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ENERGY INSIGHTS

Recent Jurisprudence and Legislation Update

JURISPRUDENCE

In ***Regions Bank et al. v. Questar Exploration et al.***, 50,211 (La. App. 2 Cir. 1/13/16); --- So.3d ----, the Louisiana Second Circuit Court of Appeal effectively held that "[t]he general lease provision, article 2679 of the Civil Code enacted in 2005, and which provides that a maximum lease term is 99 years, cannot apply to mineral leases because mineral leases have their own maximum term as provided by the Mineral Code."

The lawsuit relates to three mineral leases executed in 1907 by W.P. Stiles (the plaintiffs' predecessor in title). The leases cover approximately 3,214 acres in northwestern Caddo Parish and provide "for a term of ten years from the date hereof and as much longer thereafter as gas or oil is found or produced in paying quantities…." Today, there are several hundred active shallow wells on the property. In their original petition, the plaintiffs/lessors sought to place the defendants/lessees in default for failing to reasonably develop the leases below 6,000 feet, and they asked the court to release the portion of the leases below that depth. In 2013, the plaintiffs filed an amended petition and asked the court to terminate the leases in their entirety pursuant to Louisiana Civil Code article 2679. Plaintiffs thereafter moved for summary judgment on the termination issue. Defendant filed a cross-motion for summary judgment on the same issue. The trial court denied the plaintiffs' motion for summary judgment and granted the defendant's cross-motion, finding Louisiana Civil Code article 2679 to be inapplicable to mineral leases.

Article 2679 is a general provision in Title IX of the Civil Code regarding leases. The article provides that the term of a lease "may not exceed ninety-nine years. If the lease provides for a longer term or contains an option to extend the term to more than ninety-nine years, the term shall be reduced to ninety-nine years." Under this article, the plaintiffs contended that the ***mineral leases*** at issue should have terminated ninety-nine years after they were executed in 1907. However, as the court noted, article 2679 is not part of Louisiana's Mineral Code.

The Mineral Code was enacted in 1974, and it is found in Title 31 of the Louisiana Revised Statutes. At Louisiana Revised Statutes § 31:2, the Mineral Code states:

> The provisions of this Code are supplementary to those of the Louisiana Civil Code and are applicable specifically to the subject matter of mineral law. In the event of conflict between the provisions of this Code and those of the Civil Code or other laws the provisions of this Code shall prevail. If this Code does not expressly or impliedly provide for a particular situation, the Civil Code or other laws are applicable.

AUTHORS

MICHAEL R. BRASSETT II
Partner
Direct: (225) 490-5003
mbrassett@bradleyfirm.com

CHAD J. LANDRY
Associate
Direct: (225) 490-5008
clandry@bradleyfirm.com

SHREVEPORT
401 Edwards St., Suite 1000
Shreveport, LA 71101-5529
P: (318) 227-1131

NEW ORLEANS
1100 Poydras St., Suite 2700
New Orleans, LA 70163
P: (504) 596-6300

BATON ROUGE
301 Main St., Suite 2100
Baton Rouge, LA 70825
P: (225) 490-5000

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Therefore, the court reasoned that the general lease provisions in article 2679 could only apply to the oil and gas leases at issue if article 2679 did not conflict with any provisions in the Mineral Code. The defendants contended that Revised Statutes § 31:115(A) of the Mineral Code provided just such a specific rule – "trumping" the general lease provisions in article 2679. Section 31:115(A) provides that:

> The interest of a mineral lessee is not subject to the prescription of nonuse, but the lease must have a term. Except as provided in this Article, a lease shall not be continued for a period of more than ten years without drilling or mining operations or production. Except as provided in this Article, if a mineral lease permits continuance for a period greater than ten years without drilling or mining operations or production, the period is reduced to ten years.

