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Mineral Rights - Effect of Spacing Orders on Servitude

Charles C. Gray

producing according to the hopes of the lessee, and that it would not be any more enticing to another lessee than to the defendant.

It would seem that the court intends to restrict the ruling of *Fite v. Miller*[15] to the particular factual situation there presented. The court seems to make it clear that the unconditional obligation, necessary to come within the facts of that case, must be explicit in the agreement, and that the lease will not be arbitrarily construed against the lessee. This is a plausible position. The costs of drilling have increased considerably since the decision in the *Fite* case, and similar damages would be very heavy, indeed.

Carl F. Walker

MINERAL RIGHTS—EFFECT OF SPACING ORDERS ON SERVITUDE

Holt owned forty acres of land. In 1939 he sold the east half to A. J. Pitts and the west half to J. C. Pitts, subject to a reservation in himself of the minerals underlying both tracts. In 1944 Holt had granted an oil and gas lease covering the whole forty and subsequently conveyed undivided interests in his reserved minerals. In 1945 the Department of Conservation issued an order setting up a forty acre spacing pattern for the Holt Zone and May Sand in the Delhi Field of which this tract formed a part. In 1946 the lessees obtained a permit to drill on the tract and a well was completed on the west half which has produced oil in allowable quantities since that time. In 1947 plaintiff Smith acquired the east half of the forty on which no well had been drilled. Plaintiff brought suit against Holt and his assignees to be declared the owner of the minerals on that part of the tract alleging the extinguishment of the servitude on that part of the tract by non-user for a period of ten years. *Held*, that since a single lessee held the entire tract, he was the "owner" of the entire tract within the meaning of the Conservation Act. In such a situation a pooling order could serve no useful purpose, the effect of a conventional pooling agreement being achieved by single ownership. *Smith v. Holt*, 67 So. 2d 93 (La. 1953).

The Louisiana Conservation Act[1] provides that the Commissioner of Conservation may establish drilling units upon

15. 196 La. 876, 200 So. 285 (1940).
1. La. Act 157 of 1940, now La. R.S. 1950, 30:1 et seq.

which only one well may be drilled.[2] In the event there are several tracts within the unit, and the right to drill on these tracts is owned by different persons, the act provides for a voluntary pooling of interests or for orders by the commissioner forcing the various owners to "pool" their interests in the unit and to share equitably the rights and obligations incident to the development of the unit.[3] This portion of the act, together with the power to allocate production, forms the primary instrumentality by which the commissioner carries out the purpose of the act to prevent waste of oil and gas and the drilling of unnessary wells.

Conflict between private rights and obligations and the public interest as declared by the Conservation Act are inevitable and a comparatively new field in mineral jurisprudence is developing delineating the effects of public police power in the field of conservation upon private interests. The instant case represents a step in the unfolding jurisprudence on this aspect of conservation.

It has been held that where two or more separately owned tracts of land were embraced within a unit forced pooled by the commissioner the consequent inability of a lessee to drill upon land which forms a part of such unit is not grounds for the dissolution of the lease by the lessor.[4] Neither will such a lease lapse after the expiration of the primary term if a producing well has been drilled within the unit.[5] Where part of a leased tract is included within a unit pooled by the commissioner and a producing well is drilled anywhere within that unit, payment of royalties by the lessee for the portion within the unit will hold the entire tract under the lease.[6]

The court in *Sanders v. Flowers*[7] indicated that prescription running against a mineral servitude affecting a tract which had been placed in a drilling unit and forced pooled by the commissioner is either suspended or interrupted by the completion of a well within the unit. The court refused to say, however, whether there was a suspension or an interruption. The instant case sheds

2. La. Act 157 of 1940, § 8, La. R.S. 1950, 30:9.
3. La. Act 157 of 1940, § 9, La. R.S. 1950, 30:10.
4. Hood v. Southern Production Co., 206 La. 642, 19 So. 2d 336 (1944).
5. Crichton v. Lee, 209 La. 561, 25 So. 2d 229 (1946); Hardy v. Union Producing Co., 207 La. 137, 20 So. 2d 734 (1944).
6. LeBlanc v. Danciger Oil & Refining Co., 218 La. 463, 49 So. 2d 855 (1950); Hunter Co. v. Shell Oil Co., 211 La. 893, 31 So. 2d 10 (1947).
7. 218 La. 472, 49 So. 2d 858 (1950); Lewis, Effective Date of Forced Unitization Orders, 27 Tulane L. Rev. 457 (1953); Comment, 12 LOUISIANA LAW REVIEW 445 (1952).

no new light on this phase of the problem. The Court of Appeal for the Second Circuit has, however, in a similar fact situation ruled that prescription is interrupted.[8] Certiorari was denied by the Supreme Court.

