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Leona Scoular

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**LESION BEYOND MOIETY; LA MOITIÉ DE QUOI,
EXACTEMENT?**

**RESCISSION NOT SUPPORTED BY MINERAL
SPECULATION: *HARRUFF V. KING***

Leona E. Scoular^{*}

Recently, in *Harruff v. King*,¹ the Louisiana Third Circuit Court of Appeal considered whether sellers may seek rescission for lesion beyond moiety when the fair market value of the land is later estimated to be much higher on account of the speculated value of undeveloped minerals in the land.² In its analysis, the *Harruff* court relied on several provisions of law, including the articles of the Civil Code that pertain to rescission of sales for lesion beyond moiety;³ the sections of the Mineral Code that prohibit rescission of sales of mineral rights for lesion beyond moiety;⁴ Louisiana jurisprudence regarding, first, the evidentiary standard required for rescission for lesion beyond moiety,⁵ second, the rights that accompany ownership of immovable property,⁶ and, finally, the “speculative nature” of minerals.⁷ The analysis takes a significantly different turn than the First Circuit used in the case of *Hornsby v. Slade*, which dealt with the same general issue.⁸

^{*} J.D./D.C.L. Candidate (May, 2016) Paul M. Hebert Law Center, Louisiana State University. Special thanks to Prof. John Randall Trahan and Prof. Olivier Moréteau for their guidance, support, and editing.

1. *Harruff v. King*, 2013-940 (La. App. 3 Cir. 5/14/14), 139 So. 3d 1062.

2. *Id.* at 1064.

3. LA. C.C. art. 2589.

4. LA. MIN. CODE art. 17 (2000).

5. *See Cascio v. Twin Cities Development, LLC*, 45,634-CA (La. App. 2 Cir. 9/22/10) 48 So. 3d 341; and *Dosher v. Louisiana Church of God*, 71 So. 2d 868 (La. 1954).

6. *Jones v. First National Bank, Ruston, Louisiana*, 41 So. 2d 811 (La. 1949).

7. *Wilkins v. Nelson*, 99 So. 607 (La. 1924).

8. *See Hornsby v. Slade*, *infra* n. 41.

I. BACKGROUND

Plaintiffs in this case are the sellers, two sisters, Tammy Renea Martin Harruff and Amy Lynn Bilodeau [hereinafter “the sisters”], who sold their undivided interests in two tracts of land located in Natchitoches Parish and Red River Parish, near the Haynesville Shale, to defendants, Richard King, Kyle King, and Renee King [hereinafter “the Kings”].⁹ A subsequent purchaser of the same undivided interests in the same immovable property, Edgar Cason, is also a plaintiff in this matter.¹⁰ The first sale, to the Kings, was executed on July 21, 2009 for the price of \$175,000.00.¹¹ The second sale, to Edgar Cason, was executed on November 30, 2009 for the price of \$375,000.00.¹² After the second sale, plaintiffs filed a petition seeking rescission of the first sale for lesion beyond moiety in the Tenth Judicial District Court for the Parish of Natchitoches.¹³ The sisters presented testimony by expert witnesses as to the fair market value of the property sold and the trial court acknowledged that there was evidence of the value of mineral rights in the area.¹⁴ The trial court granted rescission for lesion beyond moiety, finding the fair market value of the sisters’ undivided interests in the two tracts of land totaled \$687,061.08.¹⁵

Defendants appealed alleging six assignments of error.¹⁶ Pertinent to the discussion of lesion beyond moiety are the first three assignments of legal error and manifest error. The first asserts that the trial court erred by allowing the valuation of speculative gaseous minerals.¹⁷ The second asserts that the trial court erred by valuing the property as a mineral-producing property rather than a recreational property, the valuation being of

9. Harruff, 139 So. 3d at 1064.

10. *Id.*

11. *Id.* at 1064-65.

12. *Id.* at 1065.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* at 1065-66.

