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# Mineral Leases - Execution By Landowner Who Is Also Agent for Servitude Owner

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insurable interest in the subject property should be required only at the time of loss. It is further suggested that whether Article 2278(3) of the Civil Code merely limits the method of proving a promise to pay the debt of another or renders the promise void, it should not be applied to the promise made to induce the promisee to extend credit to another, Louisiana jurisprudence to the contrary notwithstanding.

*Sydney B. Nelson*

MINERAL LEASES — EXECUTION BY LANDOWNER WHO IS  
ALSO AGENT FOR SERVITUDE OWNER

Plaintiff conveyed title to 160 acres of land by act of partition to his brother, the defendant,<sup>1</sup> reserving one-half the minerals. The act contained an agreement whereby defendant was granted full power of attorney to make and execute oil and gas leases affecting all of the mineral interest in the land. It was provided that any bonus, rental money, and future royalties would be equally divided between the brothers. Eight months before accrual of liberative prescription against plaintiff's mineral servitude, defendant executed a mineral lease with a primary term of five years, to commence four days after prescription would have accrued on the plaintiff's servitude. Contemporaneously with the execution of the lease, defendant and his lessee agreed that the bonus would be put in escrow pending title examination.<sup>2</sup> One month before expiration of the prescriptive period, plaintiff made written demand on the defendant, the lessee, and the escrow agent, for payment of one-half the bonus, and one-half of all future rentals and royalties which might become due. Upon being refused, the plaintiff instituted an action for a declaratory judgment recognizing his rights. The trial court rendered judgment in his favor. On appeal, the court of appeal *held*, affirmed. The lease of the entire mineral interest was valid and binding as of its date of signing by defendant and lessee. To effectuate the leasing of the entire mineral interest, the defendant necessarily signed as agent of plaintiff as well as

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1. The lessee and the escrow agent were also defendants in the district court, but did not join the landowner on appeal.

2. The agreement provided that the bonus of \$4,000 and the title to the leased property would be placed in escrow and the lessee might, within one month before the beginning of the primary term, examine title and allow the defendant landowner thirty days in which to meet any requirements of title which the lessee's attorneys might make.

in his individual capacity. The execution of the lease thereby extended by contract the rights of the plaintiff until the termination of the lease. *Namie v. Namie*, 134 So.2d 572 (La. App. 2d Cir. 1961).

Interruption of prescription occurs when a landowner acknowledges the rights of his mineral servitude owner, thereby beginning a new ten-year prescriptive period on the servitude.<sup>3</sup> The courts have stressed that the acknowledgment must clearly express an intent to interrupt prescription.<sup>4</sup> This principle was adopted in *Mulhern v. Hayne*,<sup>5</sup> where the court ruled that when a landowner and servitude owner jointly execute a mineral lease, and its primary term extends beyond the prescriptive period, prescription on the servitude is interrupted. However, this ruling has been modified by later decisions to the effect that there is no *interruption* of prescription by execution of a joint lease, but only an *extension* until the termination of the lease.<sup>6</sup> The courts have held that an intent to enter into a joint lease is sufficient to effectuate extension of the servitude, whereas in situations where there is no joint lease, there must be a clear intent to interrupt prescription by acknowledgment.<sup>7</sup> The rationale is that if the parties enter into a joint lease, the landowner must intend for it to be effective as to both his interest and his servitude owner's interest for at least the duration of the lease, so the landowner is presumed to have intended that the servitude remain in existence for the duration of the lease.<sup>8</sup>

No Louisiana cases were found which dealt with the time of the inception of a contract of lease. Generally, however, a contract is operative from the time of the meeting of the minds

3. LA. CIVIL CODE art. 3520 (1870). See also *Frost Lumber Industries v. Republic Prod. Co.*, 112 F.2d 462 (5th Cir. 1940); *James v. Noble*, 214 La. 196, 36 So.2d 722 (1948).

4. *Arkansas La. Gas Co. v. Thompson*, 222 La. 868, 64 So.2d 202 (1953); *James v. Noble*, 214 La. 196, 36 So.2d 722 (1948).

5. 171 La. 1003, 132 So. 659 (1931).

