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Civil Code and Related Subjects: Mineral Rights

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MINERAL RIGHTS*

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A suit was filed in *Broussard v. Hassie Hunt Trust*[1] by the initial lessor, landowner, to cancel a lease for failure to reasonably develop it. The lease had been twice transferred since its origin. A clause in the first transfer purported to absolve the lessee from all responsibility and place the transferee in position to fulfill all obligations of the lease to the original lessor. The word *assignment* appeared in the instrument. However, the transfers had provided for overriding royalty and thus were subleases and not assignments. Hence, the court under a well-settled rule held there was no privity of contract between the plaintiff (lessor) and the defendant (sublessee), no right of action, and the suit was dismissed. There is no departure from established jurisprudence in this case. The test of real control as evidenced by retention of royalty or otherwise, rather than words or lack thereof in the instrument, was maintained. The principles of the relationship between landlord and under-tenant were cited.[2]

In *Sun Oil Co. v. State Mineral Board,*[3] the Louisiana Legislature by Act 513 of 1952 provided that the State Mineral Board might execute mineral leases upon land owned in indivision by five hundred or more persons if petitioned to do so by fifty or more of the co-owners. Such a lease was granted by the Mineral Board. A co-owner and his lessee attacked the lease by the Mineral Board as being invalid because of the unconstitutionality

*Permission has been granted by Matthew Bender and Company to use certain cases reported herein as have been reported by the writer in the *Oil and Gas Reporter*, sponsored by the Southwest Legal Foundation of Dallas, Texas, and published by that company.

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1. 231 La. 474, 91 So.2d 762 (1956).

2. For further discussion and references, see Warren, *Transfer of the Oil and Gas Lessee's Interest*, 34 TEXAS L. REV. 386 (1956); Moses, *Subleases — The Legal Relation Between the Lessor, Sublessor and Sublessee*, 2 LA. B.J. 177 (1955); Moses, *Assignments and Subleases of Oil and Gas and Mineral Leases in Louisiana*, 23 TUL. L. REV. 231 (1948): Moses, *Distinction Between a Sublease and an Assignment of a Mineral Lease in Louisiana*, 18 TEXAS L. REV. 159 (1940); Note, 82 A.L.R. 1273 (1933), concerning the development of land and the payment of royalties under oil and gas leases as affected by assignment of lease or sublease as to a portion of the land; and the casenotes on the distinction between a sublease and an assignment at 23 MISS. L.J. 299 (1952) and 6 TUL. L. REV. 312 (1932); BROWN, ASSIGNMENTS OF INTERESTS IN OIL AND GAS LEASES, FIFTH ANNUAL INSTITUTE ON OIL AND GAS LAW AND TAXATION 25 (1954); Sullivan, *Assignments by the Landowner and the Lessee*, 17 MONT. L. REV. 64 (1955); TUCKER, SUBLEASE AND ASSIGNMENT: SOME OF THE PROBLEMS RESULTING FROM THE DISTINCTION, THIRD ANNUAL INSTITUTE ON MINERAL LAW 176 (1955).

3. 231 La. 689, 92 So.2d 583 (1956).

of the statute. The court found the lease by the co-owner invalid for the lack of consent of all other co-owners and held the statute constitutional as a valid exercise of the police power to conserve minerals, since it would be a practical impossibility to obtain a valid lease otherwise, due to the number of co-owners. It would appear that the decision was eminently correct. The square grounding on the power to conserve is heartening and in accord with the well-settled policies and practices of the state.[4]

Gulf Refining Company v. The Hunter Company[5] presents the question of interpretation of an instrument conveying land, and as further consideration for this land, a mineral interest. Prescription of this interest had been successfully pleaded below and was maintained in this decision. The portion of the instrument in question is presented as follows:

> "And as a further consideration hereof, La Prairie Maronne Companie agrees and binds itself to deliver to the vendor herein, his heirs or assigns, one-eighth (1/8) of all oil or other mineral substances produced from said tract of land herein conveyed, free of all charges and expenses, at the wells or mines where produced."

