

1951

N. J. Meagher v. Uintah Gas Company et al : Brief of Appellant Ashley Valley Oil Company

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Meagher v. Uintah Gas Company*, No. 7723 (Utah Supreme Court, 1951).
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In the
Supreme Court of the State of Utah

N. J. MEAGHER,
Plaintiff and Respondent,

VS.

UINTAH GAS COMPANY and VAL-
LEY FUEL SUPPLY COMPANY,
Defendants,

Civil No.
7723

RAY PHEBUS, ASHLEY VALLEY
OIL COMPANY, PAUL STOCK and
JOE T. JUHAN,
Defendants and Appellants.

**BRIEF OF APPELLANT
ASHLEY VALLEY OIL COMPANY**

FILED
SEP 13 1931

Clerk, Supreme Court, Utah

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Civil No.
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BRIEF OF APPELLANT ASHLEY VALLEY OIL COMPANY

Appellant Ashley Valley Oil Company files this separate brief because it is not involved in the issue between Respondent and the other Appellants with respect to the so-called

“Release,” and, on the other hand, the other Appellants are not involved in the issue between Respondent and Ashley Valley Oil Company with respect to the so-called “North Forty.”

For simplicity of description we will refer to the lands described in the complaint and covered by the Sheridan-Hill Lease (Exhibit A-1) as the “480 acres”, the Northeast Quarter of the Southeast Quarter of Section 15, Township 5 South, Range 22 East, Salt Lake Base and Meridian, included in the 480 acres, as the “North Forty,” and the 480 acres less the North Forty as the “440” acres.”

On the trial Ashley Valley contended that it was the owner of an overriding royalty of 4% of the oil and 6% of the gas produced from the 440 acres under the Sheridan-Hill Lease, as modified, to which Respondent stipulated (Pages 3 to 8, Pretrial Proceedings, Exhibit A-58) and which overriding royalties were decreed to Ashley Valley by subdivisions (1) and (2) of paragraph 4 of the Judgment and Decree herein (R. 223) and which portions of the decree are not appealed from. Ashley Valley also contended that it was the owner of the Lessee’s rights under the Sheridan-Hill Lease as modified with respect to the North Forty, which respondent disputed, contending that the Modification Agreement (Exhibit A-5) did not apply to the North Forty and that, therefore the Sheridan-Hill Lease had lapsed with respect to such acreage, and that respondent was the owner of the North Forty subject only to landowner’s royalties.

The only issue, therefore, between Appellant Ashley Valley and Respondent is one of law as to whether the Modi-

fication Agreement included and covered the North Forty and inured to the benefit of those having the Lessee's rights therein. (See pages 8 and 9, Pretrial Proceedings, Exhibit A-58).

STATEMENT OF THE FACTS

Under the Sheridan-Hill lease, dated June 4, 1924 (Exhibit A-1), R. C. Hill became the Lessee of the 480 acres. This lease provides that it "shall remain in force for the term of three (3) years from this date and as long thereafter as oil and gas or either of them is produced from said land by the Lessee * * *."

On October 30, 1924 Hill sublet to Utah Oil Refining Company his lessee's rights to the 440 acres, retaining a 6% overriding royalty of the oil and gas produced therefrom (Exhibit A-2).

Hill, on November 10, 1924, released, assigned, quit-claimed and conveyed to Ashley Valley all of his right, title and interest in and to his said agreement with Utah Oil Refining Company, subject to all the liabilities therein imposed upon Hill (Exhibit A-3), resulting in Ashley Valley owning the 6% overriding royalty of oil and gas produced from the 440 acres and acquiring the Lessee's interest therein, with all liabilities thereunder, subject to the said sublease to Utah Oil.

On November 14, 1924, the Sheridans conveyed the 480 acres to M. P. Smith, subject to the Sheridan-Hill lease (Exhibit A-4).

On May 21, 1927, M. P. Smith and wife and Ashley Valley entered into the so-called "Modification Agreement" (Exhibit A-5), which is the agreement referred to in the former decision of this court in this case, reported in 112 Utah 149, 185 P. 2d 747. Paragraph 3 of the Modification Agreement recites, "It is understood that a large quantity of petroleum gas was encountered in the test well heretofore caused by the Lessee to be drilled upon said Section 23 * * *."