6. *Elkins v. Roseberry*, 233 La. 59, 96 So.2d 41 (1957); *Union Oil v. Touchet*, 229 La. 316, 86 So.2d 50 (1956); *Barnsdall Oil Co. v. Miller*, 224 La. 216, 69 So.2d 21 (1953); *Long-Bell Petroleum Co. v. Tritico*, 216 La. 426, 43 So.2d 782 (1949); *Baker v. Wilder*, 204 La. 759, 16 So.2d 346 (1943); *Goree v. Sanders*, 203 La. 859, 14 So.2d 744 (1943); *White v. Hodges*, 201 La. 1, 9 So.2d 433 (1942); *Spears v. Nesbitt*, 197 La. 931, 2 So.2d 650 (1941); *Achee v. Caillouet*, 197 La. 313, 1 So.2d 530 (1941); *Hightower v. Maritzky*, 194 La. 998, 195 So. 518 (1940); *Vincent v. Bullock*, 192 La. 1, 187 So. 35 (1939); *Bremer v. North Central Texas Oil Co.*, 185 La. 917, 171 So. 75 (1936); *Louisiana Del Oil Properties v. Magnolia Petroleum Co.*, 169 La. 1137, 126 So. 684 (1930); *Placid Oil Co. v. George*, 49 So.2d 500 (La. App. 2d Cir. 1950).

7. See note 6 *supra*.

8. See note 6 *supra*. See also *Nolen v. Bennett*, 119 So.2d 636 (La. App. 2d Cir. 1960).

of the parties, or when the last act necessary for the completion is performed.<sup>9</sup> The date on the face of the instrument is generally inconclusive.<sup>10</sup> Since under Civil Code Article 2684<sup>11</sup> a lease is regulated by contract, it should become perfected between the parties as soon as there exists an agreement for the object and for the price, although the object has not yet been delivered nor the price paid. Unless a different intent appears, a written contract ordinarily dates from the time of delivery and when the delivery is at a time different from the date on the instrument, the date of delivery is deemed to be the date of inception of the contract.<sup>12</sup> On the other hand, the view has been taken that a contract runs from the date it bears without regard to the date of its delivery.<sup>13</sup>

In other American jurisdictions, a landowner having a mineral interest less than the whole has an executive right giving him the exclusive power to execute oil and gas leases. Generally, the executive owner of a mineral interest has a duty towards the non-executive owner to execute a mineral lease to protect the rights of both when it is reasonably prudent and beneficial to do so,<sup>14</sup> and he may not exercise or refuse to exercise the executive right for the purpose of benefitting himself at the expense of the non-executive owner.<sup>15</sup> In Louisiana, the right in and to minerals is treated as a servitude and a servitude owner can sell or lease the rights reserved by the servitude regardless of whether he is the landowner; consequently, there appears to be no duty on the part of a landowner to execute a lease for the protection of the servitude owner's rights.<sup>16</sup>

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9. See note 12 *infra*. See also LA. CIVIL CODE art. 2456 (1870); Hicks Body Co. v. Ward Body Works, Inc., 233 F.2d 481 (8th Cir. 1956); Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 169 Miss. 196, 150 So. 205 (1933); Texas Employers' Ins. Ass'n v. Moore, 56 S.W.2d 652 (Tex. Civ. App. 1932).

10. See note 12 *infra*. See also Hawley v. Levy, 99 W. Va. 335, 128 S.E. 735 (1925).

11. LA. CIVIL CODE art. 2684 (1870): "The duration and the conditions of leases are generally regulated by contract, or by mutual consent."

12. 17 C.J.S. *Contracts* § 359 (1961).

13. *Ibid.* See also Greer v. Stanolind Oil & Gas Co., 200 F.2d 920 (10th Cir. 1952); Kishi v. Humble Oil and Refining Co., 261 S.W. 223 (Tex. Civ. App. 1924).

14. WILLIAMS & MEYERS, OIL AND GAS LAW §§ 338-339.4 (1959).

15. *Id.* § 339.2.

16. LA. CIVIL CODE art. 646 (1870). See also Wier v. Texas Co., 180 F.2d 465 (5th Cir. 1950). Note, however, that such a duty may arise through an agency agreement such as the one in the instant case. The civil law of mandate and the common law principles of agency involved in this case embrace generally the same concepts. The agent owes a duty of good faith in all acts performed on behalf of the principal in matters connected with the agency. LA. CIVIL CODE arts. 3003, 3021 (1870); RESTATEMENT, AGENCY § 387 (1933); Assunto v. Coleman, 158 La. 537, 104 So. 318 (1925); Forshay v. Lewis, 81 So.2d 114 (La.

