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Prescription of Joint Mineral Leases - Interruption

Arthur E. Sparling

Watson v. Feibel,[12] when, after defending the doctrine of default from the assaults of its many critics, it added:

> "But if putting in default were to be wrenched from its proper function of giving warning in order that the debtor may perform, and converted into an instrument for destroying the right to perform, it would deserve, and richly so, this severe arraignment of it."[13]

It may be argued that default has no place whatsoever in compensatory damage suits,[14] but this is not necessary in order to avoid the inequities resulting from an overzealous application of Article 1913. A restriction of that article to cases involving moratory damages would accomplish the same thing without injury to our code or jurisprudence. The courts would then be free to exercise the control given them in Article 2047 and decide whether or not to allow the party in default additional time for performance according to the materiality of the delay in the light of the nature of the contract and the attendant circumstances.

Jerry Simon

PRESCRIPTION OF JOINT MINERAL LEASES—INTERRUPTION

Plaintiff brought a concursus proceeding to determine the rights of the several defendants to royalties from the plaintiff's well. Defendant Davis owned a forty acre tract of land. Defendant George and defendant Oil Investment, Incorporated, each owned a one-quarter interest in the mineral rights of this land. Plaintiff secured voluntary pooling or unitization agreements for exploration purposes from the owners of the entire section in which Davis' land lay.[1] The defendant Davis in signing one of the agreements specifically deleted a paragraph which stated that any drilling on any part of the pooled land would constitute an interruption of prescription of ten years liberandi causa and that any payment of royalties would be considered as a new acknowledgment made for the purpose of interrupting prescription. *Held*,

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12. 139 La. 375, 71 So. 585 (1916).

13. 139 La. 375, 390, 71 So. 585, 590.

14. This is the view taken by many French commentators. Hubert, S. 1926.1.17, Planiol, S. 92.1.117, 2 Colin et Capitant, Droit Civil Francais, § 99 (1945).

1. The effects of a forced pooling agreement are beyond the scope of this note.

the purposes and intention of the defendant Davis in striking out this paragraph was to deny the interruption of prescription and to refuse any acknowledgment thereof. *Placid Oil Company v. George*, 49 So. 2d 500 (La. App. 1950).

In cases concerning joint leases the supreme court has held that the intention of the landowner governs.[2] In applying Article 3520[3] to mineral servitudes, it has consistently decided that, to be sufficient to interrupt the running of prescription, an acknowledgment must be express; it must indicate with certainty the intent of the landowner.[4] A bare acknowledgment of the rights of another party will not suffice.[5]

The first case dealing with a joint lease was *Mulhern v. Hayne*,[6] where the court unfortunately said that a joint lease extending beyond the prescriptive period would interrupt prescription. However, this holding was explained in *Bremer v. North Central Texas Oil Company*,[7] as standing for nothing more than the prolongation of the prescriptive period in order to make the joint lease valid for the length of time it goes beyond the original term of the servitude. In *Baker v. Wilder*,[8] the court further clarified its position by holding that in the *Mulhern* case it was speaking in terms of extension rather than interruption.

As the matter now stands the signing of a joint lease, the term of which does not extend beyond the prescriptive period, does not of itself show the intention of the landowner to extend the term of the servitude.[9] But, if the primary term of the lease

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2. Bremer v. North Central Texas Oil Co., Inc., 185 La. 917, 171 So. 75 (1936); Achee v. Caillouet, 197 La. 313, 1 So. 2d 530 (1941); Spears v. Nesbitt, 197 La. 931, 2 So. 2d 650 (1941).

3. Art. 3520, La. Civil Code of 1870: "Prescription ceases likewise to run whenever the debtor, or possessor, makes acknowledgment of the right of the person whose title they prescribed."

4. Vincent v. Bullock, 192 La. 1, 187 So. 35 (1939); Goree v. Sanders, 203 La. 859, 14 So. 2d 744 (1943).

5. This rule was well stated in Louisiana Del Oil Properties, Inc. v. Magnolia Petroleum Co., 169 La. 1137, 1142, 126 So. 684, 686 (1930), where the supreme court said: "In construing this article [3520], the Supreme Court of this state has held repeatedly that 'the acknowledgment, in order to interrupt prescription, must be specific;' that 'unless the acknowledgment be clear and precise, the courts cannot consider it;' and that 'a simple recognition neither disposes of nor changes the state of the thing!'"

6. 171 La. 1003, 132 So. 659 (1931).

7. 185 La. 917, 171 So. 75 (1936).

8. 204 La. 759, 16 So. 2d 346 (1943).

9. Bremer v. North Central Texas Oil Co., 185 La. 917, 171 So. 75 (1936); Cox v. Acme Land & Investment Co., 192 La. 688, 188 So. 742 (1939).

does expire on a date beyond the end of the ten-year prescriptive period, the term of the servitude will be extended.[10]

The drafters of the agreement in the principal case were well aware of the latest expressions of the court holding that the signing of a joint lease of itself would not serve to interrupt prescription and attempted to establish a clear-cut interruption by contract. The defendant Davis, being equally well advised, struck out this clause, thereby showing a clear intention not to allow the interruption of prescription.

The court said that if the defendant Davis had not struck out this paragraph there would have been an express interruption, "and it is equally as obvious that the purposes and intention of these parties in striking out the provisions of this paragraph was in effect to deny the interruption of prescription and to refuse any acknowledgment thereof.[11]

The instant case shows the hesitancy of the courts to allow an interruption of prescription unless there is a clear intention to do so. This seems to be a wise policy in view of the fact that no new consideration need be given when there is an interruption of prescription by acknowledgment.[12]

Arthur E. Sparling

OBLIGATIONS—EXCLUSIVE LISTING AGREEMENTS—POTESTATIVE CONDITIONS

Under terms of an exclusive listing contract, defendant, an owner of real estate, on December 7, 1949, listed for sale certain property with plaintiffs, real estate brokers. Defendant agreed to pay plaintiffs a commission whether the property was sold by plaintiffs, by defendant or by any other person or persons. Thereafter, about December 27, 1949, defendant requested the return of his listing, advising plaintiffs that he no longer wished to sell the property. The listing was surrendered with the understanding that if defendant desired to sell the property within sixty days he would relist the same with plaintiffs. The property was nevertheless sold by defendant on January 6, 1950, to a purchaser

10. Achee v. Caillouet, 197 La. 313, 1 So. 2d 530 (1941) and White v. Hodges, 201 La. 1, 9 So. 2d 433 (1942).

11. Placid Oil Co. v. George, 49 So. 2d 500, 505 (La. App. 1950).

12. For a discussion of this point, see Daggett, Mineral Rights in Louisiana 73-74 (1949).