the circumstances and equities of each case. Furthermore, even the code texts granting the "right" of dissolution have not blocked the process of introducing discretion into the "right." It has already been seen that the lessee has no absolute right to dissolve the lease where the thing has been partially destroyed, even though Louisiana Civil Code article 2697 [*see now* articles 2714-15] seems to give an unqualified right to demand it. Likewise, a lessor is not necessarily entitled to evict a lessee who is slightly late in paying the rent, despite the imperative language in Louisiana Civil Code article 2712 [*see now* article 2704]. Indeed, the language of Louisiana Civil Code article 2729 [*see now* article 2719] that the judge shall grant no delay in the dissolution of a lease is in practice subordinated to his preliminary decision concerning whether a dissolution is

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was a major factor in maintaining the lease."), and KM, Inc. v. Weil Cleaners, Inc., 185 So. 3d 112, 118 (La. Ct. App. 2d 2016).

122. Hous. Auth. of City of Lake Charles v. Minor, 355 So. 2d 271, 273 (La. Ct. App. 3d 1977), *writ den'd* 355 So. 2d 1323 (La. 1978); Karno v. Bourbon Burlesque Club, Inc., 931 So. 2d 1111, 1117 (La. Ct. App. 4th 2006) ("Moreover, where, as in the instant case, the alleged lease violations could be characterized as 'technical' the courts are inclined to regard them as non-serious.").

appropriate in the first place.[123]

Thus, in *IP Timberlands Operating Co., Ltd. v. Denmiss Corp.*,[124] the court stated, as follows:

> One of the fundamental concepts of landlord-tenant law in Louisiana is that the court has considerable discretion in deciding whether a breach of the lease is serious enough to justify dissolution.[125]

C. Leases Other than Mineral Leases

As demonstrated by the following cases, the doctrine applies to both the lessor and lessee against whom the remedy of dissolution is sought by the other contracting party.

A lessor's demand for dissolution due to failure of the lessee to timely pay rent was disallowed due to a mutual error caused by an erroneous receipt provided by the lessor.[126] Thus, in *Lillard v. Hulbert*,[127] the court stated that, "[a]s a general rule, a lease will not be annulled where the lessee has partly performed his obligations under the lease, unless the breach of the terms of the lease are material and important."[128]

Lee v. Abernathy is a case involving a gravel lease that predated the Mineral Code.[129] The lessor sought to cancel the lease due to nonpayment of royalty. The court declined to grant the requested relief, finding that it "would be extremely inequitable in view of all the facts and circumstances of the case, to adjudge the lease null and void because of the brief delay in paying the rentals."[130]

In another case,[131] the court refused to cancel a lease where "the record shows substantial compliance by the tenant with these rather ambiguous lease provisions."[132]

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123. VERNON V. PALMER, LEASES: THE LAW IN LOUISIANA (Harrison Company, Publishers 1982), at § 5-19.

124. IP Timberlands Operating Co., Ltd. v. Denmiss Corp., 657 So. 2d 282 (La. Ct. App. 1st), *writ den'd* 661 So. 2d 1348 (La. 1995).

125. *Id.* at 309.

126. Belvin v. Sikes, 2 So. 2d 65, 67 (La. Ct. App. 2d 1941).

127. Lillard v. Hulbert, 9 So. 2d 852 (La. Ct. App. 1st 1942).

128. *Id.* at 855.

129. Lee v. Abernathy, 19 So. 2d 670 (La. Ct. App. 2d 1944).

130. *Id*. at 673.

131. Lacour v. Myer, 98 So. 2d 308 (La. Ct. App. 1st 1957).

132. *Id.* at 309.