17. *Id.*

a different state than the property was in at the time of the challenged sale.¹⁸ The third asserts that the trial court erred in making a finding of fact regarding the valuation reports by mixing the reports of two experts and adding a purported mineral valuation to achieve the amalgamated value awarded.¹⁹ The Third Circuit's ruling on the first assignment of error determined the second and third assignments of error.²⁰

II. DECISION OF THE COURT

The Third Circuit reversed the decision of the Tenth Judicial District Court, that had granted rescission of a sale of land based on lesion beyond moiety, on the grounds that lesion beyond moiety does not apply to the speculated value of minerals in the land that have not been accessed.²¹ The court determined that the value of undeveloped minerals is too speculative to be included in the fair market value considered as the basis of a claim for rescission for lesion beyond moiety.²² The competing facts of the case were opposing expert witness valuations of the immovable property that was the subject of the July 21, 2009 sale to the Kings.²³ The court reviewed whether the Tenth Judicial District Court's decision was legally correct or incorrect²⁴ and reviewed findings of fact under the manifest error rule.²⁵

The *Harruff* court first considered Louisiana Civil Code article 2589, which provides for rescission of the sale of a corporeal

18. *Harruff*, 139 So. 3d at 1066.

19. *Id.*

20. *Id.* at 1070-71.

21. *Id.* at 1070.

22. *Id.*

23. *Id.* at 1068-69.

24. *Id.* at 1066 (citing *Dugan v. Gen. Servs. Co.*, 01-511 (La. App. 3 Cir. 10/31/01) 799 So. 2d 760, 763, writ denied, 841 So. 2d 942 (La. 2002) (trial court's erroneous application of law eliminates trial court's entitlement to deference by the reviewing court)).

25. *Id.* at 1066 (citing *Cormier v. Comeaux*, 98-C-2378 (La. 1999) 748 So. 2d 1123 (setting forth a two-part test for reversing factual findings: no reasonable factual basis for finding in record and record shows finding is manifestly erroneous or clearly wrong)).

immovable for lesion beyond moiety. The seller may rescind the sale of a corporeal immovable when the price is less than one half of the fair market value of the thing.²⁶ The Louisiana Supreme Court held in *Jones v. First National Bank, Ruston, Louisiana* that the value of an immovable includes the value of mineral interests or rights when the mineral interest or right is sold with the immovable.²⁷ The mineral rights in an immovable are included in the bundle of rights that make up the ownership of the underlying immovable and are therefore part of the corporeal immovable.²⁸ A seller petitioning for rescission for lesion beyond moiety must show “clear and exceedingly strong evidence” that the fair market value of his property is more than twice the price in the challenged sale.²⁹

Second, the *Harruff* court shifts its analysis over to mineral rights and away from corporeal immovables.³⁰ The court states that the nature of minerals is speculative³¹ and this prevents the valuation of minerals.³² Louisiana Mineral Code article 6 provides that the ownership of land does not include the ownership of liquid or gaseous minerals, but only the exclusive right to explore and develop the land for the production of minerals and to reduce them to possession and ownership.³³ Louisiana Mineral Code article 17 prohibits rescission of a sale of a mineral right for lesion beyond moiety.³⁴

The Third Circuit comes back to the plaintiffs’ failure to meet the high evidentiary standard of “clear and exceedingly strong evidence” as reason for reversing the lower court’s judgment for

26. LA. C.C. art. 2589.

27. *Jones v. First National Bank, Ruston, Louisiana*, 38056, 41 So. 2d 811 (La. 1949).

28. *Harruff*, 139 So. 3d at 1067.

29. *Id.* at 1067-68 (*citing* *Pierce v. Roussel*, 79 So.2d 567, 571 (La. 1955)).

30. *Id.* at 1069.

31. *Id.* at 1069 (*citing* *Wilkins v. Nelson*, 99 So. 607 (La. 1924)).

32. *Id.* at 1069 (*citing* *Cascio v. Twin Cities Development, LLC*, 45,634-CA (La. App. 2 Cir. 9/22/10) 48 So. 3d 341).

33. *Id.* at 1069.

