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Civil Code and Related Subjects: Mineral Rights

Harriet S. Daggett

AGENCY

*Milton M. Harrison**

Two cases provided the opporunity for the court to reiterate the well-established doctrine that failure of a principal to repudiate immediately an unauthorized agreement by an agent when notified of such agreement amounts to ratification of the agreement by the principal.

In *Gallioto v. Trapani*,[1] a real estate broker[2] transferred to the prospective vendor a portion of the deposit made to him at the time of the execution of an agreement to sell a business establishment. Although there was no evidence of specific authority to make such a transfer, it was made in the presence of the vendee without any protest or repudiation and the vendee took possession of the premises. The sale was not consummated because of foreclosure by creditors of the owner. The court held that the principal (vendee) had ratified the agent's act in transferring a portion of the deposit and could therefore recover only the remainder.

In *Bellestri v. Clark*,[3] the court said it was of no import whether one held out to be an agent acted with actual authority where he acted in the presence of the purported principal who expressed no disagreement.

The court in neither case referred to Civil Code Article 3021, but it is clear that ratification may result from silence and inaction as well as be expressed in positive terms.

MINERAL RIGHTS*

*Harriet S. Daggett***

The case of *Crown Central Petroleum Corp. v. Barousse*[1] was a concursus proceeding instituted to obtain a determination of

*Professor of Law, Louisiana State University.

1. 238 La. 625, 116 So.2d 273 (1959).

2. The court also cited with approval Succession of Gilmore, 154 La. 105, 97 So. 330 (1923), and the interpretation of Civil Code Articles 3016 and 3017, to the effect that a real estate broker, whose purpose is to bring together vendor and vendee, is the agent of both parties, owing equal fidelity to each.

3. 239 La. 713, 119 So.2d 836 (1960).

*Grateful acknowledgment is hereby registered to my student and friend Jack P. Brook for his work in the preparation of these materials.

**Professor of Law, Louisiana State University.

1. 238 La. 1013, 117 So.2d 575 (1960).

the ownership of royalty interests in a 150-acre tract of land. The court divided the claimants into a "first group" who claimed interests from royalty deeds dated prior to 1944 and a "second group," whose title emanated from royalty interests acquired subsequent to 1944. The landowner executed a mineral lease in 1948 and, in 1952, agreed to a unitization plan which included 24 acres of the disputed tract in a production unit. Later in 1952 a producing well was completed within the unit but not on the 24-acre portion. The validity of the conflicting claims of royalty ownership depended upon whether this production interrupted prescription liberandi causa on the entire 150-acre tract. The court, in holding that prescription on the entire tract was interrupted, distinguished the case of *Elson v. Mathewes*.[2] In the *Elson* case it was held that a mineral servitude was capable of division by a contract between the landowner and the servitude owner. In the instant case it was stated that the same rules of liberative prescription governed both servitudes and royalties. But, contrary to *Elson*, the court here found no intention to divide the acreage involved into separate tracts. The *Elson* case was further distinguished on the basis that the pooling agreement in *Elson* was made by the landowner, royalty owners, and lessees, while the agreement in this case was between the lessees and the royalty owners (whether or not they were landowners). The majority opinion stated that a bi-party agreement between lessees and royalty owners could hardly be an agreement between the landowners and the royalty owners to divide the tract into two segments.

Justice Hawthorne, in dissent,[3] argued that the instant case should be controlled by the *Elson* decision. He stated that, in *Elson*, the court had found an intention to divide the servitude because the unitization agreement had not included any provision relating to the land not included in the unit and no drilling on the non-unitized portion had been attempted. The dissent correctly points out that the same factors existed in the instant case. Justice Hawthorne was also disturbed by the possibility that mineral lessees may hold large tracts of land, immune from the operation of liberative prescription, merely by including a small part of the leased acreage in a producing unit.

2. 224 La. 417, 69 So.2d 734 (1957).
3. Justice Hamiter also dissented but did not assign written reasons.