An implication in *LaNasa v. Winkler* intimates that the breach must cause something more than mere inconvenience.[133]

Where the basis for a lessee's demand for lease dissolution is based on the lessor's failure to maintain or repair the premises, it has been held that "the lessee must prove that he has been seriously disturbed in his possession or that the premises no longer serve for the use for which they were leased."[134]

Cancellation was ordered in another case where the court found that the "breach of the lease by [the lessee] was substantial in nature." The court stated that "an infraction of a lease in order to justify its cancellation must be substantial, serious and continuous in nature."[135]

The court in *Eckerd Drugs of Louisiana, Inc. v. Greenland Vistas, Inc.*, observed that "not every breach of a lease will entitle a tenant to dissolve it under this article," citing "numerous cases which dissolve a lease when a landlord's breach is 'substantial' or 'material.'"[136]

A violation of a mere technical nature is not ordinarily addressed with the extreme remedy dissolution of the lease. Thus, in *Goldblum v. C & C Investments*,[137] the court refused to dissolve the lease, stating, as follows:

> No doubt there was a technical violation of the contract, as the premises had been structurally changed without C & C Investments' written consent. However, voiding of lease agreements are not favored by the law, particularly for technical infringements.[138]

Noting that "[j]udicial control is an equitable doctrine by which the courts will deny cancellation of the lease when lessee's breach is of minor importance, is caused by no fault of his own, or is based on a good faith mistake of fact," the court in *Select Properties, Ltd. v. Rando* terminated the lease on a finding that a "provision of the lease requiring various types

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133. LaNasa v. Winkler, 144 So. 2d 489, 491 (La. Ct. App. 4th 1962) (The lessor "was subjected to much more than inconvenience and is entitled to the dissolution of the lease . . .").

134. Reed v. Classified Parking Sys., 232 So. 2d 103, 107–08 (La. Ct. App. 2d), *writ den'd* 234 So. 2d 194 (La. 1970), and *writ ref'd* 234 So. 2d 194 (La. 1970).

135. Friendly Fin., Inc. v. Cefalu Realty Inv., Inc., 278 So. 2d 584, 586 (La. Ct. App. 1st 1973).

136. Eckerd Drugs of La., Inc. v. Greenland Vistas, Inc., 365 So. 2d 1131, 1133 (La. Ct. App. 4th 1978).

137. Goldblum v. C & C Invs., 444 So. 2d 642 (La. Ct. App. 5th 1983).

138. *Id*. at 643.

of insurance is not of minor importance but is a major factor in maintaining the lease."[139]

In *Ergon, Inc. v. Allen*,[140] the plaintiff brought suit to expropriate a piece of land which it had leased since 1976 for the purpose of operating a compressor station. The defendant-landowner reconvened, asking the court to evict the plaintiff from his property for non-payment of rent in accordance with the terms of their written lease. While the lessee had admittedly failed to timely pay the rental due under the lease, the court invoked the doctrine of judicial control, and refused to declare the lease terminated "under the unusual circumstances presented."[141]

One appellate court stated that "[c]ases which have applied judicial control of leases generally involve circumstances where a lessee has made a good faith error and acted reasonably to correct it."[142]

The doctrine was not allowed to operate in a case in which it was found that:

> [T]he failure by [the tenant] to keep the properties in first class condition was not accidental, inadvertent, or isolated. Further, the breach of the obligation to keep the properties in first class condition was not a breach of minor importance, did not occur due to circumstances beyond the control of [the tenant], and was not based on a good faith mistake of fact.[143]

"The trial court has discretion to decline dissolution of a lease where it finds that the breach of the lease is not major or where the breach was not the fault of the lessor or where the lessor was in good faith."[144]

The United States Court of Appeals, Fifth Circuit, affirmed a decision of the district court that had invoked the doctrine of judicial control to deny a landlord's demand for eviction, finding that there was no default on the part of the tenant. Rather, it was found that "the lease was 'sufficient[ly] ambigu[ous]' to support [tenant]'s position that it did not breach the

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139. Select Props., Ltd. v. Rando, 453 So. 2d 980, 983 (La. Ct. App. 4th 1984).

140. Ergon, Inc. v. Allen, 593 So. 2d 438 (La. Ct. App. 2d 1992).

141. *Id*. at 441.