34. *Id.* at 1070.

lesion beyond moiety.³⁵ The estimates of the sisters' expert witness were based on many assumptions beginning with the assumption that the mineral rights would ever be leased and that minerals would ever be produced.³⁶ The Third Circuit determined that the sisters' expert witness testimony was merely "speculation laced with hopeful thinking."³⁷ The Third Circuit held that the trial court erred in relying on the sisters' expert witness and found that the sisters' real estate expert's estimate of the value of the land, without any consideration of the value of mineral interests, was the best evidence of the fair market value of the land, that is \$166,400.00.³⁸

III. COMMENTARY

The Third Circuit in *Harruff* discusses provisions of the Louisiana Mineral Code and the "speculative nature of minerals" more than the basic evidentiary burden.³⁹ The discussion of the treatment of mineral rights does not assist in resolving the issue in the case. Louisiana Mineral Code article 17 applies to mineral rights, which are the exclusive rights discussed in Louisiana Mineral Code article 6 once they have been segregated from the ownership of the underlying immovable.⁴⁰ In this case, the plaintiffs sold the whole ownership of the immovable property including those exclusive rights discussed in Louisiana Mineral Code article 6. Even considering the sale of land valued primarily

35. *Id.* at 1069.

36. *Id.* at 1070.

37. *Id.* at 1069.

38. *Id.* at 1070-71.

39. *Id.* at 1069.

40. *See also* LA. MIN. CODE art. 16 (providing an illustrative list of mineral rights and that all mineral rights are created by the landowner), *and* LA. MIN. CODE art. 2 (providing that the provisions of the Mineral Code only apply when the Mineral Code expressly or impliedly provides for a particular situation), *and* LA. MIN. CODE art. 2, cmt. (explaining that the article was intended to prevent the application of the Mineral Code to other types of controversies properly resolved under the Civil Code because the Mineral Code was tailored to meet the special needs of Louisiana's mineral industries).

on speculation that there may be minerals accessible from that land falls within the scope of Louisiana Mineral Code article 17, this would preclude the remedy of lesion in all such cases, defeating the public policy concerns reflected in Louisiana Civil Code article 2589. Therefore, Louisiana Mineral Code article 17 does not apply to this case. Further, the Third Circuit discussed jurisprudence recognizing the “speculative nature of mineral exploration” without any authority to connect a speculative nature with an absolute inability to meet the evidentiary standard and in spite of the case of *Jones v. First National Bank, Ruston, Louisiana*. The trial court relied on *Jones* for the rule that when land and mineral interests are sold together, the mineral interests are to be included in the value of the immovable property. The Louisiana Supreme Court in *Jones* reversed the dismissal of a petition for rescission for lesion beyond moiety when, considering mineral interests, the property value was increased by more than twice as much. The one significant distinction between *Jones* and this case is that mineral leases were executed between sale and the lesionary claim in *Jones*, providing more evidence of value for the *Jones* court to consider than was available to the Third Circuit in *Harruff*.

The approach taken by the Third Circuit to the lesion issue presented in this case can be contrasted with that taken by the Louisiana First Circuit Court of Appeal in *Hornsby v. Slade* in 2003 on similar facts.⁴¹ Plaintiff-appellee Hornsby sold her interest in a tract of land to defendant-appellant Slade and later sought rescission for lesion beyond moiety.⁴² Hornsby asserted that the fair market value of the land, which featured significant deposits of gravel (a kind of mineral), was more than double the sale price considering the value of the gravel.⁴³ The First Circuit majority concluded, consistent with the Louisiana Supreme Court’s holding

41. *Hornsby v. Slade*, 2002 CA 2138 (La. App. 1 Cir. 8/20/03) 854 So. 2d 441.

42. *Id.* 442.

43. *Id.*

in *Jones*, that when the passing of mineral rights was with the sale of the underlying immovable, the sale is subject to rescission for lesion beyond moiety because the value of the minerals increases the value of the land.⁴⁴ The First Circuit majority distinguished this from the sale of segregated mineral rights, which are incorporeal immovables, and not subject to rescission for lesion beyond moiety.⁴⁵ The analysis of the First Circuit majority turned on corporeality, perhaps because it considered the value of the mineral rather than the value of the mineral right.⁴⁶ Gravel is a solid mineral; solid minerals are an integral part of the land and therefore corporeal movables.⁴⁷ The mineral right to gravel, when segregated from the bundle of rights belonging to the owner of the underlying immovable, is an incorporeal immovable and not subject to rescission for lesion beyond moiety.⁴⁸ The First Circuit majority specifically referred to “mineral rights” as being unsusceptible of lesionary inquiry because of their speculative nature, not the estimated fair market value of minerals in the sale of an underlying immovable.⁴⁹ The *Hornsby* majority affirmed the lower court’s judgment for rescission for lesion beyond moiety because the sale was of a corporeal immovable and the fair market value of the immovable was more than twice the sale price.⁵⁰

Judge McClendon dissented from the majority opinion in *Hornsby*, reasoning that Louisiana Mineral Code article 17 may apply to the sale of immovable property in cases where there are minerals beneath the surface of the property.⁵¹ The underlying argument, which is perhaps not as clearly articulated as one might have hoped, seems to be that the Mineral Code provisions apply in this case because the disputed amount contributing to a fair market

44. *Id.* at 445.