In *Gulf Oil Corp. v. Clement*,[4] the landowner had sold an interest in the minerals in a certain tract of land containing 106 acres. The deed recited that the vendee acquired a one-fourth interest in all the minerals to be produced on 76 acres of the tract and in addition, a one-fourth interest in all minerals produced below 2200 feet under the south 30 acres. There was drilling activity on the north 76 acres which was sufficient to interrupt prescription but none on the 36-acre tract. In a concursus proceeding provoked by Gulf Oil Corporation, the heirs of the vendor claimed that the deed established two servitudes, one on the 76 acres and one on the south 30 acres, and that the drilling on the 76 acres did not interrupt prescription on the smaller tract. In refusing to adopt these contentions, the court said that the reservation did not affect the nature of the interest granted and amounted to nothing more than an agreement that the vendor would receive all royalties from production on the south 30 acres above 2200 feet.[5]

The case of *Tinsley v. Seismic Explorations, Inc.*,[6] presented the question of whether the lessee of mineral lands was entitled to recover damages from a seismic survey on the leased premises. The lessee had been approached by agents of several exploration companies other than defendant, who had unsuccessfully tried to obtain permission to conduct such surveys. After obtaining permission from the lessor, but without consulting the lessee, defendant conducted the tests.

In refusing to allow an award of damages, the court reviewed the jurisprudence and the legislative changes concerning Act 205 of 1938 and concluded that a lessee is not the owner of a real right and therefore unable to bring "an action in tort for trespass and to recover damages."[7] It was concluded, however, that the lessee could recover by proving three essential elements: (1) that he owned an exclusive right to conduct geophysical surveys; (2) that this right has been protected by timely recordation; and (3) that actual damages could be established. Without deciding (1) or (2), it was held that plaintiff was not entitled to recover because he had failed to establish any actual damage. "In essence, the award of the district court, which was affirmed by the Court of Appeal, amounts to the infliction of

4. 239 La. 144, 118 So.2d 361 (1960).
5. 239 La. 144, 150, 118 So.2d 361, 363 (1960).
6. 239 La. 23, 117 So.2d 897 (1960).
7. 239 La. 23, 28, 117 So.2d 897, 898 (1960).

punitive or exemplary damages which are not recoverable under our law, nor can we countenance an award based on arbitrary measures."[8]

Gueno v. Medlenka[9] presented a situation which required the decision whether the naked owner or the usufructuary of certain land was the proper party to execute a mineral lease on the land. At the time of the creation of the usufruct, there was neither an existing lease nor production on the land. The court reaffirmed the prior decisions that exploration for oil and gas was "mining" within the meaning of our law and stated that Civil Code Article 552 was applicable to the instant case. This article provides that: "The usufructuary has a right to the enjoyment and proceeds of mines and quarries in the land subject to the usufruct, if they were actually worked before the commencement of the usufruct; but he has no right to mines and quarries not opened."[10] Accordingly, it was concluded that the naked owner, not the usufructuary, was the proper party to execute a valid lease and share in the proceeds of production. Primarily on the basis of the public policy against holding property out of commerce, the court further decided that the right of the naked owner (or his lessee) to explore for and produce minerals, is not subordinate to the rights of the usufructuary. The court implied that the usufructuary's right to enjoyment of the property free from interference could be protected adequately by an action for damages against the owner or his lessee.[11]

The *Hodges v. Long-Bell Petroleum Co.*[12] case arose from an involved factual situation. In 1931, Long-Bell Lumber Sales Corporation conveyed the minerals under a vast tract of land in Beauregard Parish to Long-Bell Minerals Corporation, thus creating a mineral servitude. Long-Bell Petroleum Company, defendant in the instant case, became the owner of this servitude by virtue of a merger of the minerals corporation with the petroleum company in 1936. Long-Bell Farm Land Corporation acquired the title to the land from the lumber sales corporation some time prior to 1938. In 1938, the farm land corporation

8. 239 La. 23, 41, 117 So.2d 897, 903 (1960).
9. 238 La. 1081, 117 So.2d 817 (1960). See Note, 20 LOUISIANA LAW REVIEW 773 (1960).
10. LA. CIVIL CODE art. 552 (1870).
11. "In case the owner or his lessee does interfere and injures the usufructuary in his rights, '. . . he (the owner or his assignees) shall be bound to make good the losses and damages which may result.' Article 601, Civil Code." Gueno v. Medlenka, 238 La. 1081, 1102, 117 So.2d 817, 824 (1960).
12. 240 La. 198, 121 So.2d 831 (1960).

