Louisiana Law Review

Volume 22 | Number 2
The Work of the Louisiana Supreme Court for the 1960-1961 Term
February 1962

Civil Code and Related Subjects: Particular Contracts

J. Denson Smith

shortly thereafter, and royalties were paid on the basis of this contractually established unit until 1958. In that year the Department of Conservation, after hearings on application of Humble, issued an order creating a forced production unit comprising 177.60 acres. The same well which had been the source of production for the voluntary unit was designated as the unit well in the forced order of the commissioner. The order also directed that the tracts included should share in production in the proportion that the surface acreage of each bore to the entire acreage within the unit.

The forced and voluntary units were not coextensive, the former overlapping the latter as to only 101.13 acres. Approximately 58 acres in the voluntary unit lay outside the forced unit, and the forced unit included approximately 76 acres of land not encompassed by the voluntary unit. As a result of the conservation order, the unit operator was required to pay royalties in the proportion directed without regard to obligations incurred by it under the contractual or voluntary unit.

The court did not find it necessary to render a decision on the merits in this instance.[34] However, the questions raised as to the effect of the conservation order on the contractually established unit are significant. The court of appeal solved the problem by declaring that the conservation order superseded the voluntarily established unit.[35]

The problems raised by this type of situation are numerous. It will be interesting to observe the manner of their resolution.

PARTICULAR CONTRACTS

*J. Denson Smith**

In the case of *Prevot v. Courtney*[1] it was held that the pur-

34. The original action was a suit by the lessee-unit operator against one lessor who had refused tendered royalties after establishment of the conservation unit. The court decided that the rights of parties to the voluntary unit, especially those of owners of the property not included in the forced unit, would be under direct consideration in any decision on the merits. If the decision of the court of appeal were followed, those persons owning mineral and royalty interests on the land within the contractual unit but not within the forced unit would no longer be entitled to share in royalties according to the court. Therefore, it was concluded that those mineral and royalty owners interested in the contractual unit in addition to the defendant-lessor were indispensable parties to the action, and the suit was remanded to allow plaintiff-lessee to implead any indispensable parties.

35. Humble Oil & Refining Co. v. Jones, 135 So.2d 640 (La. App. 3d Cir. 1960).

*Professor of Law, Louisiana State University.

1. 241 La. 313, 129 So.2d 1 (1961).

chaser of an immovable became the owner of the improvements that had been placed thereon by a former occupant of the property. There was nothing of record to put the purchaser on notice of any claim of adverse ownership. Indeed, the evidence showed that the former owner had elected to keep the improvements by virtue of the authority conferred by Civil Code Article 508, and, therefore, had become indebted for their value.

In *Dougherty v. Petrere*[2] redhibition was granted in the case of a sale of a house trailer, the roof of which leaked so badly as to render it uninhabitable. The defect was found to be not apparent and the purchaser's refusal of an adjustment of the purchase price was held justifiable. The court's disposition of the case followed the Code and the jurisprudence. The condition of the trailer was such as to clearly negative the belief that the purchaser would have been willing to take the vehicle in its defective condition. The risk was left where it belonged, on the entrepreneur.

The case of *Gilliam v. Lumbermens Mutual Casualty Co.*[3] affirmed a position taken earlier by the court of appeal[4] that a lessor who knows of a defect in the leased premises cannot shield himself behind a contract with his lessee by which the latter assumes liability for the condition of the premises.

Two cases dealt with problems of eminent domain. In *State v. Guidry*[5] the court supported the position of the Department of Highways that it has constitutional power to determine the necessity and extent of a taking for highway purposes and that its decision is not subject to judicial review.

In *State v. McDuffie*[6] it was held that offers to purchase, though bona fide, are not sufficient evidence of market value and should be excluded from evidence. The court reminded that, although rentals and income are highly relevant in the absence of comparable sales, they are not necessarily controlling even where the property is encumbered by a long-term lease.

2. 240 La. 287, 123 So.2d 60 (1960).
3. 240 La. 697, 124 So.2d 913 (1960).
4. Mitchal v. Armstrong, 13 So.2d 506 (La. App. Orl. Cir. 1943).
5. 240 La. 516, 124 So.2d 531 (1960).
6. 240 La. 378, 123 So.2d 93 (1960).