On June 9, 1927, Utah Oil and Ashley Valley entered into a so-called Modification Agreement (Exhibit A-6) wherein Utah Oil accepted the conditions of the Modification Agreement (Exhibit A-5) and agreed to perform the conditions imposed upon Ashley Valley by Exhibit A-5 with respect to the 440 acres and pay Ashley Valley the 6% overriding royalty of oil and gas produced therefrom.

On October 30, 1930, the Hill Syndicate, by Edward H. Watson as Trustee, assigned to Ashley Valley all of the right, title and interest of Hill in and to the North Forty (Exhibit A-16), which would carry the Lessee's operating rights under the Sheridan-Hill lease as modified by the Modification Agreement, if the Modification Agreement applied to the North Forty. We use the word "Hill" because no issue has been raised as to R. C. Hill, R. C. Hill Trustee, Hill Syndicate, or Edward H. Watson as successor Trustee of Hill Syndicate and for the purposes of this record they may all be considered as one and the same person (Page 8, Pretrial Proceedings, Exhibit A-58).

STATEMENT OF POINTS

The Modification Agreement (Exhibit A-5) included and covered the North Forty and Ashley Valley is the owner of the Lessee's rights therein.

ARGUMENT

By Exhibit A-2 Hill sublet to Utah Oil Refining Company the 440 acres, by which agreement Utah Oil was granted exclusive possession of said tract and undertook to perform the conditions of the Sheridan-Hill Lease with respect thereto, paying to Hill the 6% overriding royalty of oil and gas. A-2 is a sublease.

24 Am. Jur. (Gas and Oil) Section 84, Pg. 591:

“Thus a transfer of the leasehold or of a specific portion thereof is to be regarded as an assignment if the transferrer retains no right of any kind therein, but will be deemed a sublease if he reserves a rental or an overriding royalty.”

There was no release of Hill by the Lessors under the Sheridan-Hill Lease and if Utah Oil defaulted under this sublease, Hill still retained the rights under the lease, subject to its obligations. When Hill, by Exhibit A-3, assigned to Ashley Valley his rights under Exhibit A-2 “subject to all liabilities therein imposed upon” Hill, Ashley Valley was required to perform the conditions of the Sheridan-Hill Lease with respect to the 440 acres if Utah Oil defaulted under its sublease. On May 21, 1927, M. P. Smith and his wife entered into the Modification Agreement with Ashley Valley (Exhibit A-5), which agreement recited the sub-

stance of the Sheridan-Hill Lease, the Hill-Utah Oil sub-lease and the Hill-Ashley Valley assignment above referred to, and also notes the owners of the landowner's royalty. The Agreement then recites:

“Whereas, it is the desire of the parties hereto, in so far as they have the legal right and power so to do, to change and modify the terms of said Oil and Gas Lease of June 4, 1924 as hereinafter provided.”

As Hill was not a party to this agreement, the parties thereto did not have the legal right and power to impose any burden upon Hill, but they did have the legal right and power to confer benefits upon him, and it is our position that the agreement could not and did not impose burdens and duties upon Hill and did confer benefits upon him with respect to the North Forty.

Paragraph I of the Agreement provides:

“That the lands the subject of this agreement are, and the term ‘the lands the subject of this agreement,’ as and when same is hereinafter used, does and shall mean and apply to the following described tract of 480 acres of land * * *.”

This language and the repeated use of the words “the lands the subject of this agreement” throughout the rest of the agreement clearly indicates that all the benefits of the agreement inure to the entire 480 acres covered by the Sheridan-Hill Lease, including the North Forty to which Hill had the Lessee's rights. Nowhere in the agreement after the recitals as above mentioned is there any acreage other than the 480 acres, “the lands the subject of this agreement,” referred to.

Because Ashley Valley has the obligation to perform the conditions of the Sheridan-Hill Lease with respect to the 440 acres if Utah Oil should default in performing such conditions of the Hill-Utah Oil sublease, Ashley Valley agrees to perform the conditions of said lease, which can be done by drilling upon the 440 acres.

Under paragraph 4 of the Modification Agreement the Lessee agrees on or before September 1, 1927, to commence, or cause to be commenced, the actual drilling of an oil well at some point to be "*selected by the Lessee upon the geologic structure upon which the lands the subject of this agreement are located.*" (Italics supplied.) This provision is mandatory upon the Lessee but if this duty is performed the Lessee may surrender the rights and privileges under the lease as modified, as provided by paragraph 20 of the agreement.

