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I. Introduction

The following is an update on Louisiana's legislative activity and notable case law relating to oil, gas, and mineral law, from August 1, 2017 to July 31, 2018.

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II. Case Law

A. Subsequent Purchaser Doctrine

Grace Ranch LLC, v. BP America Production Company.[1]

Grace Ranch, LLC ("Grace Ranch"), the owner of 40 acres in Jefferson Davis Parish, filed suit against J.P. Van Way ("JPVW"), BP American Production Company ("BP"), and BHP Billiton Petroleum (Americas), Inc. ("BHP") for damaging its property as a result of oil and gas exploration and production.[2] Ellen M. Davies, the predecessor in title to Grace Ranch, LLC, executed a mineral lease in 1944, which was subsequently assigned to BP and JPVW.[3] The lease expired in 1985 due to non-production.[4] Grace Ranch obtained one-half (1/2) of the minerals in 2009 from General Farms and one-half (1/2) of the other minerals due to the expiration of Daniel and Jeralyn Ewings' mineral servitude.[5] Grace Ranch obtained assignments of rights in tort and contract from the previous mineral owners.[6] Subsequently, Grace Ranch filed suit to assert its claims.

The trial court dismissed Grace Ranch's suit with prejudice on the basis of the subsequent purchaser rule and failed to find that Grace Ranch had a right of action even though Grace Ranch had obtained assignments from its predecessors in title, specifically finding that the assignment from General Farms to Grace Ranch was invalid based on General Farm's affidavit of dissolution.[7] The Third Circuit affirmed the trial court's grant of summary judgment in favor of JPVW, BHP, and BP.[8]

The Third Circuit looked to *Eagle Pipe and Supply, Inc. v Amerada Hess Corp*., 10-2267, 10-2272, 10-2275, 10-2279, 10-2289, p.8 (La. 10/25/11);79 So.3d 246, 256-257, in which the Louisiana Supreme Court held that the right to sue for damage to property is a personal right held by the landowner who owned the property at the time the damage occurred unless such right was assigned or subrogated to a subsequent purchaser.[9] Grace Ranch argued that this analysis was inapplicable to the situation at

1. Grace Ranch, LLC v. BP Am. Prod. Co., 17-1144 (La. App. 3 Cir. 7/18/18); 2018 WL 3454981.
2. *Id*. at p. 1, *1.
3. *Id*. at p. 1-3, *1-2.
4. *Id*. at p. 2, *2.
5. *Id*.
6. *Id*.
7. *Id*. at p. 4-5, *3.
8. *Id*. at p. 19, *10-*11.
9. *Id.* at p. 5, *3.

hand since *Eagle Pipe* involved surface rights only.[10] However, the Third Circuit found that the subsequent purchaser rule had been applied to mineral leases since *Eagle Pipe*. In *Boone v. Conoco Phillips Co.*, 13-1196 (La.App. 3 Cir. 5/7/14);139 So.3d 1047, the current landowners sued a lessee for damage to property as a result of drilling operations that had occurred prior to when the plaintiffs acquired the property.[11] The *Boone* court held, and the Fifth Circuit agreed, that pursuant to the subsequent purchaser doctrine, the current landowners had no right of action for contamination that occurred prior when they owned the land.[12]

Grace Ranch also argued that the trial court erred in applying the jurisprudential subsequent purchaser rule when the Civil Code and Mineral Code, specifically La.R.S. 31:16, provides a right of action.[13] The court found that La.R.S. 31:16 created a real property right in the mineral lessee, and not the mineral lessor.[14] Therefore, the mineral lease did not create a right that ran with the land which would allow a landowner to sue for property damage.[15] Grace Ranch also argued that the working interest owners violated an implied obligation of the lessees under La.R.S. 31:122 which binds a lessee to "perform the contract in good faith and to develop and operate the property leased as a reasonably prudent operator."[16] However, the court found that the obligation did not include a duty to restore the surface unless the plaintiff could prove that the defendants had acted unreasonably or excessively.[17]

