UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-3818
Summary Calendar

MORVANT J. CHERAMIE, ET AL.,

Plaintiffs-Appellants,

versus

EXXON COMPANY, USA, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Eastern District of Louisiana
(CA 90 4187 M)

(June 17, 1993)

Before POLITZ, Chief Judge, GARWOOD and SMITH, Circuit Judges.

POLITZ, Chief Judge:[*]

Plaintiffs-appellants appeal an adverse summary judgment on their claims of underpaid royalties and the dismissal of their fraud claims. For the reasons assigned, we affirm.

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background

In their brief, counsel for Shell Oil Company, one of the appellees, suggests that plaintiffs' claims as set forth in their pleadings and brief are difficult to comprehend and, once comprehended, are difficult to believe. That characterization is not without merit.

The most recent transactions underlying this lawsuit date back nearly 40 years. In October 1954, plaintiff Morvant Cheramie and the remaining plaintiffs' ancestors in title, then the 11 heirs of Haize Cheramie, Jr.,[1] executed an oil, gas, and mineral lease with Humble Oil & Refining Company, now Exxon Corp.,[2] regarding certain property located in Lafourche Parish, Louisiana (Tract A). The lease granted the Cheramies a 1/8 royalty interest in any oil and gas produced on the leased premises. The lease provided: "If Lessor owns less than the entirety of the mineral rights on, in or under said land, then the royalties to be paid lessor shall be reduced proportionately." At the time, the Cheramies purported to own a 1/21 undivided interest in the subject property.

In support of their assertion that they owned, and still own, an undivided 1/21 interest in the property, the Cheramies rely upon an October 1954 instrument between the original 11 Haize Cheramie

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[1] The plaintiffs/appellants shall be hereinafter referred to as "the Cheramies."

[2] Humble/Exxon assigned one-half of its lease interest to Shell Oil Company; Exxon and Shell have identical interests in this litigation and assert the same defenses.

heirs and their attorney, G. Wray Gill. The heirs hired Gill to determine their interest in the property and to assist them in dividing same. Gill concluded that they owned an undivided 1/21 interest and divided same, giving ten of the heirs 6.477%, one heir 10.230%, and awarding Gill 25% thereof as his fee. The Cheramie/Gill instrument was recorded in the Lafourche Parish public records. The Cheramies contend, however, that this allocation of shares was for their benefit only and that none of the oil companies was entitled to rely on this in determining each heir's royalty share of any oil and gas production.

At the time the 1954 OGM lease was negotiated there was an ongoing dispute regarding the Cheramies' title to the property. Originally, Laurence and Celeste Cheramie,[3] the grandparents of Haize Cheramie, Jr., owned an interest in the property which is the subject of this litigation. In 1934, Harvey Peltier brought a partition suit claiming that he owned a large portion of that property. Peltier named as defendants Frederick Scully and the heirs of Laurence and Celeste Cheramie. As a result of that suit, a sheriff's sale of the property was conducted on December 29, 1934; Peltier acquired 7/10 of the property (Tract A)[4] and Scully acquired 3/10 (Tract B). The sheriff's sale, if valid, divested the Cheramies of any interest in either Tract A or Tract B.

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[3] Laurence Cheramie died in 1894; Celeste Cheramie died in 1906; Haize Cheramie, Jr. died in 1926.

[4] Peltier later transferred a 1/5 interest in Tract A to the heirs of John Pitre.

In 1951, certain heirs of Laurence and Celeste Cheramie -- though not the Haize Cheramie line -- filed an action to nullify the 1934 sheriff's sale; the Haize Cheramie heirs were joined as involuntary plaintiffs therein. In a 1957 settlement of that action, the Cheramies entered two compromise agreements: the Tract A Compromise and the Tract B Compromise.[5] Under both agreements, they relinquished all rights in the tracts except those specifically reserved in the agreement. The Tract A Compromise was entered between Peltier, Pitre, and the Cheramies;[6] it recognized the Cheramies' interest in Tract A as a 148/4935 fractional interest which was then subdivided using the apportionment in the Cheramie/Gill instrument. The Tract B Compromise involved the Cheramies, two Scully brothers, and Superior Oil Company;[7] it recognized in the Cheramies a 1/8 royalty in a 148/4935 interest, which again was subdivided as per the Cheramie/Gill division. The Tract B Compromise also provided that the royalty interests recognized therein were subject to the joint operating agreement between Superior and Clovelly Corporation, operated by the Scullys,

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[5] As to those Cheramies who did not settle, i.e., the other heirs of Laurence and Celeste Cheramie, the 1934 sheriff's sale was ultimately determined to be valid. See **Pitre v. Peltier**, 227 La. 478 (1955), and on appeal following remand, 122 So.2d 867 (La.App. 1960).

[6] Humble/Exxon/Shell was not party to the Tract A Compromise.

[7] Mobil Exploration & Producing North America, Inc. (MEPNA) is a successor in interest to Superior.

pursuant to which Superior possessed mineral rights in Tract B; the Scullys retained the exclusive right to enter into mineral leases pertaining to Tract B. The compromise agreements were duly recorded in the public records of Lafourche Parish. Exxon, Shell, and MEPNA have paid royalties to the Cheramies based upon the percentage interests set forth in these compromise agreements.

