NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 1243

VADA GROUP, LP

VERSUS

JOHN L. GLASER, APRIL MARIE GLASER BERGERON, CHARITY ANN GLASER, PAULINE MARIE GLASER, ANGELLE ALINE GLASER, THEODORE H. GLASER III, CYNTHIA LONG STEIB, CHARLES R. GLASER, AUDREY GLASER BROWNING, JOHN BURTON PRATHER, JEANETTE PRATHER HEINEN, GEORGIE FAY PRATHER, CYNTHIA PRATHER ROBERTSON, JOHNNIE PRATHER OLINGER, YVONNE PRATHER CRAMER, MICHAEL J. CRAMER, ANTHONY E. CRAMER, RHENA VIENNE CRAMER, BRENT BEAUVAIS, CYNTHIA MARIE BEAUVAIS, JODIE HENDERSON WILLIAMS SR., CHARLES G. CHAUVIN, STACY MARIE CHAUVIN GUEHO, GRETCHEN ANN CHAUVIN ALLEMAN, JASON ANDREW CHAUVIN, ADAIR CHAUVIN CHUTZ, SHIRLEY BALLARD ELAM, FREDERICK DOMINGUE, MICHAEL NORTHERN, SYLVIA NORTHERN, BRENDA SAM, AND DAVID MICHAEL MOYE

Judgment Rendered: JUN - 8 2012

Kuhn, J concurs

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Appealed from the
Eighteenth Judicial District Court
In and for the Parish of Pointe Coupee
State of Louisiana
Suit Number 41,759

Honorable William G. Dupont, Presiding

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BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

GUIDRY, J.

Vada Group, LP (Vada Group) instituted this concursus proceeding to determine the ownership of royalty proceeds of production from the Liberty Resources, Inc.—Beauvais No. 1 unit well located in Pointe Coupee Parish. Brent and Cynthia Beauvais, who are owners of the land upon which the well resides and who granted a lease to Vada Group, appeal from the trial court's judgment finding that they are entitled to a royalty of 7.08% of the revenue in the registry of the court and 1.77% of the future unit revenue. For the reasons that follow, we affirm in part and reverse in part.

FACTS AND PROCEDURAL HISTORY

In March 2007, Liberty Resources, Inc., acting as a contract operator for Vada Group, drilled the Liberty Resources, Inc.—Beauvais No. 1 well in Section 119 of Township 6 South, Range 9 East in Pointe Coupee Parish. On April 15, 2008, but effective February 12, 2008, the Commissioner of Conservation for the State of Louisiana issued order no. 420-G creating the SP RB SUA unit for the Sparta Sand, Reservoir B in the Livonia Field (Beauvais No. 1 unit), with the Beauvais No. 1 well serving as the unit well.

The Beauvais No. 1 unit well has an area of slightly less than 67 acres. The majority of the land comprising this unit was formerly part of a larger tract of property known as Mulberry Grove Plantation (Mulberry Grove). Additionally, land lying in the northern section of the unit, designated as tracts R-1 and R-2, was formerly part of a larger tract owned by Grover M. Johnson, Jr.[1]

On March 21, 1959, heirs of Adam Bergeron, owner of Mulberry Grove, executed an act of partition, whereby four tracts, listed as items "A," "B," "C," and "D" were divided amongst the seven heirs. However, the act of partition contained a provision, whereby the parties agreed:

[1] Additionally, tract Q was part of a tract owned by the Pointe Coupee Parish School Board.

> [T]hat there are certain mineral leases now outstanding on the properties referred to in Items "A", "B", "C" and "D", and it is their desire and agreement that their interest in said leases and outstanding mineral interest on the said properties herein partitioned shall remain in indivision for so long as the said leases remain in effect[,] but that should the said leases ever lapse, then the full mineral rights shall revert to the owners in full ownership of the said properties as received by each in this partition.

On the date of the partition, the only outstanding mineral lease on the four tracts was a lease entered into between Adam Bergeron and Earl H. Short on March 2, 1956 (hereinafter "the Short lease"). This lease had a primary term of 5 years, but the term could be extended so long as oil, gas, or some other mineral was being produced or drilling operations were conducted on the land, or on acreage pooled therewith. Thereafter, in March 1961, the then owners of the leasehold rights and interests in the Short lease and in a lease covering property owned by Grover M. Johnson, Jr. (hereinafter "the DeJean lease"), acting pursuant to the rights granted to them by the provisions of these leases, created a forty-acre unit, referred to as the Texas Crude Adam Bergeron No. 1 unit.