The appellate court also found that Grace Ranch did not obtain an assignment of the right to sue from previous owners.[18] The trial court found, and the appellate court affirmed, that at the time that General Farms assigned its claims, it had dissolved as a corporation, and therefore, could not assign any claim as it did not "maintain any claims or causes of action to assert on its own behalf and therefore [has] nothing to assign."[19]

10. *Id*. at p. 5-6, *3.
11. *Id*. at p. 6, *3.
12. *Id*.
13. *Id*. at p. 9-10, *7-8.
14. *Id*. at.
15. *Id*.
16. *Id*.
17. *Id*. at p. 10, *6.
18. *Id*. at p. 14, *8.
19. *Id*.

B. Trespass

Chauvin v. Shell Oil Company[20]

The plaintiffs owned land located in St. Charles Parish, Louisiana and filed a suit for trespass and sought damages caused by pipelines that were put in by the defendants over the a thirty-two year period.[21] Shell Oil Company ("Shell Oil"), one of the defendants, had bought the disputed property in 1971 from the plaintiff's predecessors in title and had subsequently granted servitudes to the other defendant pipeline carriers.[22] The plaintiffs became aware of their ownership of the property when several companies contacted them seeking to obtain servitudes over the property.[23] The defendants sought for summary judgment by arguing that the plaintiffs could not prove that they owned the property. The district court granted the summary judgment and dismissed the claims brought by the plaintiffs.[24]

Shell Oil had bought two tracts of land in 1971, Parcel A, containing 3.71 acres, and Parcel B, containing 3.70 acres, and had granted multiple servitudes over that property.[25] However, the language in the contract was unclear as to where the boundary of the tracts lied, specifically, if the boundaries included the property where the pipelines now lie.[26] The plaintiffs argued that the defendant's pipelines were not included in the boundaries of the 1971 contract, and the defendants argued that the pipelines were located on the 1971 contract property.[27] The plaintiffs argued that there was a question of material fact as to "the extent" of the property sold in 1971.[28]

In order to determine where the boundaries were, the court first looked toward the reference to the survey in the deed; however, the survey did not clearly show where the boundaries of parcels were in relation to the right-of-ways that Shell Oil had granted.[29] Consequently, the court looked to extrinsic evidence, including testimony from the parties surveyors.[30] The

20. Chauvin v. Shell Oil Co., 16-609 (La. App. 5 Cir. 10/25/17); 231 So. 3d. 903.
21. *Id*. at p. 2-3, 231 So. 3d at 905, 911.
22. *Id*.
23. *Id*. at p.4, 231 So.3d at 906.
24. *Id*. at p.2, 231 So.3d at 905.
25. *Id*. at p. 3-4, 231 So.3d at906.
26. *Id*. p. 6-7, 231 So.3d at 908.
27. *Id.*
28. *Id*. at p.5, 231 So.3d at 907.
29. *Id*. at p. 7-8, 231 So.3d at 908.
30. *Id*. at p. 8-9, 231 So.3d at 908-909.

plaintiffs' surveyor stated that he was unable to determine where the boundaries of the parcels were, but despite his testimony, the plaintiffs' surveyor was able to draft a survey map, which included the right of ways within the boundaries of the parcels.[31]

The court also found that the numerous actions taken by Shell Oil on the property in conjunction with the lack of action that the plaintiffs and their predecessors in title took, suggested that Shell Oil did indeed obtain title to the property that is in dispute.[32] When selling the property surrounding the property in dispute, the predecessors in title to the plaintiffs never included the property that was in dispute, suggesting that they did intend to sell Shell Oil the disputed property.[33] Shell Oil, on the other hand, had granted servitudes to Shell Pipeline in 1980, Southern States, Inc. in 1981, Entergy Louisiana, Inc. in 1997, and Air Products in 1996 and 2012.[34] Shell Pipeline had also been maintaining the servitude by posting signage and removing brush and vegetation twice a year.[35]

