**Louisiana Law Review**

Volume 15 | Number 4
*June 1955*

# Mineral Rights - Interpretation of Lease - Effect of Signing a Division Order

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and *LeBlanc* cases. The decision is also consistent with a decision rendered in Mississippi. In *Texas Gulf Producing Co. v. Griffith*, the Mississippi Supreme Court, confronted with a similar fact situation, allowed cancellation of the lease on the portion of the tract lying outside the unit and said that to hold otherwise would "be a violation of the constitutional guaranty that no person shall be deprived of his property without due process of law."[6] A most significant point in the instant case is that plaintiff lessor was able to overcome a geologist's testimony by showing that he had received from a prudent operator a bona fide offer to drill if the land was freed from the lease. The Court of Appeals for the Fifth Circuit in *Romero v. Humble Oil and Refining Co.*[7] had taken a step in that direction, but had required the plaintiff's offeror to give assurance that he would drill before the lease to defendant would be cancelled for nondevelopment. Because of the importance the court in the instant case seemed to place on the fact that a well had been drilled during the primary term in both the *Hunter* and the *LeBlanc* cases, it is not entirely clear whether the result reached in the instant case would have been the same had the lessee drilled during the primary term. However, the remedy afforded the lessor in the instant case was probably within the contemplation of the court in the *Hunter* case.[8] It is submitted that regardless of when the well is drilled on the unit, if the lessor can prove that the lessee has not adequately developed the portion of the leased premises outside the unit, then the lease on that portion should be cancelled.

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MINERAL RIGHTS—INTERPRETATION OF LEASE—EFFECT OF SIGNING A DIVISION ORDER

Plaintiff lessors sued to cancel a mineral lease for failure of lessee to drill or pay delay rentals as required by the terms of the contract.[1] The lessee had completed and placed in production

6. 65 So.2d 447, 452 (Miss. 1953), 2 OIL & GAS REP. 1103, 1111 (1953).
7. 194 F.2d 383 (5th Cir. 1952), 1 OIL & GAS REP. 358 (1952).
8. See language quoted page 854 *supra*.
1. Section 4 of the lease provides in part: "If operations for the drilling of a well be not commenced on said land, or any unitized area hereunder, on or before the 3rd day of September, 1949, this lease shall terminate, unless Lessee on or before that date pays to lessor a rental. . . ." Wilcox v. Shell Oil Co., 76 So.2d 416, 419 (La. 1954).

a well on land other than that covered by the lease in question. Thereafter the defendant, without knowledge of the plaintiffs, formed a voluntary operating unit around the producing well including a portion of the land leased from plaintiffs.[2] A declaration of the unit was placed of record without plaintiffs' knowledge on the day before delay rentals were due. Defendant did not pay delay rentals, relying on the following provision of the lease:

> "5. . . . The commencement of a well or the completion of a well to production, and the production of oil or gas therefrom, on any portion of an operating unit in which all or any part of the land described herein is embraced shall have the same effect, under the terms of this lease, as if a well were commenced or completed on the land embraced by this lease. . . ."[3]

About two months after failing to make payment of delay rentals under the lease, defendant sent plaintiffs a division order, which stated their interest in the production from the unit referred to above. Plaintiffs signed it and cashed four royalty checks. On appeal from judgment for defendant, *held*, reversed. The obligation of the contract requiring drilling unless payment of delay rentals was made had not been satisfied; and plaintiffs, by signing the division order and cashing the royalty checks, were not estopped to urge cancellation since they were ignorant of the formation and recordation of the unit by defendant. *Wilcox v. Shell Oil Co.*, 76 So.2d 416 (La. 1954).

Louisiana courts have recognized that production from any part of a unitized area will keep the lease in force for land, all or part of which is included in the unit, and has the same effect as if the production had been obtained directly from the leased land.[4] The parties to a lease may, however, provide effect of operations on a unit or pool. In such cases the intention of the

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2. Prior to this voluntary operating unit, which affected the FT sands, the Commissioner of Conservation had issued an order unitizing an area including some of plaintiffs' land, but only as to the FX and FV sands. A well was drilled unproductively into the last mentioned sands, and pulled up to the FT sands where oil was discovered. Since the Commissioner's order did not affect the FT sands and the voluntary pooling declaration had not then been recorded, the well was brought in on non-unitized lands.

3. Section 5 of the lease. Wilcox v. Shell Oil Co., 76 So.2d 416, 419 (La. 1954).

4. Smith v. Carter Oil Co., 104 F. Supp. 463 (W.D. La. 1952); 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); Crichton v. Lee, 209 La. 561, 25 So.2d 229 (1946).

parties controls and the court must rely on general principles of contract interpretation.[5]

In the instant case the defendant, relying upon the lease provision quoted above, contended that the existence at the due date for rentals of (1) a unit validly formed under the permissive unitization clause[6] and (2) a producing well on the unit was sufficient to keep the lease in effect. The court found that the clause in question provided three types of operations on a unit comprising some of plaintiffs' land which would preserve the lease: (a) starting a well on the unit; (b) completing a well to production on the unit; or (c) production from a well completed on the unit.[7] Since no unit was created until the day before the due date for rentals and after completion of the well, none of the conditions was met.

