

IN THE THIRTY EIGHTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF CAMERON
STATE OF LOUISIANA

DORE ENERGY, CORPORATION

VERSUS

:

NO. 10-16202

CARTER-LANGHAM, INC., ET AL

RULING OF THE COURT

Evidence adduced and proceedings had in the above-numbered and entitled cause at Cameron, Louisiana, on the 31st day of January, 2007, at approximately 10:00 a.m. before the HONORABLE H. WARD FONTENOT, Judge of the Thirty Eighth Judicial District Court in and for the Parish of Cameron, State of Louisiana.

APPEARANCES:

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and
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1 **RULING OF THE COURT:**

2 THE COURT:

3 The JNOV filed, and I'll identify it as
4 "1," claiming no breach, will be denied.

5 The JNOV, which I will identify as that
6 claiming inadequate evidence for damages,
7 the Court will deny.

8 On the JNOV for no privity of contract,
9 I want to point out that an issue in the
10 case which was raised was whether or not
11 Dore Energy, Corporation, stood in the shoes
12 of the original landowner. The Court made a
13 ruling that the language of the sale to Dore
14 Energy Corporation, while, at least, vague
15 in some parts, it did achieve what Dore
16 Energy claimed, and that is that it received
17 all the rights of the original landowner,
18 and so that's been established and formed
19 the basis of these following comments.

20 As counsel pointed out today, the
21 Hinshaws, who were the original lessees,
22 immediately subleased the property to oil
23 exploration and production companies, which
24 was the way it was done in the business,
25 and, ultimately, ExxonMobile became a
26 sublessee.

27 ExxonMobile remained on the premises, on
28 the tract, as sublessees until they sold out
29 their interest, divested themselves. All
30 that occurred some time prior to 1975. I
31 think it was done in more than one action,
32 but it's undisputed from the document that

1 by the time 1975 arrived, ExxonMobile was no
2 longer on the Cameron Meadows property.

3 Now, at that point in time, 1975, the
4 relationships of parties who were
5 contracted, bound to one another in the
6 oilfield were governed by a regime of law
7 which was changed by the Mineral Code. But
8 because of the time that ExxonMobile was on
9 the property, their relationship, the
10 relationship of ExxonMobile to the
11 landowner, was governed by the case of
12 Broussard versus Hassie Hunt Trust,
13 definitive law on the subject that has
14 specifically stated that the original lessor
15 had no right of action against a sublessee.

16 Now, counsel for ExxonMobile today says
17 that it's more than that. They have no
18 cause of action against the sublessee. But
19 we all agree that Article 128 of the Mineral
20 Code was enacted to provide a remedy for
21 landowners. Nevertheless, when ExxonMobile
22 ended their operation of this property, the
23 landowners could not have sued them under
24 contract, by the authority of the Broussard
25 case.

26 Now, the plaintiff in the case, this
27 case, would like us to apply Article 128
28 retroactively to grant the right of action
29 or a cause of action, which landowners today
30 in Louisiana all enjoy against the ultimate
31 sublessees. However, Article 214 of the
32 Mineral Code was specific that no provision

1 would be applied to divest vested rights or
2 to impair the obligation of the contracts.

3 The drafters of the Code and the
4 legislature could have attempted to make the
5 Code retroactive, but there's no such
6 language in the Code, and, furthermore,
7 Louisiana legislation is presumed to
8 prescribe only for the future, according to
9 the general code concept.

10 Now, that does not mean that the
11 legislature cannot legislate retroactively,
12 as it does in some instances, but there was
13 no apparent attempt to do so in adopting the
14 Mineral Code. Furthermore, the restriction
15 on impairing contracts is imposed, both by
16 federal and by state law.

17 The restriction against impairing the
18 obligation of contracts is not absolute, as
19 is seen by the case of Exxon Corporation
20 versus Edgerton, 462 U.S. 176, a Supreme
21 Court case dealing with the subject. A
22 general law addressing a serious
23 governmental interest may impair some
24 existing contracts, and the rationale is
25 that parties should not be able to insulate
26 a certain activity from governmental control
27 simply by making it the subject of a
28 contract.