Finally, the court also determined that Shell Oil also obtained ownership over the property through acquisitive prescription, finding that Shell Oil satisfied all requirements for ownership over a thirty year acquisitive prescription.[36] In order to meet the requirements, the acquisition must be "continuous, uninterrupted, peaceable, public, and unequivocal corporeal possession."[37] The court found that Shell Oil had met all of these requirements by granting servitudes that had been maintained for a thirty-two year period.[38]

C. Duty to Prevent Erosion of Pipeline Canals

Vintage Assets, Inc. v. Tennessee Gas Pipeline Company, L.L.C.[39]

Plaintiffs owned a piece of property over which the defendants had eight right-of-way servitudes that were granted to their predecessors from 1953 to 1970.[40] Several of those servitudes contained language that stated the canals

31. *Id*.
32. *Id*. at p. 10, 231 So.3d 910.
33. *Id*. at p. 8-9, 231 So.3d at 909.
34. *Id*. at p. 10, 231 So.3d at 910.
35. *Id*.
36. *Id*.
37. *Id*. at p. 11, 231 So.3d 910 (citing La. C.C. art. 3476; La. C.C. art. 3486).
38. *Id*. at p. 11, 231 So.3d at 911.
39. Vintage Assets, Inc. v. Tenn. Gas Pipeline Co., L.L.C., No. 16-713, 2016 WL 3601215 (E.D. La. Aug. 22, 2017).
40. *Id*. at *1.

in which the pipelines were laid may not exceed a certain width.[41] Two right-of-ways did not contain any language that stated the canals were "not to exceed" a certain width.[42] The plaintiffs argued that the defendants did not maintain the canals, which resulted in the canals eroding and damaging the property.[43] The plaintiffs brought a trespass, breach of contract, and negligence claim against the defendants.[44] The court dismissed the trespass and negligence claims, but found for the plaintiff in their breach of contract claim as to the contracts that contained "not to exceed" language, finding that the defendants had a duty to maintain canals.[45]The plaintiffs argued that the defendants committed trespass by failing to adhere to the "not to exceed" language contained in the servitudes and allowing the canals to erode.[46] The defendants argued that in order to "trespass," they had to take an affirmative action, and that failing to maintain a canal was a passive, not active action.[47] The court followed the Louisiana Supreme Court's analysis in *Hogg v. Chevron USA Inc.*[48], agreeing with the defendants that the plaintiff had to show that the trespasser had to take an affirmative action. The district court found that failing to maintain the canals was more of an act of negligence and was insufficient as to support a claim of trespass.[49]

As to the breach of contract claim, the defendants argued that the contracts for the servitudes allowed the canals to be "open," which meant that the pipeline owners had no duty to maintain the canal banks.[50] Instead, they only had a duty to maintain the pipelines. The defendants argued that the "not to exceed" language contained in the agreements for the canals was only applicable at the time of construction of the rights-of-way and did not create a continuing duty to maintain the canals.[51] The plaintiffs argued that the contract was breached when the canals began to exceed the widths established in the rights-of-way agreement.[52] The court found that since the contracts were ambiguous, they had to look to suppletive servitude rules,

41. *Id*. at *1-2.
42. *Id.* at *2.
43. *Id.* at *1.
44. *Id.*
45. *See ud*. at *9.
46. *Id*.
47. *Id*.
48. Hogg v. Chevron USA, Inc., 2009-2632, 2009-2635, p.15 (La. 7/6/10); 45 So.3d 991, 1002.
49. *Vintage,* 2016 WL 3601215 at *4.
50. *Id*. at *5.
51. *Id*.
52. *Id*.

holding that suppletive law created "a continuing duty to refrain from injuring or aggravating a servient estate," which included the duty to maintain canals and canal banks from eroding.[53] By letting the canal widen so far that it encroached on the servient estate was aggravation of the servient estate, and therefore the contract was breached.[54] However, the contracts that did not state that the canal must not exceed a certain width did not create an obligation to maintain the canals.[55]

