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Mineral Rights - Unitization - Prescription

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disagree with the Court as to what is the proper interpretation of Section 2(a) on the facts of the instant case. The act is being interpreted to prevent a national seller from engaging in predatory price cutting to eliminate local competition. While the decision does not differentiate between selling at a loss or at less than "fair market value," and selling at a price which returns a slightly smaller profit than is normally received, the prior cases and legislative history[24] indicate that a possible argument might be made on the point that a fair profit was being returned on the lower sales price. Apparently this aspect was not considered in the instant case, so it remains as a tenuous loophole for a discriminating national seller.

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MINERAL RIGHTS — UNITIZATION — PRESCRIPTION

Defendant conveyed to plaintiff a tract of land and reserved a mineral servitude. Plaintiff sued to have the servitude declared extinguished, contending that there had been no development on the land for a period exceeding ten years, and consequently that the servitude had prescribed for lack of user. Defendant contended, however, that a voluntary unitization agreement, approved by the Commissioner of Conservation, which unitized the entire tract in question with a producing tract, had the effect of forced unitization resulting in interruption of liberative prescription. The evidence showed that the unitization agreement was for purpose of secondary recovery, and was not signed by plaintiff landowner. The district court entered judgment for defendant and on appeal to the court of appeal, *held*, reversed. The Conservation Commissioner's approval of the unitization agreement was not such an order as to effect a forced unitization of the area. As the unitization agreement was voluntary, it was insufficient, without user of the servitude or express acknowledgment by the landowner of the interruption of prescription, to prevent the mineral reservation from prescribing. *Alexander v. Holt*, 116 So.2d 532 (La. App. 1959).

Although a mineral servitude cannot be acquired by acquisitive prescription,[1] it is well settled in Louisiana that mineral

24. See notes 4 and 5 *supra*.
1. Savage v. Packard, 218 La. 637, 50 So.2d 298 (1950).

rights acquired either by purchase[2] or reservation[3] are in the nature of servitudes, and in the absence of suspension or interruption may be lost by the running of the ten-year liberative prescription.[4] In order to interrupt the running of prescription the servitude owner must either use the servitude[5] or receive an express acknowledgment from the landowner clearly stating that the latter acknowledges the outstanding mineral servitude and that it is his intention to interrupt the running of prescription.[6] Within the doctrine of interruption of the running of prescription of a mineral servitude by user, the effect of voluntary and forced unitization must be considered. An area is said to be unitized when tracts owned by different persons are treated as a unit in the production of minerals.[7] This entails the consolidation of individual interests in separately owned tracts within a specific area so as to permit the interests in each tract to participate proportionately throughout the entire unitized area in any production of oil or gas from any part of the unit.[8] In executing a voluntary unitization agreement, in order to interrupt the running of prescription, it is necessary for the landowner and the servitude owner to agree that prescription is to be interrupted.[9] If so agreed, user of any part of the unit constitutes user of every tract within the unit and prescription is thereby interrupted.[10] Although a voluntary unitization agreement may impose no limit as to the number of persons allowed to develop a unitized tract, in order to drill a well, it is necessary to obtain a permit from the Conservation Commissioner.[11] As a general rule, the Commissioner will allow only one well for an area which can be efficiently and economically drained by one well.[12] Thus, it may be that several persons will agree to develop the unit, but

2. United States v. Nebo Oil Co., 190 F.2d 1003 (5th Cir. 1951).

3. Sample v. Whitaker, 171 La. 949, 132 So. 511 (1930); Frost-Johnson Lumber Co. v. Salling's Heirs, 150 La. 756, 91 So. 207 (1922).

4. Haynes v. King, 219 La. 160, 52 So.2d 531 (1950); Achee v. Caillouet, 197 La. 313, 1 So.2d 530 (1941).

5. McMurrey v. Gray, 216 La. 904, 45 So.2d 73 (1949).

6. Elson v. Mathewes, 224 La. 417, 69 So.2d 734 (1953); James v. Noble, 214 La. 196, 36 So.2d 722 (1948).

7. Hussey, *Pooling and Unitization — Government's Point of View*, in SECOND ANNUAL INSTITUTE ON MINERAL LAW 28 (1954).

8. *Ibid.*

9. James v. Noble, 214 La. 196, 36 So.2d 722 (1948); Hightower v. Maritzky, 194 La. 998, 195 So. 518 (1940).

10. United States v. Nebo Oil Co., 190 F.2d 1003 (5th Cir. 1951).

11. LA. R.S. 30:204(A) (1950): "No well or test well may be drilled in search of minerals without first obtaining from the Commissioner of Conservation a permit."

12. See *id.* 30:9.

only one will be permitted to do so by the Commissioner of Conservation.