45. *Id.* at 445-46.

46. *Id.*

47. *Id.* at 445.

48. *Id.* at 445-46.

49. *Id.* at 446.

50. *Id.*

51. *Id.*

value more than double the sale price is based on the value of minerals or mineral rights. Judge McClendon criticizes the majority for considering the value of gravel instead of considering the value of the mineral right to explore, mine, and remove gravel; and thereby stopping the analysis because the sale of mineral rights are not subject to rescission for lesion beyond moiety.⁵² Indeed, because the minerals do not exist for the purpose of ownership until they are extracted,⁵³ it may seem illogical to consider their value in a valuation of the land containing them. Further, because what is sold is the mineral right in the bundle of rights that comprise ownership of the land⁵⁴ and because lesion beyond moiety is not a ground for rescission of a sale of mineral rights,⁵⁵ it seems to follow logically that a sale of land may not be rescinded when the difference in value is based on the valuation of mineral rights.

The *Harruff* court did not follow the approach suggested by Judge McClendon, and with good reason. His approach requires us to treat a contract of one type as though it were really a different type of contract. Judge McClendon is essentially proposing that, under certain circumstances, we treat a deal that is structured as a sale of immovable property as though it were a sale of a segregated mineral right.⁵⁶ There is no sound legal basis for treating one conventional obligation as though it were some other conventional obligation, save, perhaps, where the obligation is simulated. It is a settled principle that even when a conventional obligation purports to be something other than the type of conventional obligation it really is, a simulation, the obligation must be treated as it really is between the parties.⁵⁷ But in *Hornsby*, as in *Harruff*, there was no

52. *Id.* at 447-48.

53. *Id.* at 447, *citing* United States v. 43.42 Acres of Land, 520 F.Supp. 1042, 1045 (W.D.La. 1981).

54. Jones, 41 So. 2d at 813 *citing* La. C.C. art. 505.

55. LA. MIN. CODE art. 17.

56. *Hornsby*, 854 So. 2d at 447-48.

57. *See* LA. C.C. arts. 2026-2027.

simulation: the parties did not really intend to transfer just a mineral interest on the land in question; rather, they intended to transfer the entire ownership of that land. Unfortunately, the Third Circuit likewise muddled the distinction between valuation of minerals as part of the value of immovable property and the value and sale of a mineral right.

Nor did the *Harruff* court follow the approach suggested by the *Hornsby* majority. The *Harruff* court examined the mineral value as though it were the value of a mineral right segregated by the owner of the underlying immovable. The court need not seek to extend the limitation to only corporeal immovables of lesion beyond moiety to exclude mineral values in all cases because the evidentiary standard is high enough to prevent rampant lesionary claims that may be lacking in merit. Further, the case may arise wherein the value of undeveloped minerals in immovable property can be shown with clear and exceedingly strong evidence, but in the Third Circuit, that case will now have to challenge the precedence set by *Harruff*.

The *Harruff* court could have used the same analysis as the *Hornsby* court and determined that lesionary inquiry is appropriate, but the court still could have held that rescission is not appropriate in this case. Considering the high evidentiary standard, requiring “clear and exceedingly strong evidence,”⁵⁸ and the court’s determination that the sisters’ expert witness testimony was merely “speculation laced with hopeful thinking,”⁵⁹ it was not necessary for the court to discuss the “speculative nature of minerals” as a general principal that would apply to any case of undeveloped minerals.⁶⁰ The evidentiary standard was simply not met in this case,⁶¹ but this should not preclude all future sellers from proving

58. *Harruff*, 139 So. 3d at 1067 (quoting *Pierce v. Roussel*, 79 So.2d 567, 571 (La. 1955)).

59. *Id.* at 1069.

60. *Id.* at 1070.

61. *Id.* at 1069-70.

by clear and exceedingly strong evidence the fair market value of undeveloped minerals in immovable property they have sold.