The court also dismissed the tort claim holding that Louisiana law makes a distinction between active and passive breaches of contract.[56] In a tort claim, an active breach is the only type of breach with merit.[57] Failing to maintain the canal was a passive, and not active, breach of contract.[58]

D. Solidarily Liability

Gloria's Ranch, L.L.C. v. Tauren Exploration, Inc.[59]

Gloria's Ranch, L.L.C. ("Gloria's Ranch) and Tauren Exploration, Inc. ("Tauren") entered into an oil and gas lease dated September 17, 2004, covering approximately 1,390 acres for a primary term of three years.[60] In 2006, Tauren assigned 49% of its interest in the lease to Cubic Energy, Inc. ("Cubic").[61] In March of 2007, Tauren and Cubic entered into a credit agreement with Wells Fargo Energy Capital, Inc. ("Wells Fargo") and used its interest in the subject lease as collateral.[62] Multiple wells were drilled on the property to the Cotton Valley formation.[63] While the lease was still in its primary term, Chesapeake Operating, Inc. had completed wells in the Cotton Valley formation in sections of land that were unitized with the subject land, which was later unitized in the Soaring Ridge 15H unit that was drilled into the Haynesville Shale formation.[64] In 2009, Gloria's Ranch and Chesapeake entered into a top lease to cover Chesapeake's operations

53. *Id*. at *7.
54. *Id*.
55. *Id*.
56. *Id*. at *9.
57. *Id*.
58. *Id*.
59. 2017-1518, 2017-1519, 2017-1522 (La. 6/27/18); 2018 WL 3216497, *reh'g granted* Gloria's Ranch L.L.C., v. Tauren Exploration, Inc., 2017-C-1519; 2017-C-1518; 2017-C-1522 (La. 09/07/2018); 2018 WL 4267316.
60. *Id*. at p.2, 2018 WL 3216497 at *2.
61. *Id*.
62. *Id*. at p. 2-5, *2-3.
63. *Id*. at p. 2, 2018 WL 3216497 at *3.
64. *Id*.

in Section 21.[65] Subsequently, Tauren assigned unto EXCO USA Asset, Inc. ("EXCO") 51% of its interest in Gloria's Ranch's lease in depths below the base of the Cotton Valley formation.[66] Wells Fargo released Tauren's interest from the mortgage and in return, received a net profits interest in the shallow rights and an overriding in the deep rights.[67]

Gloria's Ranch sent a letter to Tauren, Cubic, EXCO, and Wells Fargo asking for information on the revenue and expenses of the wells on the lease because they believed that the lease had expired for not producing in paying quantities.[68] Tauren responded to their letter, determining that the lease was producing profitably.[69] Gloria's Ranch responded by asking for a recorded release of the lease, which did not occur.[70] The trial court found that the lease had indeed expired in depths below the Cotton Valley Sand, and expired in as to all depths in Sections 9, 10, 16, and 21 since there was no producing in paying quantities on those wells.[71]

The trial court found that Wells Fargo was solidarily liable because the mortgage on Cubic's interest contained an assignment of the lease, the mortgage stated that the lease could not be released without prior consent from Wells Fargo, Wells Fargo had an override and a net profits interest in the lease, and it received cost information from the other defendants.[72] Wells Fargo argued that it did not receive an assignment of the lease, but rather a security interest.[73] The appellate court agreed with Wells Fargo arguing that because the mortgage did not include an assignment of Cubic's working interest, it was not an assignment of the lease.[74] The sole purpose of the "assignment" language was to secure the loan by granting a security interest in the leases.[75] However, the court found that Wells Fargo did in fact have some control over Cubic's working interest as the mortgage granted Wells Fargo the right to approve location and depth of wells and the right to access the property at all times.[76] Further, Wells Fargo had to give written consent for any new operating agreements and amendments