In spite of the fact that the lease instrument in the instant case provided that the primary term was not to begin until after prescription had run on plaintiff's servitude, the court held that the lease was valid and binding as of the date it was signed. Although the court cited no authority for this conclusion, Articles 2684 and 2456 of the Civil Code<sup>17</sup> could furnish a basis for it. The court reasoned that the lease instrument and the escrow agreements were separate instruments, and that the escrow agreement was executed merely to facilitate a title examination. Consequently, the escrow agreement seems to have had no bearing on the effective date of the lease contract. Although it is not entirely clear from the facts, the lease apparently provided that the lessee was privileged to enter upon the property and begin development operations at any time on or after the signing of the lease. Additionally, it does not appear that the lease instrument stated any intention of the parties to delay the inception of the contract. The lease instrument only expressed an intention to delay the commencement of its *primary term*. This being so, the decision reached by the court is consistent with Article 2456<sup>18</sup> which provides that a contract of lease is valid and binding as soon as an agreement as to its terms is reached by the parties. Thus, despite the fact that the defendant and the lessee might have intended otherwise, a strict construction of its terms afforded the court a basis for the holding that the lease was effective and binding upon signing.

Upon concluding that a leasing of the whole mineral interest was intended, since it could only have been accomplished by defendant signing both in his individual capacity and as agent for plaintiff, the court ruled that leasing the entire mineral interest had the effect of extending by contract the rights of the plaintiff until the termination of the lease.

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App. 2d Cir. 1955). Although there are exceptions, it is usually held that the principal is not bound for the acts done by the agent which violate the duty of good faith. However, many such acts outside the authority of the agency which are done in reliance on the existing agency relationship may be ratified by the principal, with the result that he obtains the benefits of them. LA. CIVIL CODE art. 3021 (1870). One of such acts is that in which the agent acts in his own name purporting to act within the authority vested in him by his principal. 2 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 2253 (1959); Hopkins v. Lacouture, 4 La. 64 (1832); James v. Lewis, 26 La. Ann. 664 (1874).

17. LA. CIVIL CODE arts. 2456, 2684 (1870).

18. *Id.* art. 2456: "The sale is considered to be perfect between the parties, and the property is of right acquired to the purchaser with regard to the seller, as soon as there exists an agreement for the object and for the price thereof, although the object has not yet been delivered, nor the price paid."

In so ruling, the court reached substantially the same result as the joint lease cases by establishing what amounts to a fiduciary duty on the part of the landowner to act in this situation both for his individual interest and as agent for the servitude owner by denying him the legal opportunity to do otherwise. If the landowner is denied the opportunity to sign in any other than the dual capacity, it follows that the necessary intent to do so is present as a matter of law. Thus, if the lease contract is executed on behalf of both parties, the rights of the servitude owner are thereby extended until termination of the lease.

Although the court's reasoning and the result reached in the instant case are essentially the same as in a joint lease case, it did not consider its decision as constituting an extension of the joint lease theory, in that it did not extend the prescriptive period, which is characteristic of joint lease cases, but extended the rights of the plaintiff by contract. Moreover, this case is clearly distinguishable on its facts from the typical acknowledgment-interruption and joint lease cases because the landowner lacked the requisite intent to recognize the rights of plaintiff or to execute a joint lease. Defendant had an intent to sign only as the owner of the entire mineral interest which was to revert to him upon accrual of prescription. Nevertheless, the court held that he signed in a dual capacity. The court recognized the duty of good faith owed by an agent to his principal and denied the defendant the opportunity to breach his duty. Certainly, such a duty is consistent with the principles of the agency relationship. However, it is suggested that this case be limited to its facts. Limited application of this duty is felt necessary to protect the rights of the agent who is also the landowner. It should not preclude the exercise of his privilege to lease or alienate in any way his individual interest when it does not operate to the detriment of the servitude owner. Neither should he be absolutely bound to do any affirmative act to extend the servitude owner's rights beyond the time when a reversion of the minerals would occur in his favor.<sup>19</sup>

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19. In cases where the agent wished to lease only his own minerals or to act for himself in any situation where he has a conflict of interest, the court might impose a duty on the agent to disclose fully to the principal the nature of his acts. Such disclosure would protect the principal in that he would be made aware of any such circumstances which might operate to his detriment. This idea is in keeping with the court's indicated intent to prevent the agent from acting in anything but