No drilling or production from the land had occurred within ten years from the date of the sale of land. Thereafter, production was secured. If royalty or servitude had been reserved by the vendor of the land, prescription under these facts would have accrued in either case. The theory presented by plaintiffs, however, was that it was neither royalty nor servitude, and was but a deferred payment of consideration. Their major support was the case of *Rudnick v. Union Producing Co.*,[6] involving interpretation of a lease contract, the critical section of which follows:

> "[A]s additional consideration, lessee agrees that if any well drilled on the above described property makes or produces not less than fifty (50) and not over one hundred (100) barrels of oil per day, to pay to lessor four thousand dollars ($4,000.00); if any well drilled on said property makes or produces over one hundred (100) barrels and not over two hundred fifty (250) barrels of oil per day, to pay

4. See 2 OIL & GAS REPORTER 1399 (1953) for a discussion of *Smith v. Holt* (forced pooling), cited by the court in the instant case regarding conflict of private contractual rights and orders of the Commissioner of Conservation.

5. 231 La. 1002, 93 So.2d 537 (1957).

6. 209 La. 943, 25 So.2d 906 (1946).

to lessor ten thousand dollars ($10,000.00); if any well drilled on said property makes or produces over two hundred fifty (250) barrels of oil per day, to pay lessors twenty thousand dollars ($20,000.00); to be more explicit whichever of the above sized well(s) should come in first, that special size well shall set the money consideration to be paid."

The Supreme Court took the view that the further consideration was to be paid within ten years from the happening of the contingency upon which it depended, so long as the lease was alive. The court in the instant case distinguished the *Rudnick* case as presenting a personal obligation due within ten years after the future condition had come to pass. Herein, the "additional consideration" was but a retention of royalty dependent upon the happening of the uncertain event — production — which must take place within ten years from the date of the instrument — a real obligation running with the land. This decision again marks the important distinction between the lease contract and the burdening of the land with servitude or royalty.[7]

In *Mallett v. Union Oil & Gas Corporation of Louisiana*[8] suit was brought to cancel a lease held beyond the primary term without production. The lessee's request for an extension had been refused. Three days before termination the lessee had unitized with other property, upon which there was a producing well, and it was alleged that this held the lease under the production clause. The court analyzed the long and involved provisions of the lease and found that the clause providing for unitization contemplated development only and did not authorize the unitization with adjoining property which was producing. One Justice dissented. Obviously, the case turns upon interpretation of the lease, the language of which was far from clear. Emphasis was placed upon the real purpose of the instrument, development. The court may have been swayed, as well they might, by the fact that after extension had been refused and with but three days left, the lessee then resorted to unitization. The growing importance of unitization clauses and the uncertainties of their interpretation should result in more clearly drawn instruments. The length of many leases presently in use with paragraph sentences and the unnecessary and meaningless

7. For further references and discussions see 7 OIL & GAS REPORTER 16 (1957), 6 OIL & GAS REPORTER 448 (1956), and 3 OIL & GAS REPORTER 388 (1954).

8. 232 La. 157, 94 So.2d 16 (1957).

verbiage of doubtful legal scope seem to be producing uncertainty and litigation rather than protection.[9]

In *Delatte v. Woods*[10] the provisions of the lease with drill or pay clause, voluntary unitization clause, etc., are clearly set forth in the opinion and need not be repeated in a presumably brief synopsis of the facts of the case. The critical question in the litigation was whether or not an order of the Commissioner of Conservation ordering the unitizing of a portion of the leased land with adjacent lands produced the effects claimed by the lessee. The order declared a unit producing well as a well producing from the unitized area, and thus producing from all of the lands within the unit. Did this action relieve the lessee of his promise to drill the land actually comprehended within the lease? The court held that it did, because production within the unit is production from anywhere within the unit and a promise to drill is indivisible.