In reaching its ruling, the Second Circuit panel relied on the habendum clause in the plaintiffs' leases. The habendum clause of a lease governs its term or duration. The habendum clauses in the plaintiffs' leases contain two tiers. The first tier sets the primary term at a definite duration of ten years. The second tier allows for the secondary term of the lease to continue "as much longer thereafter as gas or oil is found or produced in paying quantities." According to the court, "[t]he 99-year limit seen in the law of general leases is not rationally applicable to mineral leases as made abundantly clear by the shift away from 'fixed-term' leases to the more modern habendum clause. The shift away from using the 'fixed-term' in mineral leases occurred because the 'fixed-term' did not account for the realities of the oil and gas industry."

Therefore, the "general lease provision, article 2679 of the Civil Code enacted in 2005, and which provides that a maximum lease term is 99 years, cannot apply to mineral leases because mineral leases have their own maximum term as provided by the Mineral Code" in Revised Statutes § 31:115, which "provides for a maximum secondary term based upon continued drilling or mining operations or production." As read by the court, the Mineral Code contemplated that a mineral lease would terminate at the expiration of the agreed term or upon the occurrence of an express resolutely condition while the general lease provision in the Civil Code provided a maximum term based on a stated number of years. "Thus, the general lease provision providing that a maximum lease term is 99 years clearly conflicts with the maximum term established for mineral leases as provided by the Mineral Code." Based on this rationale, the appellate panel affirmed the trial court and rejected the plaintiffs' claims regarding termination of the leases pursuant to Civil Code article 2679.

The Second Circuit issued its ruling on January 13, 2016, and the plaintiffs applied for a rehearing on January 27, 2016. The court denied rehearing on February 18, 2016, and the plaintiffs have thirty days to apply for writs to the Louisiana Supreme Court. Otherwise, the decision becomes the law of the land in the Second Circuit and a valuable authority in Louisiana's other four circuits.

Counsel for Plaintiffs/Appellants: Randall S. Davidson, Grant E. Summers and Andrew D. Martin of DAVIDSON, JONES & SUMMERS, APLC

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Counsel for Defendant/Appellee: Joseph L. Shea, Jr. and Katherine Smith Baker of BRADLEY MURCHISON KELLY & SHEA LLC, and Jonathan Baughman of MCGINNIS, LOCHRIDGE & KILGORE,LLP

LEGISLATION

Act No. 253 of the 2015 Regular Session created La. R.S. 30:9.2 and amended La. R.S. 30:9(B).

The amendment of La. R.S. 30:9 unambiguously acknowledged the authority of the Commissioner of Conservation to create a drilling unit larger than the area that can be drained by **ONE** well. Act No. 253 further recognized the authority held by the Office of Conservation to approve alternate unit wells. Specifically, definition of a "drilling unit" was defined as *"A drilling unit, as contemplated herein, means the maximum area which may be efficiently and economically drained by the well or wells designated to serve the drilling unit as the unit well, substitute unit well, or alternate unit well. This unit shall constitute a developed area as long as a well is located thereon which is capable of producing oil or gas in paying quantities."* The previous definition of a "drilling unit" was *"the maximum area which may be efficiently and economically drained by one well".*

§ 30.9.2 Cross Unit Well

A. The following shall apply where used in this Section:
   1) "Cross-unit person" means an interested owner, interested party, or represented party as defined in LAC 43: XIX, other than a mineral lessee.
   2) "Cross-unit well" means a well drilled horizontally and completed under multiple drilling units that is designated by the commissioner after notice and public hearing to serve as a unit well, substitute unit well, or alternate unit well for said units.
   3) "Short unit" means a unit in which the proposed well shall have less than five hundred feet of perforated lateral.
   4) "Timely objection" means an objection mailed to the commissioner and the applicant at least fifteen days prior to the application hearing.

B. The commissioner is authorized to permit the drilling of cross-unit wells as proved in this section.

C. The commissioner shall not authorize or permit a cross-unit well that is proposed to have less than five hundred feet of perforated lateral in any unit to be served by the cross-unit well if one of the following occurs:
   1) The preapplication notice and hearing application do not expressly set forth the cross-unit person's right to object to the application.
   2) A timely objection is filed by a cross-unit person who owns an interest in a short unit and , on the date of the application hearing, the short unit either is not producing or is producing only from one or more horizontal laterals with a combined length of perforated lateral less than five hundred feet.

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