The immovable property listed as item "B" in the 1959 act of partition, and commonly referred to as Mulberry Grove, comprised 402 acres and was located in Section 119, Township 6 South Range 9 East. According to the partition, five of the Bergeron heirs, Alvis, Roland, Roy, Roger, and Neal, received Mulberry Grove. Thereafter, in a series of transactions, these heirs sold Mulberry Grove to Theo Glaser, Jr., each reserving a royalty interest. Roy, Roger, and Neal subsequently conveyed to Theo Glaser, Jr. all of their mineral rights and royalty interest previously reserved in the act of sale. Thereafter, Theo Glaser, Jr. sold Mulberry Grove to his father, Theo Glaser, Sr. Roland subsequently conveyed to

Theo Glaser, Sr. all his mineral rights and royalty interest previously reserved in the act of sale.[2]

By act of sale dated March 8, 1968, Theo Glaser, Sr. purchased forty acres, including tracts R-1 and R-2, from Grover M. Johnson, Jr., with Johnson reserving an undivided one-half of the minerals and/or mineral rights underlying the property sold. Thereafter, on June 10, 1974, Theo Glaser, Sr. sold Mulberry Grove, the forty acres purchased from Johnson, and three other tracts, to John Prather, John Burton Prather, and Michael J. Cramer, reserving an undivided one-half of all the oil, gas, and minerals and/or mineral rights presently owned by him in the described property. Thereafter, John Prather and John Burton Prather conveyed to Michael J. Cramer and Anthony E. Cramer their interest in the foregoing property, reserving all of their oil, gas, and minerals and/or mineral rights in the property therein conveyed. Michael J. Cramer and Anthony E. Cramer subsequently conveyed the subject property to Exxon Corporation, also reserving an undivided one-half of all the oil, gas and other minerals and/or mineral rights presently owned by them. Thereafter, Exxon Corporation conveyed the subject property to Clifton and Helen Beauvais, who subsequently conveyed the property to their children, Brent and Cynthia Beauvais.

Vada Group obtained oil, gas, and mineral leases from all of the defendants covering the acreage within the Beauvais No. 1 unit well. The unit well ultimately produced oil and gas, and due to competing claims between the various defendants and Vada Group regarding the amount to be paid in royalties under the leases, Vada Group instituted a concursus proceeding to resolve the competing claims.

Following a trial, the court determined that as to the land formerly part of Mulberry Grove, the 1959 act of partition was not a reservation of mineral rights,

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[2] The record is devoid of evidence that Alvis Bergeron Brown ever conveyed her mineral rights or royalty interest to Theo Glaser, Jr. In an act of cash sale, dated January 12, 1961, Alvis specifically reserved a twenty-five acre royalty interest in Mulberry Grove. However, there is no subsequent act of sale, whereby Alvis conveys her mineral rights and royalty interest.

but was an acknowledgment that such partition was subject to the outstanding mineral lease on the property. The trial court looked at the terms of the lease, which provided that the lessee may at any time release any portion or portions of the land subject to the lease. It then determined that because the partition was subject to the lease and therefore, the lease terms, when the partial releases were executed, those portions of the land were also released and ownership, therefore, reverted to the then landowners of the property.

Additionally, the trial court determined that with regard to tracts R-1 and R-2, which were formerly part of the forty-acre Johnson tract, the Johnson mineral servitude was maintained as to tract R-2 by its inclusion within the Texas Crude Adam Bergeron No. 1 unit and that unit well's continued production through at least March 12, 1997. However, the trial court found that the Johnson mineral servitude was prescribed as to tract R-1, because it was outside of the Texas Crude Adam Bergeron No. 1 unit.

Thereafter, in conformity with its findings, the trial court signed a judgment determining the percentages of revenue from the sale of production from the Beauvais No. 1 unit to which the various defendants are entitled. The Beauvais defendants now appeal from this judgment.

DISCUSSION

Mulberry Grove Tract

The Beauvais appellants assert that the trial court erred in finding that the Bergeron partition did not create a mineral servitude on the Mulberry Grove tract, and that partial releases of the Earl Short lease effected a termination of the Bergeron heirs' mineral rights as to the parcels of property thereby released.