If Utah Oil accepted the terms of the Modification Agreement it could meet the requirements of paragraph 4 by drilling upon the 440 acres, and if it failed to do so, Ashley Valley could meet such requirements by drilling upon any portion of the 440 acres. It is our contention that such drilling upon 440 acres would meet the conditions of the entire lease as modified with respect to the full 480 acres, which includes the North Forty.

Hill did not have to join in the Modification Agreement to receive all the benefits thereof with respect to the North Forty, as Ashley Valley had accepted the assignment of the Sheridan-Hill Lease from Hill as to the 440 acres subject to its liabilities, and Hill could assume that if Utah Oil did not perform the conditions of the Modification Agreement

by drilling upon the 440 acres, Ashley Valley would do so by reason of its assumption of this obligation through the Hill-Ashley Valley assignment.

It will be noted that Smith in the Modification Agreement did not require that it be entered into by Hill to make it effective upon the full 480 acres. It appears that he was willing to accept the obligation of Ashley Valley to perform the conditions of the lease as modified upon the 440 acres, or the obligation of Utah Oil if it undertook this duty on behalf of Ashley Valley. To our minds this is almost conclusively indicated by the constant reference to the "lands the subject of this agreement" and the fact that by paragraph V of the Modification Agreement the parties agreed to "co-operate in an effort to procure the written approval of this agreement by all owners of *royalty interests* in the lands the subject of this agreement." (Italics supplied.) Nothing is said about procuring the written approval of Hill to the Modification Agreement, all indicating that it was for his benefit and it was not necessary for him to assume any obligations thereunder.

We observe that Mr. Meagher, Respondent in this case, signed a consent of royalty owners at the end of the Modification Agreement in which the words "the lands the subject of the foregoing agreement" appear, ratifying the fact that the 480 acres were covered by the agreement—inconsistent with his position here that the North Forty was not so covered.

As stated, on the 9th day of June, 1927, a few days after the date of the Modification Agreement, Utah Oil

entered into the agreement with Ashley Valley (Exhibit A-6) whereby the former accepted the terms of the Modification Agreement and specifically agreed to start the drilling of an oil well on the 440 acres of land, as provided by paragraph 4 of the Modification Agreement. This relieved Ashley Valley from the obligation of drilling this well, but if Utah Oil defaulted thereunder, Ashley Valley would be required to do so. This Utah Oil-Ashley Valley agreement, of course, only applied to the 440 acres as that was the extent of the acreage covered by the sublease from Hill.

It will be noted that in paragraph 7 of the agreement of June 9, 1927, the North Forty is expressly reserved to Ashley Valley, free and clear of any right or claim of Utah Oil. This is interesting in view of the recital in the assignment from Hill to Ashley Valley of his interest in the North Forty (Exhibit A-16) to the effect that Ashley Valley "has become entitled to receive an assignment of all of the right, title and interest of said Hill Syndicate and said Edward H. Watson, trustee in and to the lands," referring to the North Forty and other lands not here involved.

On October 30, 1930, Hill assigned his interest in the North Forty to Ashley Valley (Exhibit A-16) by reason whereof it is our contention Ashley Valley now owns the leasehold or operating rights upon the North Forty.

The Modification Agreement does not require the drilling to be done on any particular part of the 480 acres, and does not require the development of the entire tract as between the parties. We submit that under a lease of this type the drilling upon one portion of the 480 acres by an

assignee of the lessee of his leasehold interests in the 440 acres, inures to the benefit of the entire 480 acres, including the North Forty retained by the Lessee.

Gypsy Oil Company vs. Charles E. Cover, 78 Okla. 158, 189 Pac. 540, 11 A. L. R. 129. In this case it was held that where an oil and gas mining lease covered 160 acres of land with 120 acres thereof contiguous and the other 40 acres located $\frac{1}{2}$ mile therefrom and the Lessee assigned the 40-acre tract, the bringing in of a producing well by the assignee on the 40-acre tract inured to the benefit of the entire 160 acres.

Harris vs. Michael, 70 W. Va. 356, 73 S. E. 934:

“Where a lessee for oil and gas producing purposes segregates the lease by assigning to another all rights thereunder as to a distinct parcel of the land, a discovery of oil on the part assigned will give the lessee a vested right to produce oil on the part retained, though he has taken no possession of that part” (Syllabus).