29 The language of that Edgerton case
30 reads, "Although the language of the
31 contract clause is facially absolute, its
32 prohibition must be accommodated to the

1 inherent police power of the state to
2 safeguard the vital interests of its people.
3 Therefore, a general law that addresses a
4 serious governmental interest may impair
5 existing contracts."

6 If that caveat is ignored and this case
7 is viewed as simply a case between Dore
8 Energy, Corporation, as landowner, and its
9 sublessee, under pre-1975 law, it is the
10 opinion of the Court that the pre-Code law
11 would apply and no right of action, or no
12 cause of action, perhaps, would be
13 available, whether it's a right of action or
14 cause of action, that a defense can be
15 raised by a peremptory exception, and it can
16 be raised at any time.

17 Now, if that were the simple structure
18 of this case, or, in other words, the entire
19 picture of this case, that would be a ruling
20 of the Court. The Court would sustain that
21 motion, JNOV, and I would dismiss the case,
22 but there's another dimension to this case
23 which must be addressed, and that is the
24 fact that the Louisiana Legislature, in its
25 regular session 2006, passed an Act. It's
26 referred to as Act 312 to amend Title 30,
27 and it was passed in order to address the
28 judicial procedure for claims related to
29 environmental damages, just as we have in
30 this case, and claims to remediate damages
31 done to the environment by oil and gas
32 industry.

1 The Act gives its purposes in its
2 preamble as "The Protection of Louisiana's
3 Natural Resources and its Environment."
4 Thus, by its description, it is the type of
5 governmental interest which will enable or
6 validate retroactivity and will authorize
7 laws which may impair the obligations of
8 contracts. Quite clearly, the Act was meant
9 to apply to the judicial demand for the
10 environmental damages in this kind of case,
11 which was a focus of this case.

12 Because this case was filed several
13 years before the Act was passed, the
14 question must be addressed whether or not
15 the Act was meant to apply. The portion of
16 the Act addressing that question reads,
17 quote: "The provisions of Section 1 of this
18 Act shall not apply to any case in which the
19 Court, on or before March 27th, 2006, has
20 issued or signed an order setting the case
21 for trial, regardless of whether such trial
22 setting is continued," end of quote.

23 Now, upon the face of the pleadings, it
24 would appear that this case could not have
25 had a trial date before March of 2006 for
26 the simple reason that ExxonMobile did not
27 file an answer to this suit until
28 October 23rd, 2006. This issue was raised
29 once already by counsel, and this Court made
30 a ruling that ExxonMobile could not raise
31 that objection for the reason that the
32 selection of the trial date had been agreed

1 upon at an earlier time and this Court had
2 issued an order pursuant to that agreement.

3 The Court's ruling in not allowing
4 ExxonMobile to raise the objection on the
5 eve of the trial may be described as an
6 estoppel theory or a judicial admission
7 theory, but the Court ruled that way on the
8 basis that ExxonMobile, having agreed to a
9 trial date before the effective date of
10 March 27th, could not then raise the
11 technicality of Civil Code Procedure Article
12 1571, to the effect that a trial fixing is
13 only valid after the filing of an answer,
14 which joins the issue.

15 However, the basis for the Court's
16 ruling was faulty in this respect: By virtue
17 of Act 312, the question of the validity of
18 any trial date after March of 2006 should
19 not only involve the nominal parties to a
20 suit but also the State of Louisiana.
21 Obviously, the State of Louisiana, not a
22 party to the suit, could not be estopped in
23 that situation and its position could not be
24 prejudiced by any agreement of the parties
25 to ignore Civil Code of Procedure Article
26 1571.

27 So, although this Court disallowed the
28 defendants from raising the objection, I
29 feel now that the Court made a mistake in
30 not allowing the State of Louisiana to have
31 an opportunity to enter an objection and to
32 question the validity of the trial date.

1 This particular case is exactly the kind
2 of case that Article 312 was designed to
3 address. There's no question but that the
4 surface of the property bears the scars of
5 decades of mineral exploration and
6 production. The jury heard a week or more
7 of evidence and concluded that a massive
8 restoration and remediation was needed to
9 restore the property to a more healthy
10 state, but using the Louisiana Civil System
11 as it stood prior to the passage of 312
12 could render a result which is faulty and
13 does not meet the concerns of the jury, nor
14 of the State.