65. *Id.*
66. *Id*. at p. 2-3, 2018 WL 3216497 at *2-*3.
67. *Id*. at P. 5-8, 2018 WL 3216497 at *3-*4.
68. *Id*. at p. 4, 2018 WL 3216497 at *2.
69. *Id*.
70. *Id*.
71. *Id*. at p. 5, 2018 WL 3216497 at *2.
72. *Id*. at p. 6, 2018 WL 3216497 at *3.
73. *Id*. at p. 7, 2018 WL 3216497 at *3.
74. *Id*. at p. 8-9, 2018 WL 3216497 at *4-*5.
75. *Id*.
76. *Id*. at p. 9 2018 WL 3216497 at *5.

and written consent to release the lease.[77] The appellate court found that Wells Fargo had actually specifically denied the release of the lease and affirmed the trial court's finding that Wells Fargo was solidarily liable for damages.[78]

The Louisiana Supreme Court reversed the appellate court's judgment as to Wells Fargo.[79] The Supreme Court agreed with the appellate court's holding that Wells Fargo was not an assignee of the lease, but merely held a security interest; however, the Supreme Court disagreed with the appellate court's conclusion that the rights that Wells Fargo did have under the security agreement rose to the level of it obtaining ownership in the lease.[80] The Supreme Court found that although Wells Fargo maintains some control over the lease, the rights that they do have are traits of a security right, and not ownership.[81] The rights that they do have do not grant them the right to explore for oil and gas, but rather the have interests related to making sure the collateral is safeguarded.[82] Gloria's Ranch argued that because Wells Fargo did not release the mortgage, there would be a cloud on title and no one would want to lease the property.[83] However, the Supreme Court found that this argument failed because once the lease no longer existed, the mortgage also no longer existed.[84] Consequently, once Cubic released the lease, the mortgage would no longer exist.[85] Ultimately, the Supreme Court found that Wells Fargo only had a security interest in the lease, and therefore, was not solidarily liable for the mineral lessee's breach of not releasing the lease.[86]

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77. *Id*. at p. 9-10 2018 WL 3216497 at *5.

78. Gloria's Ranch, L.L.C. v. Tauren Expl., Inc., 51,077, p. 32-33 (La. App. 2 Cir. 6/2/17); 2017 WL 2391927.

79. Gloria's Ranch, L.L.C. v. Tauren Expl., Inc., 2017-1518, 2017-1519, 2017-1522, p. 23 (La. 6/27/18); 2018 WL 3216497 at *12, *reh'g granted* Gloria's Ranch L.L.C., v. Tauren Exploration, Inc., 2017-C-1519; 2017-C-1518; 2017-C-1522 (La. 09/07/2018); 2018 WL 4267316

80. *Id*. at p. 9-10, 2018 WL 3216497 at *5.

81. *Id*. at p. 10, 2018 WL 3216497 at *5.

82. *Id*. at p. 11, 2018 WL 3216497 at *6.

83. *Id*. at p. 13, 2018 WL 3216497 at *7.

84. *Id.*

85. *Id*.

86. *Id*. at p. 15, 2018 WL 3216497 at *8.

III. Legislation

A. Pipeline Damage

Act No. 692 was enacted to protect pipeline infrastructure and penalize those who trespass on, damage, or conspire to damage the pipelines.[87] The act establishes criminal punishment for anyone that trespasses or creates "criminal damage" to critical infrastructure. The definition of "critical infrastructure" was expanded to include pipelines.[88] This act amended R.S. 14:61(B)(1), (C), and (D) and enacted R.S. 14:61(B)(3) and 61.1.[89] According to Tyler Gray, attorney for the Louisiana Mid-Continent Oil and Gas Association, the criminalization of the conspiracy to damage infrastructure was included to deter those who would pay third parties to trespass on or damage a pipeline.[90]

87. 2018 La. Sess. Law Serv. Act 692 (H.B. 727) (West).

88. *Id*.

89. *Id*.

90. Steve Hardy, *Environmentalists See Proposed Louisiana Law to Protect Pipelines and Penalize Protestors as Overreach*, THE ADVOCATE (Mar. 31, 2018, 2:11 PM), https://www.advocate.com/baton_rouge/news/crime_police/article_1b087942-34ee-11e8-8dcb-2b3538173f63.html.