142. Martin Timber Co. v. Pegues, 715 So. 2d 728, 732 (La. Ct. App. 2d), *writ den'd* 729 So. 2d 590 (La. 1998).

143. Western Sizzlin Corp. v. Greenway, 821 So. 2d 594, 602 (La. Ct. App. 2d 2002).

144. Karno v. Joseph Fein Caterer, Inc., 846 So. 2d 105, 110 (La. Ct. App. 4th), *writ den'd* 853 So. 2d 642 (La. 2003).

lease."[145] The court cited *Rudnick v. Union Producing Co.*[146] for the proposition that, when "such 'honest doubt' exists as to the applicability of certain lease provisions, Louisiana courts 'ha[ve] not, and will not, penalize a litigant lessee by dissolving a lease.'"[147]

D. The Doctrine as Applied to Mineral Leases

1. As Concerns Breaches by Lessee Other Than Pertaining to the Expiration of the Term of the Lease

Dissolution of the mineral lease is not a favored remedy under Louisiana law.[148] Indeed, it is not every breach of a mineral lease that gives rise to its dissolution. Rather, the breach must be substantial in character, and cause injury to the lessor.

As previously noted, dissolution of mineral leases is disfavored in Louisiana, and courts have periodically used the doctrine of judicial control to prevent mineral lease dissolution in cases which do not merit the imposition of such drastic remedy.[149]

The Supreme Court in *Brewer v. Forest Gravel Co., Inc.*,[150] refused to cancel a gravel lease because the lessee withheld a disputed amount of royalty (rent) based on the severance tax statutes.[151] The court explained its rationale, as follows:

In the present case defendant has not refused arbitrarily to pay the rent, but was in good faith in refusing to pay more than he thought was due according to the advice of his counsel. We do not think a lease should be canceled under such circumstances. Thus, where a lessor refuses or

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145. Richards Clearview, L.L.C. v. Bed Bath & Beyond, Inc., 849 Fed. Appx. 456, 458 (5th Cir. 2021).

146. Rudnick v. Union Producing Co., 25 So. 2d 906, 908 (La. 1946).

147. *Richards Clearview, L.L.C.*, 849 Fed. Appx. at 458.

148. LA. REV. STAT. ANN. § 31:141 (2022) (concerning remedy for non-payment of royalty).

149. Cox v. Cardinal Drilling Co., 188 So. 2d 667 (La. Ct. App. 2d 1966); Taussig v. GoldKing Props. Co., 495 So. 2d 1008 (La. Ct. App. 3d 1986), *writ den'd* 502 So. 2d 111 (La. 1987).

150. Brewer v. Forest Gravel Co., Inc., 135 So. 372 (La. 1931).

151. Prior to the adoption of the Mineral Code, gravel (and other substances) were treated as (or at least assimilated to) minerals for distinct purposes. *See, e.g.*, Logan v. State Gravel Co., 103 So. 526 (La. 1925) (recognition of lessor's privilege) and Holloway Gravel Co., Inc. v. McKowen, 9 So. 2d 228 (La. 1942) (construction of ambiguous mineral reservation). Article 4 of the Mineral Code now explicitly identifies gravel as an "other substance" to which the provisions of the Code are applicable.

neglects to make certain repairs, the tenant may make them at his own expense and deduct them from the rent. Rev. Civ. Code, art. 2694. But this right would be valueless if the tenant could do so only at his own risk and peril if it should later develop that he was in error as to the necessity for or the value of such repairs. When the tenant has reasonable grounds for thinking that he does not owe all the rent claimed by the landlord, it would be a harsh rule to turn him out because he has made some error in good faith; and, as above said, courts will exercise some discretion in such cases.[152]

Where there is a legitimate dispute between the lessor and the lessee relative to a clause in the lease, and there are grounds for honest doubt as to the rights of the parties, the Louisiana Supreme Court has declared that it "has not, and will not, penalize a litigant lessee by dissolving a lease held technically in default when there is a bona fide defense."[153]

The Louisiana Supreme Court denied dissolution of a mineral lease in *Tyson v. Surf Oil Co.*,[154] upon a finding that the refusal of the lessee to pay excessive royalty was based on advice of counsel. Citing *Sieward v. Denechaud*,[155] the court noted:

> Defendant, in this case, is represented by able counsel, under whose advice it has acted in refusing to pay the excessive royalties demanded by plaintiffs. The judgment of the lower court, which is correct, is in itself a vindication of defendant against any charge of bad faith, since the amount of royalties sued for has been greatly reduced by this judgment, after contradictory hearing by the trial judge of all the facts in the case.[156]

In *Midstates Oil Corp. v. Waller*,[157] the Federal Fifth Circuit cited the *Brewer*, *Tyson* and *Rudnick* cases for the proposition that "the right to dissolve a lease is subject to judicial control according to the circumstances."[158]