It had been thought by some students that after the decisions declaring that the land over which a servitude reached might be divided not only by contract but by an order of the Commissioner of Conservation, that the same principle might be applied in the case of a lease. This decision, following the much-discussed cases of *Hunter v. Shell Oil Co.*[11] and *LeBlanc v. Danciger Oil & Refining Co.*,[12] dispels these thoughts and, perhaps, hopes of analysts of mineral law problems. Justice Hamiter continues to maintain his stand, taken so firmly as a dissenter in *Hunter v. Shell Oil Co.*, and with the same cogent reasons. Thus, the lessor is again remitted for possible relief to other breached clauses of the lease, notably, failure to have diligently developed, a tortuous and expensive procedure at best.

A lessor sued for cancellation of his lease in *Bollinger v. Texas Co.*[13] for failure to pay royalties from production. "Shut-in" payments had been made which were provided for in the lease but not in case production was flowing. Sales of this production had been made. Failure to pay production royalties,

9. For a discussion of pooling provisions in general, see Hoffman, *Pooling and Unitization Clauses in Oil Leases*, 1ST ROCKY MT. MINERAL LAW INSTITUTE 103 (1955); HOFFMAN, VOLUNTARY POOLING AND UNITIZATION 87-137 (1954); SULLIVAN, HANDBOOK OF OIL AND GAS LAW 150-155. See Comment, *The Right of the Lessee to Pool the Mineral Interest Before and After the Expiration of the Primary Term*, 10 SW. L. J. 165 (1956).

10. 232 La. 341, 94 So.2d 281 (1957).

11. 211 La. 893, 31 So.2d 10 (1947).

12. 218 La. 463, 49 So.2d 855 (1950).

13. 232 La. 637, 95 So.2d 132 (1957).

likened unto rent, have long constituted a breach and grounds for cancellation. It was again so held. Two Justices dissented upon the major ground that the lessor had received more from the shut-in payments than he would have been entitled to receive from production. It would seem that the decision is in line with well-established principles regarding leases, adapted to mineral leases. Much emphasis has been placed upon the contract phase of lease and, hence, a lessor would have a right to cancel for breach, whether he lost or gained economically, a matter for his own decision. It appeared that the lessee was most anxious to secure from the lessor a revised and enlarged provision for voluntary unitization. Whether or not this influenced the decision is, of course, purely speculative.

In *Elkins v. Roseberry*[14] a landowner brought suit to have a mineral servitude declared extinguished by prescription of ten years. The defense was that the landowner and servitude owner had executed a joint lease, which would have under previous jurisprudence extended the life of the servitude for the primary term of the lease. Thus, the real issue was whether or not the lease was joint, as stated by the court. The facts were examined and it was found that there was no intention by the landowner to extend the life of the servitude, which, therefore, had expired. Obviously, the question was to be resolved on the evidence adduced. The lease "was not signed by the parties at the same time." There was no specific statement of an intention to lengthen the life of the servitude. The landowner did not accept joint rentals after the original term of the servitude had expired. The landowner leased again after extinguishment of the original term. Moreover, and most importantly, the court has long emphasized the need for clear and express intendment to interrupt or extend a servitude. Thus, the decision is in line with their wise and just attitude in regard to these questions.

The following cases appeared during the year but contained little that was really pertinent to this section: *Richardson & Bass v. Board of Levee Commissioners of Orleans Levee District*,[15] *Seiber v. Ringgold*,[16] *Sun Oil Co. v. Kinder Canal Co.*,[17] and *Simmons v. Cowper*.[18]

14. 96 So.2d 41 (La. 1957).
15. 231 La. 299, 91 So.2d 353 (1956).
16. 231 La. 983, 93 So.2d 530 (1957).
17. 231 La. 1039, 93 So.2d 551 (1957).
18. 96 So.2d 646 (La. 1957).