The general rules of contract interpretation apply when interpreting contracts involving mineral rights. Hoover Tree Farm, L.L.C. v. Goodrich Petroleum Co. LLC, 46,153, p. 15 (La. App. 2nd Cir. 3/23/11), 63 So. 3d 159, 167, writs denied,

11-1225 and 1236 (La. 9/23/11), 69 So. 3d 1161 and 1162. A contract between the parties is the law between them, and the courts are obligated to give legal effect to such contracts according to the true intent. See La. C. C. art. 2045. When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. La. C.C. art. 2046.

The meaning and intent of the parties to the written contract in such cases must be sought within the four corners of the instrument and cannot be explained or contradicted by parol evidence. La. C.C. art. 1848; Martin Exploration Company v. Amoco Production Company, 93-0349, p. 5 (La. App. 1st Cir. 5/20/94), 637 So. 2d 1202, 1205, writ denied, 94-2003 (La. 11/4/94), 644 So. 2d 1048. Contracts, subject to interpretation from the instrument's four corners without the necessity of extrinsic evidence, are to be interpreted as a matter of law, and the use of extrinsic evidence is proper only where a contract is ambiguous after an examination of the four corners of the agreement. Dore Energy Corporation v. Carter-Langham, Inc., 08-645, p. 3 (La. App. 3rd Cir. 11/5/08), 997 So. 2d 826, 828-829, writs denied, 08-2863 and 2938 (La. 3/13/09), 5 So. 3d 118 and 119.

When the terms of a written contract are susceptible to more than one interpretation, or there is uncertainty or ambiguity as to its provisions, or the intent of the parties cannot be ascertained from the language employed, parol evidence is admissible to clarify the ambiguity or show the intention of the parties. Martin Exploration Company, 93-0349 at pp. 5-6, 637 So. 2d at 1205. In cases in which the contract is ambiguous, the agreement shall be construed according to the intent of the parties. La. C.C. art. 2045. Intent is an issue of fact, which is to be inferred from all of the surrounding circumstances. Dore Energy Corporation, 08-645 at p. 3, 997 So. 2d at 829. A doubtful provision must be interpreted in light of the nature of the contract, equity, usages, the conduct of the parties before and after the

formation of the contract, and other contracts of like nature between the same parties. La. C.C. art. 2053; Martin Exploration Company, 637 So. 2d at 1205.

Whether a contract is ambiguous or not is a question of law. Martin Exploration Company, 637 So. 2d at 1205. Where factual findings are pertinent to the interpretation of a contract, those factual findings are not to be disturbed unless manifest error is shown. Dore Energy Corporation, 08-645 at p. 3, 997 So. 2d at 829. However, when appellate review is not premised upon any factual findings made at the trial level, but is, instead, based upon an independent review and examination of the contract on its face, the manifest error rule does not apply. In such cases, appellate review of questions of law is simply whether the trial court was legally correct. Martin Exploration Company, 93-0349 at p. 6, 637 So. 2d at 1206.

The 1959 partition states, in pertinent part:

> [T]hat there are certain mineral leases now outstanding on the properties referred to in Items "A", "B", "C" and "D", and it is their desire and agreement that their interest in said leases and outstanding mineral interest on the said properties herein partitioned shall remain in indivision for so long as the said leases remain in effect[,] but that should the said leases ever lapse, then the full mineral rights shall revert to the owners in full ownership of the said properties as received by each in this partition.

At the time the partition was executed, the only outstanding mineral lease on the subject property was the Short lease. The Short lease, executed in 1956, was for a term of five years, and for so long thereafter as oil, gas or some other mineral is being produced or drilling operations are conducted either on this land, or on acreage pooled therewith. Additionally, the lease provided that the "Lessee may, at any time prior to or after the discovery and production of minerals on the land, execute and deliver to Lessor or place of record a release or releases of any portion or portions of the lands or any stratum or strata and be relieved of all requirements hereof as to the land, stratum or strata so released."

Beginning in 1965, pursuant to the terms of the Short lease, Earl Short's successors in interest executed partial releases of property subject to the lease. By 1968, all of the property currently owned by the Beauvais appellants was released from the Short lease. However, the Glaser defendants acknowledge that the Short lease was not released in full until the final eight acres of Mulberry Grove were released in 2002. As such, the Beauvais appellants assert that the Short lease did not "lapse" as contemplated in the partition until 2002, when the Short lease was completely released. Further, the Beauvais appellants assert that because the mineral reservation in the partition was in the nature of a mineral servitude, which is indivisible, any partial release of the Short lease could not affect a partial termination of the servitude.