In *Touchet v. Humble Oil & Refining Co.*,[159] the court invoked the doctrine of judicial control to decline to dissolve the mineral lease based on the lessee's alleged failure to pay royalties, saying:

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152. *Brewer*, 135 So. at 373.
153. Rudnick v. Union Producing Co., 25 So. 2d 906, 908 (La. 1946).
154. Tyson v. Surf Oil Co., 196 So. 336 (La. 1940).
155. Sieward v. Denechaud, 45 So. 561 (La. 1908).
156. *Tyson*, 196 So. at 341.
157. Midstates Oil Corp. v. Waller, 207 F. 2d 127 (5th Cir. 1953).
158. *Id*. at 131.
159. Touchet v. Humble Oil & Refin. Co., 191 F. Supp. 291 (W.D. La. 1960).

> Assuming no demand was necessary, we believe it would be unjust to cancel this lease without giving the operator a reasonable opportunity to perform its obligations. Louisiana has never followed a dogmatic rule requiring the mechanical application of a general rule that a lessor may dissolve a lease for failure on the part of lessee to pay rent promptly when due. On the contrary, in Louisiana the right to dissolve a lease is subject to judicial control according to the circumstances.[160]

The doctrine was next invoked in *Simmons v. Pure Oil Co*.[161] In that case, the court held that, absent an express contractual provision to the contrary, a mineral lease will not be dissolved unless the breach, of which the lessor complains, was both substantial *and* caused injury to the lessor.

As noted by the court in Simmons, "[m]anifestly, every act of omission or commission, no matter how small, will not justify dissolution of a lease on grounds of imprudent administration. The dereliction of duty must be of a substantial nature *and* cause injury to the lessor."[162]

In the important case of *Davis v. Laster*,[163] the lessor sued to dissolve the mineral lease because the lessee erroneously paid delay rentals for a period of time when the well was shut-in, and shut-in payments were provided for by the lease and should have been paid instead. The court found it equitable to consider that the lease provisions had been modified by mutual consent, especially in view of the fact that the lessor suffered no loss as the delay payments were much more than the shut-in payments.

Citing the often referenced case law on the doctrine of judicial control, the court stated that "[i]t results from the facts and the authorities relied upon that lessor cannot obtain forfeiture and cancellation of the controverted lease on the basis that lessees paid the delay rentals when shut-in royalties were due."[164]

A Federal District Court employed the doctrine to deny a sublessor's demand for cancellation of a sublease stating, as follows:

> Defendant has made large investments in developing this property and has heretofore 'earned' a substantial portion of the leased premises by its operations. This case is one requiring summary disposition. The action to cancel an oil, gas and mineral lease is

160. *Id*. at 295.

161. Simmons v. Pure Oil Co., 124 So. 2d 161 (La. Ct. App. 2d), *aff'd* 129 So. 2d 786 (La. 1961).

162. *Id*. at 166 (emphasis added).

163. Davis v. Laster, 138 So. 2d 558 (La. 1962).

164. *Id*. at 565.

> an equitable proceeding, and is subject to judicial control. To justify application of the remedy, there must be a substantial breach of the contract. We do not find such a breach here.[165]

Prior to the adoption of the Louisiana Mineral Code, it was not a certain proposition that a mineral lease could be dissolved partially,[166] it being deemed an immutable tenet that a mineral lease is indivisible.[167]

The doctrine of judicial control was a partial basis for the ruling in *Fontenot v. Sunray Mid-Continent Oil Co.*[168] which, while affirming a decision that dissolved a mineral lease for failure to pay royalties, excepted a portion of the leased premises "as to which the defendants Sunray had performed all lease obligations due to the plaintiff Fontenot."[169]

The court explained its rationale, as follows:

> However, in Sellers v. Continental Oil Co., La.App. 3 Cir., 168 So .2d 435, this court unanimously concluded that equitable circumstances might justify excepting from cancellation of a mineral lease that portion of the leased premises as to which the mineral lessee had fully performed all lease obligations due the lessor. In reaching this result, we in part relied upon jurisprudence permitting partial cancellation under certain circumstances, and also upon jurisprudence holding that whether or not to dissolve a lease is subject to judicial control according to the circumstances, see Rudnick v. Union Producing Co., 209 La. 943, 25 So.2d 906.[170]

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165. Iberian Oil Corp. v. Tex. Crude Oil Co., 212 F. Supp. 941, 945 (W.D. La. 1963), *aff'd* 328 F. 2d 832 (5th Cir. 1964).

