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Mineral Rights - Obligations - Potestative Condition - Damages for Failure to Drill

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intention to seek review under the supervisory jurisdiction of the Supreme Court. Together with a third alternative, these possible solutions may be stated as follows:

(1) Notification of intent serves to stay proceedings for such time as may be reasonably necessary to allow application to be made.

(2) Notification of intent does not stay proceedings. Only issuance and service of writs or a stay order on the trial judge can have that effect.

(3) After notification the trial judge may proceed; however, he must assume the risk that actions taken after notification will be nullified if the writs are issued.

It is submitted that mere notification of intent should not serve to stay proceedings. Only the service of the writs or a stay order on the trial judge should have that effect. If, in compliance with the third alternative, the trial judge were allowed to proceed at his risk, there would always be as a possible consequence the needless waste of time and effort if proceedings subsequent to notification were nullified. On the other hand, the result of the instant case will be to allow a litigant to stay trial court proceedings merely by giving notice of his intention to apply to the Supreme Court for review of a ruling by the trial judge. Clearly, the trial of a case under such circumstances would become an impossible task if an attorney not averse to the use of dilatory tactics were allowed to suspend proceedings in this manner. Although a literal interpretation of the Supreme Court rule in question supports the position taken in the instant case, it is believed that this interpretation will prove unworkable and that reinstatement of the rule of the *First National Bank Bldg.* case offers the soundest solution of the problem.

Neilson Jacobs

MINERAL RIGHTS—OBLIGATIONS—POTESTATIVE CONDITION—DAMAGES FOR FAILURE TO DRILL

Plaintiffs, lessors, sought damages from defendant, lessee, for an alleged breach of contract to drill. The lease provided: "Lessee agrees to commence the drilling of a well in search of oil, gas or other minerals, on the leased premises, on or before one hundred

and fifty (150) days from date hereof [date of execution], and to pursue operations and drilling with due diligence to completion of said well or abandonment thereof as a dry hole." In place of the usual provision for delay rentals, the parties to the lease substituted the following proviso: "4. *If* operations for drilling are not commenced on said land on or before one hundred fifty days from this date [date of execution], the lease shall *then* terminate." (Italics supplied.) Defendant failed to drill on the leased premises. *Held*, complaint dismissed as failing to state a claim upon which relief can be granted. Defendant was not unconditionally obligated to drill on plaintiffs' land, and plaintiffs therefore are not entitled to damages. Failure to drill resulted in termination of the lease by the terms of the lease contract. *Bland v. Barkalow*, 117 F. Supp. 1 (W.D. La. 1953).

The instant case finds ample support in the Louisiana jurisprudence. A series of decisions, beginning with *Fite v. Miller*[1] and terminating with *Godfrey v. Lowery*[2] are in point. The *Fite* case was the first to hold that damages could be recovered for breach of a contract to drill an oil well. In that case plaintiff, who owned a lease on twenty acres of land, had transferred the north ten acres to defendant. Subsequently, plaintiff and defendant entered into a contract whereby the former assigned to the latter a one-half interest in the lease on the remaining south ten acres. In the words of the court, the consideration for this contract was $1,000 plus the obligation to drill a well on both the north and south tracts. Efforts to locate oil on the north tract having proved futile, defendant refused to drill on the south tract. Plaintiff thereupon sued for damages for failure to drill and recovered. The value of the hope of enrichment upon drilling was used as the measure of damages. The very next case[3] to present the question of damages distinguished the *Fite* case and disallowed recovery. The jurisprudence has since consistently veered away from the rule of the *Fite* case. The problem of recovery of damages under instruments phrased like those in the *Fite* case and the instant case is by no means confined to Louisiana mineral law.[4]

The court's interpretation of the lease in the instant case seems entirely correct. The main purpose of this note is to point

1. 192 La. 229, 187 So. 650 (1939), 13 Tulane L. Rev. 639. See also Daggett, Mineral Rights in Louisiana 395, § 88 (rev. ed. 1949).
2. 223 La. 163, 65 So.2d 124 (1953), 14 Louisiana Law Review 434 (1954).
3. Fogel v. Feazel, 201 La. 899, 10 So.2d 695 (1942).
4. See Note, 32 Texas L. Rev. 127 (1953).

out that it is possible for a lessor to avoid the results reached here.

It will not admit of argument that plaintiffs' principal *cause* or motive in granting a lease to the defendant was to obtain an unconditional obligation on the part of defendant to drill on their land. If this obligation is not obtained, there is an absence of *cause* and therefore no contract.[5] Again, it should not admit of argument that defendant's obligation, which the plaintiffs were seeking to enforce, was subject to a potestative condition.[6] In other words, what appeared at first blush from the written lease to be an absolute duty to drill turned out to be an illusory promise.[7] This result was doubtless not what the lessor expected.

The solution to the problem is found in careful draftsmanship by the lessor's attorney. Form leases are mainly the product of "lessee interests," and it seems only natural that lessees would attempt to secure a mineral lease without running any risks thereunder.[8] "Lessor interests" can be adequately protected by careful attention to the interrelation of the provisions of the proposed lease. The draftsman must be sure that "unless" clauses, surrender clauses, separate forfeiture clauses, and other provisions do not overlap the obligatory provisions of express covenants so as to deprive them of their binding quality. Without exercise of this precaution, the lessor may be without a remedy for lessee's failure to drill, as were the plaintiffs in the principal case.

John S. Covington

TORTS—INTERFERENCE WITH CHILD'S INTEREST IN NORMAL FILIAL RELATION

Plaintiff, a child, alleged that he had been deprived of his mother's aid, comfort, kindness, and assistance by defendant's

5. See Arts. 1824-1825, LA. CIVIL CODE of 1870. For an excellent discussion of this topic, see Smith, *A Refresher Course in Cause*, 12 LOUISIANA LAW REVIEW 2 (1951).

6. See Arts. 2024-2034, LA. CIVIL CODE of 1870. Cases treating this aspect of a lease are: Lieber v. Ouachita Natural Gas & Oil Co., 153 La. 160, 95 So. 538 (1922); Raines v. Dunson, 145 La. 525, 82 So. 690 (1919); McClendon v. Busch-Everett Co., 138 La. 722, 70 So. 781 (1916); Caddo Oil & Mining Co. v. Producers' Oil Co., 134 La. 701, 64 So. 684 (1913).

7. See 1 CORBIN, CONTRACTS §§ 16, 145, 149 (1950).

8. For an interesting account of how such an attempt backfired, see Noxon v. Union Oil Co. of California, 210 La. 1074, 29 So.2d 67 (1946).