"Lapse" is defined in Black's Law Dictionary, Deluxe Seventh Edition (1999), as "[t]he termination of a right or privilege because of a failure to exercise it within some time limit *or* because a contingency has occurred or not occurred." (Emphasis added.) In the instant case, the Bergeron heirs specifically tied the maintenance of their mineral interest in indivision to the duration of the Short lease. The Short lease provided for a term of five years subject to certain conditions, including the right to release any portion or portions of the land and be relieved of all requirements as to the land so released. Accordingly, the rights and/or privileges of the parties under the lease terminated as to certain portions of land subject to the lease when the lessees exercised their option to release those portions.

Further, though the Bergeron partition was executed prior to the enactment of the Mineral Code in 1974, we note that La. R.S. 31:214 provides that "[t]he provisions of this Code shall apply to all mineral rights, including those existing on the effective date hereof[,] but no provision may be applied to divest already vested rights or to impair the obligation of contracts." Our jurisprudence has

consistently held that the mineral code is applied retroactively where the particular issue has not been resolved to the contrary by pre-code litigation. Dore Energy Corp., 08-645 at pp. 5-6, 997 So. 2d at 830. There is no assertion in the instant case that application of the Mineral Code would divest the Beauvais appellants of a vested right or impair the obligation of contracts, nor do we find that application of the provisions of the Mineral Code would do so.

Louisiana Revised Statute 31:3 provides that individuals may renounce or modify what is established in their favor by the provisions of the Mineral Code if the renunciation or modification does not affect the rights of others and is not contrary to the public good. The comments to this provision indicate, however, that the freedom to contract is not unlimited under the Mineral Code. For example, Articles 73-75, applicable to mineral servitudes, prohibit the creation of one servitude on two or more noncontiguous tracts of land, contracting for a prescriptive period greater than ten years, or making the rules of use of mineral servitudes less burdensome than those provided by the Mineral Code. There is nothing in the Mineral Code, however, that prohibits parties from contractually agreeing to the terms of termination of their mineral rights.

Further, though the parties do not really dispute that the language in the partition created a mineral servitude, we agree that the classification of the mineral rights reserved in the partition is not determinative of the issue before us.[3] Even if this court were to find that the partition created a mineral servitude on the Mulberry Grove tract, it would not change the finding that the Bergeron heirs contractually agreed to make the duration/nature of their mineral rights contingent upon the duration of the Short lease. Further, though generally a servitude is

[3] The Beauvais appellants assert that the partition created one mineral servitude. However, even if we were to find that the language of the partition created a servitude, because the property subject to the partition was not one, contiguous tract, but rather, was four tracts, only two of which were contiguous, three separate servitudes would have been created. See La. R.S. 31:63 and 31:64.

indivisible, there is no law prohibiting the landowner and the mineral owner from entering into a contract with each other, whereby a division or a reduction of the servitude results. See Exchange Oil & Gas Company v. Foster, 237 So. 2d 904, 910 (La. App. 1st Cir.), writ denied, 239 So. 2d 541 (La. 1970).

Therefore, from our review of the record, we find no error in the trial court's determination that the Bergeron heirs' mineral rights terminated when the successors to Earl Short executed partial releases of portions of Mulberry Grove.

Johnson Tract

The Beauvais appellants also assert that the trial court erred in finding that production from the Texas Crude Adam Bergeron No. 1 unit maintained the Johnson mineral servitude, and that the unit well produced past 1989.

As stated previously, when Grover M. Johnson, Jr. sold his property, including tracts R-1 and R-2, to Theo Glaser, Sr., he reserved an undivided one-half mineral interest. A mineral servitude is extinguished by prescription resulting from nonuse for ten years. La. R.S. 31:27; Wall v. Leger, 402 So. 2d 704, 709 (La. App. 1st Cir. 1981). However, prescription of nonuse is interrupted by the production of any mineral covered by the act creating the servitude. La. R.S. 31:36. Further, production from a conventional or compulsory unit embracing all or part of the tract burdened by a mineral servitude interrupts prescription, but if the unit well is on land other than that burdened by the servitude, the interruption extends only to that portion of the servitude tract included in the unit. La. R.S. 31:37; See Sandefer & Andress, Inc. v. Pruitt, 471 So. 2d 933, 936 (La. App. 2nd Cir. 1985).