15 The jury in this case made a finding of
16 environmental damage, and it expressed its
17 desire to see the property remediated by
18 awarding a large sum of money in damages to
19 Dore Energy, Corporation. Since the only
20 defendant in the case was ExxonMobile,
21 Corporation, it is inescapable that the
22 injuries sought to be redressed by the
23 jury's award of remediation damages was for
24 the result of the practice by ExxonMobile
25 and its predecessors of flowing produced
26 water into the canals or the adjoining
27 surfaces or maybe by the use of containment
28 pits, but this is where the disconnect is
29 seen.

30 What damages has Dore Energy,
31 Corporation, suffered? That corporation was
32 not the owner of the property until the mid-

1 nineties. At the time of its purchase, the
2 effects of the produced water were open and
3 obvious. The practice of flowing the salt
4 water, as ExxonMobile and its predecessors
5 had done, was industry-wide. It was not a
6 clandestine operation, and it took no in-
7 depth examination of the property to see the
8 impact of these practices. We saw aerial
9 photos during the trial which showed these
10 changes to the property. They were
11 manifest, and just a simple stroll across
12 the property would have disclosed this to an
13 observer.

14 Not only was Dore Energy, Corporation,
15 aware of the results of the years of brine
16 production but it also, additionally, had an
17 environmental study performed on the
18 property in order to investigate any
19 environmental damage, and the corporation
20 was successful in having the sale price
21 adjusted. Thus, Dore Energy knew exactly
22 what it had purchased, and today it still
23 possesses what it purchased on that day.

24 So, the award by the jury was for damage
25 to the property itself, not for anything
26 that Dore Energy had suffered. So, is there
27 a method to guarantee that the wishes of the
28 jury to have the property remediated be
29 fulfilled? There is only one way, and that
30 is through the operation of Article 312.
31 While it is true that the president of Dore
32 Energy, Corporation, told the jury that he

1 would use the jury award for that purpose,
2 that commitment has no legal binding effect.
3

4 The history of this whole transaction
5 illustrates that Dore Energy, Corporation,
6 bought this land as a business investment.
7 Afterwards, the vice president of operations
8 testified that Dore Energy, Corporation,
9 attempted to sell the property at a profit
10 but could not get the asking price.

11 If this award were handled outside of
12 Act 312, there's no assurance that Dore
13 Energy, Corporation, can not pocket the
14 money, and sell the property and simply walk
15 away. In that event, Act 312 and other
16 associated legislation on the subject would
17 prohibit a subsequent landowner from seeking
18 redress from any despoilers of the land who
19 may have been party to this suit.

20 In this case, it is implicit that the
21 jury concluded that the discharge of
22 produced water and pit containment equated
23 to, quote, "acting excessively and
24 unreasonably," end of quote, in the
25 production on the property, but ExxonMobile
26 could never be sued again. It would then be
27 that the land and the State of Louisiana and
28 its citizens that would suffer the loss.
29 So, I turn to the Act, which reads that: "In
30 a case of judicial demand of this sort,
31 litigation shall be stayed with respect to
32 any such judicial demand until 30 days after

1 such notice is issued and return receipt is
2 filed with the Court."

3 The Court will thus order that, pursuant
4 to Article 312, the proper department of the
5 State be notified, and the Act further
6 reads: "No judgment or order shall be
7 rendered granting any relief in such
8 litigation to which this section applies,
9 nor shall the litigation be dismissed until
10 timely notice is received by the State of
11 Louisiana as set forth."

12 So, the Court will not take any other
13 action in the granting of relief until we're
14 notified what action the State of Louisiana
15 plans to take.

16 I'm going to direct the attorney for
17 ExxonMobile to prepare an order to this
18 effect.

19 MR. JARRETT:

20 Yes, Your Honor.

21 (PROCEEDINGS IN THIS MATTER CONCLUDED.)
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29 **REPORTER'S CERTIFICATE**

30
31 I DO HEREBY CERTIFY that the foregoing 11 pages of
32 typewritten matter constitutes a true and correct translation of

1 my stenomask notes and recording of the proceedings taken in
2 the above-numbered and entitled cause at the time and place
3 set forth on page one hereof.

4 February 15, 2007

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9 _____
10 RENEE PARSLEY, CCR-CVR
11 Official Court Reporter
12 Certificate Number 92082
13 (Stenomask Method)
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