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Oil and Gas: Lease Extension

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must be treated as that of the deceased represented by his personal representative, with the benefits passing to whomsoever happens to be the next of kin.

As to the effect of insurance on the maintenance of such actions, the court in *Rozell v. Rozell*[23] had this to say:

> Of course, that fact alone creates no right to sue where one otherwise would not exist. . . . But I am unwilling to admit that sanction to the maintenance of such an action between brother and sister is any more of an incentive to fraud than when a similar action was sanctioned between husband and wife, between an emancipated son and his father, between grandmother and grandchild, between owner and guest, or between intimate friends. No warrant is found for any prediction that brothers and sisters will flock into the courts on fictitious claims through mere judicial recognition of the right of one to sue the other in personal injury cases. Common honesty inherent in the family unit presents an effective barrier. If it should appear that there is any foundation for the suggestion, a means of protection may be found in diligence on the part of the insurance carriers to ferret out and expose the fictitious claims and reliance may be placed on our courts and juries to detect and prevent a fraud.[24]

The question will be raised one day in Oklahoma. When that day comes, the Supreme Court of Oklahoma should follow the progressive decisions it rendered in allowing suits between husband and wife for injuries to the person. Certainly, as compared to a lawsuit between unemancipated minors of the same family, there is more force to the argument that a law suit between husband and wife is contrary to public policy and would disrupt the peace and harmony of the family unit. The latter action has been sanctioned; the former action should be sanctioned.

William Thomas Coffman

OIL AND GAS: LEASE EXTENSION

In the recent case of *Oklahoma Natural Gas Co. v. Long*, 406 P.2d 499 (Okla. 1965) the Oklahoma Supreme Court extended the doctrine that production on one lease within a unit holds the other leases within that unit *after* the primary term under the "thereafter" clause, to situations occurring *within* the primary term.

The issue before the court was whether the existence of a gas well capable of producing gas in paying quantities on acreage included in a

[23] 281 N.Y. 106, 22 N.E.2d 254 (1939).

[24] *Id.* at 257; *accord*, Midkiff v. Midkiff, 201 Va. 829, 113 S.E.2d 875 (1960) and Annot., 81 A.L.R.2d 1155 (1962).

well spacing and drilling unit created pursuant to statute[1] relieved lessees of other acreage in that unit from the obligation to continue the payment of delay rentals in order to preserve their leases in effect.

The court held that production from a well in one part of the unit did perpetuate leases covering acreage in other parts of the unit and that payment of delay rentals on those leases was not required to prevent their termination. The court reached this decision by applying its reasoning in *Murphy v. Garfield Oil Co.*[2] to the effect that completion of a well capable of producing secures the lease for the remainder of the primary term without the payment of further delay rentals, and its reasoning in *Layton v. Pan American Petroleum Corp.*[3] to the effect that a producing well in one part of a well spacing and drilling unit serves to extend leases on acreage in other parts of the unit beyond the primary term under the "thereafter" clause.

While no Oklahoma court had been faced with the precise question presented in *Long* of whether completion of a producing well in another part of the same unit would hold a lease during the remainder of the primary term, the court in *Layton* had said, "If the lease was extended by production in the spacing unit, the payment or non-payment of delay rentals could not affect the matter in anywise."[4] (This was not the basic issue before the court in *Layton* but was discussed by the court because the lessor sought to show that the parties had entered into a construction of their lease as a result of the lessee's gratuitously paying delay rentals after the completion of the well in the other part of the unit.)

The holding of the court in the instant case is sound and is the logical result of applying existing law in this state to the question. Also this is the established law in other jurisdictions having similar statutes.[5] For instance in *Sohio Petroleum Co. v. V.S. & P.R.R.*[6] the lease in question had a primary term of 10 years and provided that if a well were not drilled within the first year, the lease would terminate unless a delay rental were paid prior to the anniversary date of the lease. During the first year the Commissioner of Conservation entered an order creating a drilling unit including the leased land, and a gas well was drilled, completed and shut in. The delay rentals were not paid, and the lessors brought an action to cancel the leases, basing their claims primarily on this failure to pay delay rentals under the leases included in the unit but on which the well was not located. The Louisiana court held that the failure to pay delay rentals did not cause the leases to terminate, because a well was drilled and completed on the unit before the delay rentals became payable.

The purpose for which a lessor traditionally executes an oil and gas

[1] 52 Okla. Stat. § 87.1 (1961).
[2] 98 Okla. 273, 225 P. 676 (1924).
[3] 383 P.2d 624 (Okla. 1963).
[4] *Id.* at 627.
[5] 6 WILLIAMS AND MEYERS, OIL AND GAS LAW § 952 (1964).
[6] 222 La. 383, 62 So.2d 615 (1953), *appeal dismissed sub nom.* Arender v. Kingwood Oil Co., 346 U.S. 802 (1953).

lease is to determine if hydrocarbons are located below the surface of his land and, if so, to provide for the production of such hydrocarbons. It is contemplated that drilling will begin without delay; but a provision is generally inserted to the effect that drilling can be delayed by the payment of a delay rental in lieu of drilling. These leases are generally classified into two main groups, the "unless" type and the "or" type. The "unless" lease typically provides that if no well is commenced within one year the lease shall terminate as to both parties *unless* the lessee pays to the lessor a delay rental. The "or" lease typically provides that the lessee agrees to commence a well within one year *or* pay the lessor a delay rental.

Where the lease is perpetuated by production—either on the leased acreage or, as in *Long*, on other acreage within the unit—the purpose of the lease is fulfilled and the delay rental provision *never comes into play* if production extends beyond the primary term. Thus in *Long* it is not relevant whether the delay rental provision is of the "unless" type or the "or" type, and the court in the body of the opinion did not make any point of the fact that they were dealing with an "unless" lease. However there are two phrases in the opinion which, when taken out of this context could appear inaccurate; this possibility is increased by the fact that the court in the syllabus called attention to the fact that the lease in question was an "unless" lease. These phrases are, "The *Murphy* case demonstrates the purpose of such drill or pay clauses as is contained in the lease before us."[7] and, "Under an oil and gas lease by the terms of which the lessee is *obligated* to either commence the drilling of a well upon the leased premises within one year or pay to the lessor a stipulated sum as delay rental..."[8] (Emphasis added).

In order to resolve this portion of the court's reasoning it is essential to note that the ultimate issue in *Long* is whether a delay rental was due—not the effect of having failed to make a rental payment admittedly due. Thus these references to the obligation to drill or pay do not mean that with an "unless" lease the lessor who has not drilled is under an obligation to pay or be liable for suit for the amount of the payments or for breach of contract as would be true with an "or" lease. Rather they mean with regard to the underlying problem before the court, what the lessee is obligated to do to perpetuate the lease during the primary term, that the lessee is obligated to either drill or pay—*not both.*

The law is clearly established and is no longer open to question as to the distinction between an "unless" and an "or" lease.[9] An "unless" lease does not create any unqualified obligation on the part of the lessee to either drill or pay a delay rental.[10] The lessee generally is said to have only a determinable fee and if there is no drilling and the delay rental is not paid in accordance with the lease, the estate automatically reverts to

[7] 406 P.2d at 502.
[8] *Ibid.*
[9] 3 WILLIAMS, OIL AND GAS LAW §§ 605, 605.1, 605.2 (1964).
[10] 3 WILLIAMS, OIL AND GAS LAW § 606 (1964).