Tract R-2 of the former Johnson property was included within the Texas Crude Adam Bergeron No. 1 unit.[4] As stated previously, owners of the leasehold

[4] There does not seem to be any dispute that tract R-1 was outside of the Texas Crude Adam Bergeron No. 1 unit, and therefore, prescription in favor of Johnson was not interrupted as to this tract.

rights to the DeJean lease, covering the Johnson property, and the Short lease created this forty-acre unit in 1961.[5] Thereafter, in 1968,[6] lessees of the Short lease released property within this unit from that lease. The Beauvais appellants contend that this release terminated the voluntary unit, as the unit was created by virtue of the authority granted to the lessee by the Short lease. We agree. Though there is no evidence in the record as to any releases of the Dejean lease affecting the former Johnson property, the purpose for which the unit was created clearly fell when over 33 acres of the forty-acre unit, which included the unit well, were released from the Short lease.

Additionally, we do not find that the subsequent lease by Glaser, owner of the surface and mineral rights at the time the above releases were executed, to New York Petroleum Corporation[7] in January 1969 served to interrupt prescription as to the former Johnson tract. As part of this lease, a new forty-acre unit was created for reworking of the Adam Bergeron No. 1 well. This unit, however, as described in the lease and as depicted on the plat attached to the lease, does not include any former Johnson property. Accordingly, from our review of the record, we find that the trial court erred in concluding that the Johnson servitude was maintained as to tract R-2 by virtue of its unitization with the Texas Crude Adam Bergeron No. 1 unit. Therefore, the mineral rights as to the tract R-2 prescribed after 10 years of non-use, or ten years following the last production in 1968 from the Texas Crude Adam Bergeron No. 1 unit as declared in the 1961 unit designation.

At the time Johnson's mineral rights prescribed in 1978, John Prather, John Burton Prather, and Michael J. Cramer were the owners of the surface of the

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[5] This voluntary, unilateral declaration of a unit by the mineral lessees by virtue of their lease authorization is referred to as "declared" unit. See Frey v. Miller, 165 So. 2d 43, 47 n.1 (La. App. 3rd Cir.), writ refused, 167 So. 2d 669 (La. 1964).

[6] The record indicates that various releases were executed between 1965 and 1968; however, the last release by Texas Crude Oil Company was executed in October 1968.

[7] Texas Crude Oil Company assigned its interest in leases and land covered thereby to New York Petroleum Corporation in November 1968.

former Johnson property, and as such, Johnson's one-half mineral rights reverted to them. John Prather, John Burton Prather, and Micheal J. Cramer (collectively "Prather claimants") assert on appeal that prescription was interrupted as to their mineral rights due to the single servitude created by Glaser in his conveyance to them, whereby Glaser reserved one-half of the mineral rights, and the continued production from wells located on that single servitude. See Wall, 402 So. 2d at 711; Broussard v. Elsbury Production, Inc., 595 So. 2d 386, 388 (La. App. 3rd Cir.), writ denied, 600 So. 2d 641 (La. 1992).

However, owners of separate mineral servitudes are not co-owners of each other's mineral servitudes. Numerous mineral servitudes can exist simultaneously as to fractional interests in the same parcels of land. Horton v. Mobley, 578 So. 2d 977, 984, (La. App. 2nd Cir.), writ denied, 582 So. 2d 1310 (La. 1991). Accordingly, though production on Glaser's single mineral servitude may serve to interrupt prescription as to his mineral interest, it does not interrupt prescription as to the separate mineral rights of the Prather claimants. Further, as there has been no evidence that mineral production occurred on the former Johnson property following the acquisition by the Prather claimants, we find that their mineral interest prescribed 10 years following their acquisition of said rights, or in 1988. At that time, the Beauvaises' ancestors in title, their parents, Clifton F. Beauvais and Helen P. Beauvais, owned the surface of the former Johnson property and the Prather claimants' one-half mineral rights in the former Johnson property reverted to them as surface owners. Thereafter, when the parents conveyed the property to the Beauvais appelants, they conveyed all of their interest, with no reservation of mineral rights. Accordingly, the Beauvais appellants acquired the one-half mineral rights formerly reserved by Grover M. Johnson, Jr. as to the Johnson property within the Beauvais No. 1 unit and the trial court's conclusion to the contrary was error.

CONCLUSION

For the foregoing reasons, we reverse the judgment of the trial court in part as to the percentages of revenue from the sale of production from the Beauvais No. 1 unit articulated in paragraph 4, subparagraphs (c), (d), and (e). We remand this matter to the trial court for redetermination of the percentages owed to the defendants listed in these subparagraphs in conformity with the views expressed in this opinion. In all other respects, the judgment of the trial court is affirmed. Costs of this appeal are assessed equally among the parties.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.