166. Article 142 of the Mineral Code now provides, as follows:

> A mineral lease may be dissolved partially or in its entirety. A decree of partial dissolution may be made applicable to a specified portion of land, to a particular stratum or strata, or to a particular mineral or minerals.

167. Hunter Co., Inc. v. Shell Oil Co., 31 So. 2d 10, 13 (La. 1947) ("The law is well settled that the lessee's obligation to drill a well is indivisible in its nature, and that the grantor's corresponding obligation to deliver the land is likewise indivisible, and that, if the obligation of one of the parties to the contract is to be fulfilled entirely, the obligation of the other contracting party must likewise be fulfilled in whole.")

168. Fontenot v. Sunray Mid-Continent Oil Co., 197 So. 2d 715 (La. Ct. App. 3d), *writ den'd* 199 So. 2d 915 (La. 1967).

169. *Id*. at 722.

170. *Id*. at 720–21.

Finally, the doctrine of judicial control was involved in one case arising out of the Haynesville Shale in Northwest Louisiana.[171] In that litigation,[172] the Walker family granted six mineral leases to the defendant. In the aggregate, the leases covered 524.448 acres in Caddo Parish. Each mineral lease contained a number of special provisions, among which were the following clauses, to-wit:

(a) A provision that, with the exception of an identified portion of the leased premises, the lessee shall conduct no operations on the leased premises;

(b) A provision that, if the lessee acquires any seismic permit within a mile of the perimeter of the leased premises, the lessee must include the leased premises in a seismic shoot; and

(c) A provision that the lessee must provide the lessor with certain well and other data, subject to the execution by the lessors of a confidentiality agreement.

Lessors filed suit against the lessee for dissolution of the mineral leases based upon allegations that the lessee had breached these distinct contractual provisions. Importantly, the lessors did not seek damages, only dissolution of the leases.[173]

The plaintiffs alleged that Chesapeake breached the "No Surface Operations Clause" because its surveyor traversed a tract of leased land with a four-wheeler.[174] Plaintiffs admitted that no damage was caused by this traversal.

Next, plaintiffs contended, with respect to the seismic provision, that lessee "acquired seismic permits on lands within one mile of the Leased Premises, but . . . refused to negotiate in good faith with plaintiffs and surrounding mineral owners concerning inclusion of the Leased Premises

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171. "This court would take judicial notice that March 2008 marked the beginning of the land-leasing boom associated with the Haynesville Shale formation." Kennedy v. Saheid, 209 So. 3d 985, 994 n. 3 (La. Ct. App. 2d 2016).

172. Walker v. Chesapeake La., L.P., 440 Fed. Appx. 254 (5th Cir. 2011). In the interest of full disclosure, the author represented the defendant-lessee in this case.

173. As noted by the trial judge, "plaintiffs acknowledge although they could have pursued the remedies of lease dissolution, specific performance of the lease terms, or damages, *plaintiffs chose to pursue only the remedy of lease dissolution.*" Walker v. Chesapeake La., LP, No. CIV.A.09-1727, 2010 WL 3843682, at *4 (W.D. La. Sept. 24, 2010), *aff'd sub nom*. Walker v. Chesapeake La, L.P., 440 Fed. Appx. 254 (5th Cir.2011).

174. *See* OTTINGER, *supra* note 1, at § 5-09.

and surrounding acreage and/or to provide fully imaged 3-D seismic coverage of the Leased Premises."[175]

Finally, plaintiffs averred that the defendant had "failed to provide the Walkers with any information regarding a particular well on the leased premises."[176]

The defendant filed a motion for summary judgment contending that it had substantially performed under the mineral leases. In the alternative, Chesapeake argued that the breaches, if any, did not justify dissolution of the leases pursuant to the doctrine of judicial control.