and the petroleum company sold 40 acres in the tract to J. A. Hodges by warranty deed, reserving to the petroleum company all the minerals to be produced on the land. During 1938, the California Company, under a lease which did not cover the 40 acres, drilled two wells on the tract covered by the 1931 servitude but not on the land which had been sold to Hodges. Both wells were dry, but it was not disputed that the drilling was of a nature to interrupt the running of 10 years liberative prescription. In 1946, the petroleum company leased part of the land subject to the 1931 servitude to Barnsdall Oil Company. Again, the 40 acres belonging to Hodges was not embraced by the lease. Two wells were drilled by Barnsdall in 1946 and 1947, and they have produced continuously since completion.

After Hodges had owned the land for more than 10 years, he wrote the petroleum company asking for a release of the mineral rights. His request was denied on the grounds that the good faith drilling of contiguous lands in 1939 had interrupted prescription on all the land covered by the 1931 servitude and, further, that production in 1946 had preserved the petroleum company's mineral interest. Hodges filed the instant suit for a declaratory judgment. Hodges appealed from an adverse decision in the lower court.

The Supreme Court, on original hearing, held that since the petroleum company had warranted the title against any pre-existing charges upon the land and had not excepted the 1931 servitude from the warranty, it was estopped to assert any claim under that servitude. Defendant argued that no grounds for estoppel existed because the minerals were not conveyed (due to the reservation) and therefore could not have been the subject of any warranty. This argument was rejected. "This is immaterial to our decision . . . because the warranty which is the basis of estoppel is the warranty of title to the land, and not of the title to the mineral rights."[13] The court further held that the petroleum company was now estopped from disputing the fact that it was a vendor of the land.

On rehearing, the court limited the estoppel which had been applied on original hearing. In the *Tritico*[14] case, involving the same type of warranty deed, the court held that the mineral reservation in the deed did not create a new servitude because

13. 121 So.2d 831, 837 (La. 1960).
14. Long-Bell Petroleum Co. v. Tritico, 216 La. 426, 43 So.2d 782 (1949).

the vendor petroleum company had not extinguished the 1931 servitude prior to the sale. In view of the *Tritico* decision and the broad estoppel applied in the original opinion in the instant case, defendant argued that it was put "in the position of having lost both sides of the same question."[15] After conceding the correctness of this contention, the court held that the estoppel applied in the original hearing was too broad. Since plaintiff had agreed to a mineral reservation in the deed, the court concluded that the petroleum company would not have been estopped from asserting the 1931 servitude during the 10 years following the sale. However, after that period the petroleum company was estopped from asserting the interruption of prescription by drilling which had occurred on contiguous lands. The rationale of the decision was that Hodges should not be placed at a disadvantage because he had no notice that a mineral servitude existed on the land at the time he bought. Likewise, he should not be allowed to escape the existence of a charge against the land during the 10 years following the sale because he assented to a mineral reservation. By applying the doctrine of limited estoppel, the court felt that an equitable solution was reached.

PARTICULAR CONTRACTS

SALE

*J. Denson Smith**

Some interesting and novel questions were presented to the court in the case of *Daum v. Lehde*.[1] Plaintiff was the purchaser in a contract by which the defendant agreed to sell certain improved real estate. Prior to the completion and delivery of the act of sale the improvements were partially destroyed by fire. It appears that the defendant rejected the plaintiff's demand that he transfer the property to plaintiff together with his interest in a fire insurance policy on the improvements. Plaintiff then sued claiming alternatively (1) the delivery of the property in substantially its condition before the fire; (2) the delivery of the property in its damaged condition together with the sum re-

15. Hodges v. Long-Bell Petroleum Co., 121 So.2d 831, 840 (La. 1960).

*Professor of Law, Louisiana State University.

1. 239 La. 607, 119 So.2d 481 (1960).