The Cheramies filed suit against Exxon, Shell, and MEPNA alleging that they have been underpaid royalties and that the defendants defrauded them into entering the compromise agreements. The district court granted summary judgment in favor of the defendants on the various claims for royalties and dismissed the Cheramies' fraud claims for failure to comply with Fed.R.Civ.P. 9(b). The Cheramies timely appeal.[8]

Analysis

We review summary judgments *de novo*.[9] Summary judgment is appropriate when there is no genuine issue of material fact and the

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[8] There is some dispute regarding whether the notice of appeal -- filed after the district court's minute entry granting summary judgment and dismissing the fraud claims but before the entry of final judgment -- is effective. The district court's direction to defendant Exxon to submit a proposed judgment following the minute entry indicates that the district court believed that the minute entry resolved all claims against all parties. The court, entering a second judgment dismissing the third-party claims, noted that it was only through oversight that these claims were not included in the first judgment. We find the notice of appeal timely under FRAP 4(a)(2).

[9] **U.S. Fidelity & Guar. Co. v. Wiggington**, 964 F.2d 487 (5th Cir. 1992).

moving party is entitled to judgment as a matter of law.[10] We find as a matter of law that there is no factual scenario alleged under which the Cheramies possibly could prevail.

Stripped to essentials, the Cheramies claim royalties for mineral rights which they do not own. Against Exxon and Shell, they contend that pursuant to the 1954 lease they are entitled to a 1/8 royalty on the entire production of Tract A.[11] That the Cheramies may neither lease unowned mineral rights nor execute a valid lease on property they did not own would appear so fundamental as to require no citation of authority. Under the lease terms, Exxon and Shell were obliged to pay a 1/8 royalty on whatever fractional ownership interest the Cheramies owned.[12] After the Tract A Compromise, they were to pay a 1/8 royalty on the fractional interests in the property set as out in the agreement;[13]

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[10] Fed.R.Civ.P. 56(c).

[11] In fact, the Cheramies contend that the lease "stipulates that plaintiff's ancestors [all 11 of them] were to receive each a 1/8th royalty share in all oil and gas production." See Plaintiffs' Amended and Supplemental Complaint ¶ 25 (emphasis in original). We find it impossible to believe that Humble Oil Company would have purchased mineral rights and then agreed to pay more than 100% of the total production in royalties. The suggested illiteracy of the Haize Cheramie heirs' is no basis for such an unreasonable interpretation of the lease. We find counsel's assertion of such an argument incredible.

[12] A mineral lease is a contract which has the effect of law between the parties. La. Civ. Code art. 1983.

[13] A lessee of mineral rights is a third party who may rely on duly recorded public records regarding interests in immovable property. See La. R.S. 9:2721 and 2722.

it is undisputed that they did so. Absent an invalidation of the 1934 sheriff's sale of the property,[14] assuming same would still be subject to challenge, the Cheramies could claim no greater mineral rights in Tract A.

As against MEPNA, the Cheramie right to royalties derives exclusively from the Tract B Compromise. If this agreement was deemed invalid, as they request, they would have no right whatever to royalties from MEPNA. They present no evidence that MEPNA ever was a party to or assignee of the 1954 lease with Humble or that they were parties to any other contractual or lease agreement with MEPNA. And, again, absent invalidation of the 1934 sheriff's sale, they would have no right to enter into any agreement leasing the mineral rights to Tract B.

The Cheramies' only summary judgment evidence that they own even an undivided 1/21 interest in Tracts A and B is that in 1954, in the Cheramie/Gill instrument, Gill told them so.[15] The defendants have countered with competent evidence that the 1934 partition sale divested the Cheramies of any interest in Tracts A or B and, furthermore, in 1957 their ancestors in title executed

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[14] Both in response to the various defendants' motions for summary judgment and in their own summary judgment motion, the Cheramies have failed to present any evidence which would undermine the validity of the 1934 sheriff's sale.

[15] They also present a portion of the public records of Lafourche Parish regarding the subject properties; however, they present no records more recent than 1895. Again, they conveniently ignore the 1934 sheriff's sale and the later compromise agreements and the effect these transactions had upon the chain of title to the property.

two compromise agreements which set forth their interests in the tracts. There is no genuine dispute of material fact, and the defendants are entitled to judgment as a matter of law.

The Cheramies also allege that they were defrauded by the defendants. Fed.R.Civ.P. 9(b) requires that allegations of fraud be stated with particularity. The Cheramies hint at some conspiracy pursuant to which Morvant and the other ancestors in title, most of whom were illiterate, were duped into signing away their rights in the compromise agreements and then taken advantage of by the oil companies who paid them minuscule royalty checks. Neither Exxon, Shell, nor their predecessor in interest, Humble Oil Company, however, was a party to the Tract A Compromise. They were, however, entitled to rely upon the compromise, once recorded, as an indication of the percentage of the mineral rights owned by the Cheramies.[16] Given that both compromise agreements were entered in settlement of an ongoing title dispute, which in all likelihood would have divested the Cheramies of any interest in either Tract A or B, we are hard pressed to understand in what manner the Cheramies were defrauded by anyone. The allegations of fraud fail to comply with the mandate of Fed.R.Civ.P. 9(b) and the district court correctly dismissed same.

We AFFIRM the district court in all respects.

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[16] See La. R.S. 9:2721 and 2722.