The trial court granted the defendant's motion, saying:

> In sum, this Court has discretion to determine whether the harsh remedy of lease cancellation is an available remedy for breach of the mineral leases in question. Under the circumstances of this case, this Court concludes even if the Court were to assume Chesapeake breached the lease provisions as alleged by plaintiffs, the factual circumstances of this case—on their face—do not demonstrate such substantial harm and injury to the plaintiffs that this Court would exercise its discretion to dissolve or cancel the subject leases.[177]

On appeal, the United States Court of Appeals, Fifth Circuit, noted that its "sole issue is thus whether the district court abused its discretion by refusing to declare a dissolution."[178] The court further stated, as follows:

> Louisiana jurisprudence does not favor lease cancellation. . . . The doctrine of judicial control is a tool used to block the remedy of lease cancellation under certain circumstances.
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> [J]udicial control requires that a lessee's 'dereliction of duty must be of a substantial nature and cause injury to the lessor.'[179]

The court then reviewed the record as to each of the three alleged breaches and found that the district court had not abused its discretion by finding that the breaches, even if assumed, were not so substantial as to

175. *Walker*, 440 Fed. Appx. at 258.
176. *Id*.
177. *Walker*, 2010 WL 3843682, at *11.
178. *Walker*, 440 Fed. Appx. at 256.
179. *Id*.

justify the harsh remedy of lease dissolution. The district court's judgment was affirmed.

2. Doctrine not Applicable to Termination of Mineral Lease Arising out of Expiration of Term of Lease

The doctrine of judicial control does not operate to immunize a lessee from lease termination resulting from a failure to take necessary actions to avoid the occurrence of an express resolution condition under the "unless" form of a mineral lease.[180] Rather, Mineral Code article 133 dictates that a "mineral lease terminates at the expiration of the agreed term or upon the occurrence of an express resolutory condition."[181] Hence, a failure to commence operations or to timely and properly pay delay rentals under the "unless" form results in the *ipso facto* termination of the mineral lease.[182]

In *Smith v. Sun Oil Co., Inc.*,[183] the lessee failed to produce in "paying quantities," resulting in the termination of the lease.[184] Nevertheless, the

180. *See* OTTINGER, *supra* note 1, at § 4-04.

181. LA. REV. STAT. ANN. § 31:133 (2022).

182. *See* Rushing v. Griffin, 121 So. 2d 229, 233 (La. 1960) ("No drilling operations having been commenced, and the delay rental not having been paid within the first twelve months, notwithstanding repeated demands, we conclude that the lease in this case was terminated by its own terms."). This automatic consequence of a failure to timely and properly pay delay rentals under a mineral lease—*ipso facto* termination—is to be contrasted with other types of leases. A lessee's failure to pay rent timely does not automatically result in the termination of a lease of a different type, for example, residential or commercial. Plunkett v. D & L Fam. Pharm., Inc., 562 So. 2d 1048 (La. Ct. App. 3d 1990). Certainly, if the landlord (lessor) under such a lease acquiesces in the late payment of rent for a period of time, it must first apprise the lessee of its intent to thereafter strictly abide by the terms of the lease pertaining to the due date for rent. *See, e.g.*, Standard Brewing Co. v. Anderson, 46 So. 926, 926 (La. 1908) ("Where, month after month, the lessor has been receiving payment of the rent a few days later, without objection, if he desires in the future to hold the lessee strictly to payment on the day the rent falls due, he must give him notice to that effect; otherwise, the lessee will not be in legal default from delaying the usual time.").

183. Smith v. Sun Oil Co., Inc., 135 So. 15 (La. 1931).

184. *See* Patrick S. Ottinger, *Production in "Paying Quantities"--A Fresh Look*, 51 ANN. INST. ON MIN. LAW 24 (2004); also published at 65 LA. L. REV. 635 (2005), and *Production in "Paying Quantities" in These Challenging Days: How Much Financial Stress Can Your Lease Withstand?*, 67 ROCKY MTN. MIN. L. INST. 6-1 (2021). *See also Prices Go Up, Prices Go Down: The Effect of Volatile Market Conditions on a Production in "Paying Quantities" Analysis,* 69 ANN. INST. ON MIN. LAW (2022).

lessee resisted this result by arguing that it was entitled to an opportunity to cure the default, relying on the "Judicial Ascertainment Clause."[185]