In the present case no forced pooling order was obtained. Only a general field-wide spacing order was issued by the commissioner. Plaintiff contended that under the act, in order to determine any private rights, it was necessary for a forced pooling order to be issued and for plaintiff to have an opportunity to be heard; that a spacing order provides only the basis upon which a forced pooling order may be issued.

To this contention the court replied that there was but a single owner who had the right to drill and produce from the pool, and "where there is a sole owner of a unit, a pooling order can serve no useful purpose."[9] The court was careful to extend itself no further than necessary for the solution of the problem before it. Its decision was grounded on single ownership of the right to extract the minerals being tantamount to a voluntary pooling.

In *Sohio Petroleum Co. v. V. S. and P. R.R.*[10] lessors sued to cancel their leases on the grounds of failure to drill or pay delay rentals within the term stipulated in the contract. A productive gas well had been drilled within the unit but had been shut down while the lessees obtained another order, based upon geological data obtained from that well, allowing them to drill another part of the unit in search of oil. The lease contained a clause, common to the "North Louisiana form," allowing the lessee to form units conforming to the spacing orders of the commissioner. The court held that the lessor's contention must fall because of the pooling clause of the lease and quoted the decision in *LeBlanc v. Danciger Oil & Refining Company*[11] to the effect that "all contracts of lease with respect to the development and production of minerals in this state must, of necessity, be subject to the police power exercised in protecting these natural resources, and that any provisions of our law with respect thereto form a part of these lease contracts the same as though written therein."[12] The court concluded that "another well could not have been drilled

8. Ohio Oil Co. v. Kennedy, 28 So. 2d 504 (La. App. 1946).
9. Smith v. Holt, 67 So. 2d 93, 96 (La. 1953).
10. 222 La. 383, 62 So. 2d 615 (1952).
11. 218 La. 463, 49 So. 2d 855 (1950).
12. 218 La. 463, 470, 49 So. 2d 855, 857 (1950).

on this same unit without specific authorization, as secured in this case, i.e., by obtaining an order from the Commissioner of Conservation, following a full hearing and based upon his findings, warranting such exception to basic order No. 96. It necessarily follows that the lease did not terminate for failure to pay rentals."[13]

In *Smith v. Holt* there was but a single servitude owner and lessee; in the *Sohio* case all the tracts in the unit were leased to the same lessee. This would seem to confine both cases to a "single ownership" category. Despite this narrow delimitation these cases seem to stand for the proposition that private rights and obligations may be placed in limbo by the police power of the state as enunciated by the commissioner pursuant to the Conservation Act. No safe indication has been given by the court as to how far they will extend the effects of a spacing order. However, it should be safe to assume from the instant case that where there is single ownership of the right to extract oil or gas from the ground for oneself or for others on a tract which has been designated by the commissioner as a unit upon which only one well may be drilled that a forced pooling order is unnecessary and that all the effects of a voluntary pooling agreement or forced pooling order will flow therefrom.

Charles C. Gray

SALES—MEASURE OF THE SELLER'S DAMAGES—SELLER'S PRIVILEGE TO KEEP THE GOODS

Defendant repudiated a contract obligating him to purchase from plaintiff a certain amount of scrap steel at a fixed price; plaintiff thereupon brought suit for specific performance. The demand for specific performance was dismissed by the trial court and abandoned by plaintiff. But, about a year after the institution of suit, the case was tried on the alternative demand for dissolution of the contract and damages for its breach. The market price of scrap steel had been less than the contract price at the time of defendant's repudiation; but, at the time of the trial, it was higher than the contract price. Defendant took the position that plaintiff had suffered no damages, because the pleadings showed that he had kept the goods and, consequently,

13. 222 La. 383, 396, 62 So. 2d 615, 620 (1952).