Prior to the recordation of the voluntary pooling by defendant, an order of the Conservation Department had unitized some of plaintiffs' land, but as to different sands. Since plaintiffs were ignorant of the voluntary pooling arrangements of defendant lessee, and were relying on the former pool by the Conservation Department, their action in signing the division order and accepting the royalties could not serve as a basis for estoppel.[8] There is ample authority that the plea of estoppel is ineffective against one having no knowledge of the facts.[9] The party asserting this defense bears the burden of proving the elements of his theory, among which is the knowledge of

5. Dobbins v. Hodges, 208 La. 143, 23 So.2d 26 (1945); Robinson v. Horton, 197 La. 919, 2 So.2d 647 (1941); Art. 1945 *et seq.*, LA. CIVIL CODE of 1870.

6. Section 5 of the lease contains the voluntary pooling clause: "Lessee shall have the right as to all or any part of the land herein leased, without lessor's consent to combine the lease, mineral and royalty rights, owned by lessor and lessee and created by this lease, with any other lease or leases . . . so as to create . . . one or more operating units. . . ." Wilcox v. Shell Oil Co., 76 So.2d 416, 419 (1954).

7. Wilcox v. Shell Oil Co., 76 So.2d 416, 420 (1954).

8. There is, however, authority from other jurisdictions to the general effect that signing a division order can operate as an estoppel against the royalty owner. Dale v. Case, 64 So.2d 344 (Miss. 1953), 2 OIL & GAS REP. 962 (1953), held that signing an erroneous division order estopped the mineral owner from proceeding against the producing oil company, although they did have a right against other owners who had been overpaid as a result of the error. Snider v. Snider, 255 P.2d 273 (Okla. 1953), 2 OIL & GAS REP. 711 (1953), while holding that a division order is no longer effective when the signer dies, did intimate that although revocable, and not binding, the division order would serve as estoppel for accrued payments.

9. Little v. Barbe, 195 La. 1071, 198 So. 368 (1940); Parker v. Ohio Oil Co., 191 La. 896, 186 So. 604 (1939); Succession of Valdes, 44 So.2d 151 (La. App. 1950); Jones v. Alford, 172 So. 213 (La. App. 1937).

the opposing party.[10] In the instant case, the peculiar sequence of pooling arrangements was sufficient to convince the court that plaintiffs were not aware of the facts. Consequently, it seems clear that the legal principles applied by the court are well grounded in the Louisiana jurisprudence. Although this case was compromised pending decision on the application for rehearing, it is an expression of judicial thought on the lease clause involved and can serve as a guide for future action to all parties interested in mineral operations.

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SALES—REDHIBITORY ACTION—ACTION FOR BREACH OF CONTRACT—DIFFERENCE IN PRESCRIPTIVE PERIODS

Plaintiff purchased paint from defendant which defendant had advertised as "guaranteed 100% Mold and Mildew-Resistant All-Purpose White Paint." Plaintiff used the paint on his own house and on another. Within less than a year after application of the paint mildew appeared on both houses. Suit was brought to recover the cost of the paint and the expenses incurred in its application and removal. The trial court held that the action was one in redhibition and, since the suit had been instituted more than two years after the date of the sale and more than one year after the discovery of the defects and deficiences in the paint, the defendant's plea of prescription was sustained. On appeal, plaintiff urged that the controversy was not controlled by the one-year rule of prescription applicable to the action of redhibition, but instead by that of ten years since the action was to recover damages for breach of contract. The Orleans Court of Appeal stated that "the Supreme Court must still be of the view that . . . this is a redhibitory action," and *held*, affirmed. "[I]n such a case as this, the party who sustains loss is entitled to 'damages' but . . . those damages are such as are contemplated by Article 2545 of the Civil Code . . . . [C]onsequently the claim is barred by the prescription period of one year in accordance with Article 2534, if the seller did not know of the defect, or Article 2546 if the

10. Harvey v. Richard, 200 La. 97, 7 So.2d 674 (1942); Hayward v. Carolina Ins. Co., 51 So.2d 405 (La. App. 1951). Ratification, while not entirely equitable in nature, must include an intent to confirm, and therefore requires knowledge of all facts surrounding the questioned transaction. Art. 2272, LA. CIVIL CODE of 1870; Otis v. Texas Co., 153 La. 384, 96 So. 1 (1923); Lacaze v. Kelsoe, 185 So. 676 (La. App. 1939).