The court held that such a clause did not apply to this case, "where the sole inquiry is whether or not the lease has expired and terminated by its own terms; no more, in fact, than if the lease had expired on a fixed date instead of an uncertain date."[186]

The case of *Miller v. Kellerman,* in which the lessee failed to timely and properly pay delay rentals, illustrates this proposition.[187] The defendants contended that the error in failing to pay the proper amount of the delay rental was "an innocent and reasonable mistake and [that] plaintiff should now be required to allow defendants to rectify their error."[188]

The court rejected this argument, saying:

> [Certain cases cited in support of the doctrine of judicial control] have enunciated the principle that the right to dissolve a lease is subject to judicial control according to the circumstances. This idea is appealing, for it honestly concedes a breach but permits judicial control where the result would be onerous and the mistake is pardonable. Later decisions illustrate the reluctance of the Louisiana Supreme Court to apply this doctrine. . . . Surely, great caution must be exercised in utilizing judicial power to revitalize an agreement that has been terminated by its own terms. In my judgment, the circumstances warranting the application of such power must appear of record with the greatest and most convincing clarity.
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> We emphasize that the circumstances warranting application of equity must appear with convincing clarity. Here, the lease stated

185. *See* OTTINGER, *supra* note 1, at § 4-33.

186. *Smith*, 135 So. at 15. *Cf.* BR Tank, LLC v. Holcim (US), Inc., 2011 WL 53032, at *2 (M.D. La. Jan. 7, 2011) ("In support of its invocation of judicial control doctrine, plaintiff cites case law stating that Louisiana does not favor the cancellation of leases and that, through judicial control, a court may deny cancellation of a lease under certain circumstances. Our ruling has already addressed that the lease was not cancelled, rather expired under its own term. This court therefore declines to exercise judicial control to find the lease extended.").

187. Miller v. Kellerman, 228 F. Supp. 446 (W.D. La. 1964), *aff'd* 354 F. 2d 46 (5th Cir. 1965), *cert. den'd* 384 U.S. 951, 86 S.Ct. 1571, 16 L.Ed. 2d 548 (1966).

188. *Id.* at 457.

> in dollars and cents the exact amount of the annual rentals ($7,800) and there had been no segregated part of the land covered by the lease. The payment of only $3,900 was not a likely or reasonable mistake. Certainly, it was not a mutual mistake; it was clearly defendants' error. It is all too obvious that to relieve a party of such a patent error would be a dangerous precedent and would initiate a policy that would be most difficult to administer.[189]

Finally, in *Ross v. Enervest Operating, L.L.C.*, a mineral lease was granted in 1916, and subsequently amended in 1921 and again in 1935 in connection with the settlement of disputes pertaining to the calculation and payment of royalties.[190] The original lease, as amended in 1921, prescribed a minimum royalty and contained an express resolutory condition that, "if the Lessee should fail to make said payments annually as aforesaid all of his rights under said lease shall terminate."[191]

In a later dispute between the lessor and the lessee relative to the timeliness of the payment of royalties, the parties disagreed as to the continued applicability of the *ipso facto* termination clause added by the 1921 amendment. The court held that the 1935 amendment removed the express resolutory condition as contained in the original lease, stating, as follows:

> [W]e find that the *ipso facto* termination clause, which was not specifically restated in that portion of the 1935 Amendment regarding royalty payments, was not incorporated by reference. For this reason, the assignments of error related to the automatic termination of the lease pursuant to the *ipso facto* clause have merit.[192]

Thus, the court permitted the provisions of the Mineral Code relative to non-payment of royalty to operate. Although the lessee urged the court to invoke the doctrine of judicial control, the court held that it was unnecessary to do so as the alleged failure of the lessee to pay royalties was not unreasonable.[193]

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189. *Id*. at 458.

190. Ross v. Enervest Operating, L.L.C., 119 So. 3d 943 (La. Ct. App. 2d), *writ den'd* 125 So. 3d 1110 (La. 2013).

191. *Id*. at 946.

192. *Id*. at 956.

193. *Id*.

CONCLUSION

The doctrine of judicial control empowers the court to avoid the consequences that would otherwise arise out of a dogmatic, non-discretionary invocation of dissolution of a lease when the magnitude or character of the breach does not rise to the level that justifies such an extreme remedy.

