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Civil Code and Related Subjects: Lease

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may include in addition to the physical value of the property taken at the time of the taking the diminution of value of the remainder, often referred to as severance damages.¹⁵ Sales of comparable property have great weight.¹⁶ Factors such as rental income and the value of an existing business are important. Location, zoning, assembly or platting value, topography, and adaptability may be considered in establishing the most profitable use to which the property can be put in view of the possibilities in the not too distant future.¹⁷ Although losses common to all affected owners such as result from redirecting or diverting traffic, changes in situation with respect to parking on public thoroughfares, or narrowing streets should not be considered, yet elements of loss not common to all owners occasioned by the peculiar location of particular property and the manner in which its use is affected may be included.¹⁸ Finally, purely consequential damages such as those flowing from loss of value of stocks of goods or fixtures are not includable.¹⁹ In sum, the cases demonstrate a consistency of application of the controlling principles.

LEASE

*J. Denson Smith**

In *Calhoun v. Gulf Refining Co.*¹ the court was confronted with the argument that a person who buys property subject to a recorded lease thereby assumes the obligations of the lessor under the lease and that since a lessor holding a one-fourth mineral interest had agreed that any additional interest he acquired would vest in the lessee, therefore an additional interest acquired by the person to whom he sold the property vested in the lessee. This contention was rejected. The court pointed out that the obligation in question was personal to the vendor and did not pass with a sale of the property and added that a lease creates a *jus*

15. *Gravity Drainage District No. 1 of Rapides Parish v. Key*, 234 La. 201, 99 So.2d 82 (1958); *Texas Gas Transmission Corp. v. Broussard*, 234 La. 751, 101 So.2d 657 (1958); *State v. Sullivan*, 235 La. 324, 103 So.2d 458 (1958).

16. *State v. Sauls*, 234 La. 241, 99 So.2d 97 (1958); *State v. Dent*, 234 La. 659, 101 So.2d 193 (1958); *State v. Sullivan*, 235 La. 324, 103 So.2d 458 (1958).

17. *State v. Sauls*, 234 La. 241, 99 So.2d 97 (1958); *Koerber v. New Orleans*, 234 La. 433, 100 So.2d 461 (1958); *State v. Dent*, 234 La. 659, 101 So.2d 193 (1958).

18. *Cerniglia v. New Orleans*, 234 La. 730, 101 So.2d 218 (1958).

19. *State v. Sauls*, 234 La. 241, 99 So.2d 97 (1958).

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1. 235 La. 494, 104 So.2d 547 (1958).

ad rem and not a *jus in re*. Of course, a purchaser of property subject to a recorded lease takes the property subject to the lease. It is thus an encumbrance on the property that passes with the property and to this extent it constitutes a real obligation.² Being recorded it is effective against all the world. It survives the transfer on the theory that the lessor-vendor cannot transfer any greater right than he himself possesses. At the same time, speaking generally, the purchaser acquires the right to the rent payable under the lease. This right has been labelled a right to the fruits of the thing.³ A sounder analysis would seem to be that it passes to the vendee by way of a tacit assignment of the lease as an accessory of the property transferred.⁴ Consequently, by accepting the assignment the purchaser should become subject to the obligations resting on the assignor even if the basic right of the lessee is a *jus ad rem*. However, as the instant case holds, this would not extend to a personal undertaking of the kind in question.⁵ The vendor never acquired any additional interest to which alone the stipulation applied.

Sections 13:4918-4924 of the Revised Statutes provide the procedure for the eviction of persons whose right to the occupancy of leased premises has ceased. It is specifically provided that an appeal from a judgment of eviction shall not suspend execution unless the defendant has interposed a special defense which entitles him to retain possession of the premises. A suspensive appeal bond is also required. In *Trist v. Ravain*⁶ the district court refused to grant a suspensive appeal from a judgment of eviction on the ground that the evidence adduced did not support the special defense relied on, *viz.*, that the premises were being occupied under an oral lease for a term that had not yet expired. It was held that the relator was entitled to a suspensive appeal because he had offered a special defense and that the question of whether the evidence adduced at the trial was sufficient to support it could be inquired into only on submission of the case on appeal. This disposition of the problem seems consistent with the apparent meaning of the provision.

2. LA. CIVIL CODE art. 2015 (1870).

3. *Lesseigne v. Cedar Grove Realty Co.*, 150 La. 641, 91 So. 136 (1921). *But see* *Coyle v. Geoghegan*, 187 La. 308, 174 So. 366 (1937).

4. 3 TOULLIER, *DROIT CIVIL FRANCAIS* 274, n° 424 (1846-48). See also LA. CIVIL CODE arts. 2008, 2009, 2011, 2019 (1870).

5. See also *Earnest A. Carrere's Sons v. Levy*, 191 So. 747 (La. App. 1939).

6. 233 La. 731, 98 So.2d 169 (1957).