Forced unitization generally occurs when persons who own land and mineral rights are unable to agree as to the production of the minerals.[13] In such a situation the Commissioner, under his established powers, can create a drilling unit in order to prevent waste and the drilling of unnecessary wells,[14] and can limit the number of persons allowed to develop a unitized area. After forced unitization by the Commissioner, development on any tract in the unitized area constitutes development on all tracts within the unit.[15]

A related aspect in this area involves unitization for the purpose of secondary recovery. Secondary recovery is defined as recovery by any method of those minerals which enter a well as a result of augmentation of the remaining native reservoir energy after a reservoir has approached its economic production limit by primary recovery methods.[16] Before 1960, the Commissioner did not have the power to force unitization for purposes of secondary recovery.[17] However, by virtue of Act 441 of 1960, the Commissioner is authorized to order the unit operation of any pool or combination of two pools in connection with the institution of any program involving secondary recovery.[18] Such an order may be issued only after notice and hearing, and must be based on a showing of reasonable necessity for the prevention of waste and the drilling of unnecessary wells, and upon the economic feasibility of the operation of the unit. The order must provide for the allocation of a just and equitable share of unit

13. Hussey, *Pooling and Unitization — Government's Point of View*, in SECOND ANNUAL INSTITUTE ON MINERAL LAW 28, 38 (1954).

14. LA. R.S. 30:10(A)(1) (1950): "Where the owners have not agreed to pool their interests, the commissioner shall require them to do so and to develop their lands as a drilling unit, if he finds it to be necessary to prevent waste or to avoid drilling unnecessary wells."

15. Jumonville Pipe and Machinery Co. v. Federal Land Bank of New Orleans, 230 La. 41, 87 So.2d 721 (1956); Childs v. Washington, 229 La. 869, 87 So.2d 111 (1956).

16. STANDING COMMITTEE ON SECONDARY-RECOVERY METHODS, AMERICAN PETROLEUM INSTITUTE, SECONDARY RECOVERY OF OIL IN THE UNITED STATES 3 (1950).

17. Hussey, *Conservation Developments of the Year*, in FOURTH ANNUAL INSTITUTE ON MINERAL LAW 156 (1956).

The Commissioner is given the authority in the conservation act to require the recycling of gas. In this article the Commissioner explains the statutory distinction between his authority to order recycling of gas and his lack of authority to create pool-wide units in connection with secondary recovery operations involving fluid injections.

18. LA. R.S. 30:5(C) (1950), as amended, La. Acts 1960, No. 441.

production to each of the interest owners in the unit. Before the hearing conducted by the Commissioner, three-fourths of the owners[19] and three-fourths of the royalty owners must have approved by written contract the plan and terms of the unit operation.[20]

In the instant case the court held that the Commissioner's approval of the unitization agreement did not constitute a forced unitization of the field, since in addition to a specific denial of such a result within the order, the operation involved secondary recovery methods. At the time of issuance of the approval the Commissioner considered he did not have authority to order unitization involving secondary recovery.[21] This factor probably influenced the court in its decision that the Commissioner did not intend to force unitize the entire field. Since there had been no forced unitization, the agreement could only be considered a voluntary unitization, and as such did not interrupt the running of prescription because a servitude owner cannot by his own act, in absence of user, extend his mineral servitude. The court pointed out that there was no impediment or obstacle that would have prevented or prohibited the defendant from developing the land either before or after the Commissioner's order, nor was there such an impediment in the voluntary agreement, and therefore plaintiff's plea of prescription should have been sustained.

Before Act 441 of 1960 to effect a unitization for secondary recovery it was necessary to have voluntary agreements among the parties who had interests in the area, since the Commissioner denied having authority to force unitization for such purposes. In view of the fact that the court stated that there was no prohibition against development in the voluntary agreement, it may be that a voluntary unitization agreement which contains a prohibition of development would extend the life of the servitude. However, such a stipulation must be signed by both the landowner and the servitude owner in order to be effective due to the statement by the court that a servitude owner cannot by his own act, without user, extend the life of the servitude.

Act 441 of 1960 authorizes the Commissioner to force uniti-

19. The statute specifically requires owners and royalty owners to agree, which apparently indicates that landowners and mineral owners are included in the word *owners*.

20. LA. R.S. 30:5(C) (1950), as amended, La. Acts 1960, No. 441.

21. See note 17 *supra*.

zation for purposes of secondary recovery. It seems, however, that the principles of prescription as stated by the instant case with regard to unitization for secondary recovery might still have importance due to the fact that the procedures for unitizing under Act 441 are in a large part voluntary.[22]

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22. Although Act 441 now vests in the Commissioner the power to order secondary recovery, he may do so only after three-fourths of the owners and royalty owners have agreed to the unitization. Therefore, voluntary unitization will be necessary to an extent in order to effect secondary recovery methods.