Perhaps a little vignette will make an important point or two about the topic under consideration. In the author's seminar class at the Paul M. Hebert Law Center at LSU,[194] one of the lead characters in the storyline is an eccentric landowner named "Tipsy."[195] Described as a "sophisticated lessor,"[196] Tipsy insists on including the following clause in her specially prepared form of mineral lease, *viz*:

Lessee shall mail to Lessor all royalty payments on or before the 25th day of the month following the month of production, and such payments shall be dispatched using a pink envelope.

Tipsy's stated rationale for insisting on this unique requirement is that she receives so much junk mail that she wants to be able to clearly identify her royalty check in the batch of mail received daily.

The lessee's royalty accounting department repeatedly overlooks this particular requirement, hidden as it is in a 50+ page mineral lease document, and mails the check in a customary white envelope routinely used for all other royalty owners.

Is the failure to mail the royalty check in a pink envelope, as explicitly required by the lease, a violation of the mineral lease? Indisputably it is.

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194. LSU Law 5840--Oil and Gas Seminar. The seminar is entitled "Anatomy of an Oil and Gas Transaction," and follows a story-line approach to all phases and aspects of the oil and gas industry, starting with the generation of a "geological idea," followed by sequential classes studying the acquisition of leases, acquiring well partners, raising capital, title examination, regulatory requirements, continuing through the drilling of a well, unitization, marketing production, lease maintenance, etc., concluding sequentially with the termination of the mineral leases and the lessee being served with a "legacy lawsuit."

195. As explained in the storyline for the seminar, Tipsy is "a flirtatious semi-calico-haired landowner whose love of cheap Chardonnay wine mixers is well known in Cameron Parish. She anticipates retirement when the test well is successfully completed on her land."

196. A "'sophisticated lessor' is a hypothetical lessor who owns significant land or mineral holdings to the end that it has the standing to demand or insist upon terms, provisions, and considerations that are generally more favorable than a lessor who owns the executive interest in smaller tracts of land (or interests therein), such that the latter does not enjoy the 'bargaining power' of the 'sophisticated lessor.'" *See* OTTINGER, *supra* note 1, at § 1-13, n. 252.

But, is it actionable? Can Tipsy obtain a judicial order of dissolution of the producing mineral lease for this obvious breach?

It is unquestionable that the unique clause, while admittedly not important to all lessors, is a proper exercise by Tipsy of the precept of "freedom of contract;"[197] that the word "shall" is mandatory,[198] and that the provision is the "law for the parties."[199] It is obviously not violative of any public policy and is worthy of enforcement.

Nevertheless, whatever can be said about the failure to mail the royalty check in a pink envelope, it is difficult to view it as a breach that is: (1) "material and important,"[200] (2) something other than "mere inconvenience,"[201] (3) "an infraction [that is] substantial, serious and continuous in nature,"[202] or (4) other than merely a "technical infringement."[203]

The doctrine of judicial control would obviously be invoked to reject a judicial demand for dissolution of a producing mineral lease, brought about by the significant expenditure of money on the part of the lessee.

At the same time, it would be within the discretion of the court to award a nominal sum as monetary damage for the technical lease violation so as to motivate the lessee to abide by the express terms of Tipsy's lease.

As illustrated by the panoply of cases cited herein, the doctrine of judicial control provides a valuable safeguard to a lessee who has expended significant capital to discover oil and gas which benefits both the lessor and the lessee alike, not to mention the general public in terms of need for a constant and reliable source of energy.

197. *See supra* pt. II.
198. LA. REV. STAT. ANN. § 1:3 (2022).
199. *See* LA. CIV. CODE ANN. art. 1983 (2022).
200. Lillard v. Hulbert, 9 So. 2d 855 (La. Ct. App. 1st 1942).
201. Campo v. LaNasa, 173 So. 2d 491 (La. Ct. App. 4th 1964).
202. Friendly Fin., Inc. v. Cefalu Realty Inv., Inc., 278 So. 2d 584, 586 (La. Ct. App. 1st 1973).
203. Goldblum v. C & C Invs., 444 So. 2d 643 (La. Ct. App. 5th 1983).