Fisher vs. Crescent Oil Co., (Tex. Civ. App.), 178 S. W. 905:

“If it shall be determined under the terms of the contract that discovering oil on the land leased was a compliance with the condition of the contract, then we believe it was sufficient, if either of the assignees discovered oil, to vest the right in the entire lease for the 25 years specified. It is not stipulated in the contract that oil should be discovered under any particular portion of the land or discovered in more places than one, but if oil was discovered the conveyance ‘shall be in full force and effect for twenty five years.’ The conveyance so continued was not to any particular por-

tion of the land or to the land where the oil was discovered, but 'this' conveyance, which was 320 acres, and which includes the land of appellee, was in full force and effect. We therefore hold that the discovery of oil by one of the assignees inured to the benefit of both and to both parcels of land, in so far as it had the effect of vesting the right."

Cowman vs. Phillips Petroleum Co., 142 Kan. 762, 51 P. 2d 988:

"The finding or producing of oil or gas, during the fixed term, in accordance with the provisions of the lease, is a condition precedent to the right to hold or produce from the land after the expiration of the fixed term. Such finding or producing of oil or gas during the fixed term as long as that condition shall continue. And, on the principal of the indivisibility of the lease contract, where the lease covers several tracts of land, although they may have passed into the ownership of different parties since the execution of the lease, a producing well drilled upon any of the tracts during the term, will extend the fixed term as to the other tracts. And this is true although the lease upon the different tracts has come to be owned by different parties and there is no privity of interest between the lessee, who drilling the producing well, and the owners of the lease upon the other tracts. But, of course, under such circumstances the different tracts could not be held indefinitely by production upon one tract without violating the implied covenant for development.

"In Summers on Oil & Gas, page 296, the author makes the following statement of the rule:

" 'Ordinarily, to extend a lease beyond the fixed term by production, the oil and gas must be produced from the demised land. Where, however, a number of landowners demise their lands in a single lease, the

courts hold that the lessee may extend the lease for all of the various tracts beyond the exploratory period by satisfactory production from one tract; or where the lease is of a single tract, but a part of it later assigned by the lessee, production within the exploratory period on the assigned portion will extend the lease as to the unassigned lands'."

Walker vs. Lane (Tex. Civ. App.), 233 S. W. 634: Lane leased to Walker 1602 acres for a term with the provision that a well be commenced before February 21, 1918, and that if not so commenced, then the Lessee pay stipulated yearly rental until the well be commenced. Walker assigned to Whiteside his interest as lessee on 800 acres of the leased land. The latter agreed to commence a well on such acreage by February 21, 1918. Whiteside agreed with the lessor Lane for extension of time to drill this well. It was held that such agreement inured to the benefit of Walker upon the retained acreage under the lease.

As stated we believe that the Modification Agreement, in light of the situation of the parties, clearly inured to the benefit of Hill with respect to the operating rights on the North Forty, without his joining in the agreement and without imposing any obligations upon him.

This court has in numerous cases adopted the majority American rule that under a contract for the benefit of a third person, the third person may sue to enforce the provisions for his benefit; that he need not be mentioned in the contract; and that it is not necessary for him to consent thereto.

Montgomery vs. Rief, 5 Utah 495, 50 P. 623:

“To entitle a third party, who may be benefited by the performance of a contract, to sue, there must have been an intention on the part of the contracting parties to secure some direct benefit to him, or there must be some privity and some obligation or duty from the promisor to the third party which will enable him to enforce the contract, or some equitable claim to the benefit resulting from the promise or the performance of the contract, and there must be some legal right on the part of the third party to adopt and claim the benefit of the promise or contract.”

Brown vs. Markland, 16 Utah 360, 52 P. 597, 67 Am. St. Rep. 629:

“She thereafter had a right to look to him for payment of her claim, under the rule that ‘where a promise or contract has been made between two parties for the benefit of a third, an action will lie thereon at the instance and in the name of the party to be benefited, although the promise or contract was made without his knowledge, and without any consideration moving from him’.”

Smith vs. Bowman, 32 Utah 33, 88 P. 687, 9 L. R. A. (N. S.) 889:

“It may further be assumed that, ‘where a promise or contract has been made between two parties for the benefit of a third, an action will lie thereon at the instance and in the name of the party to be benefited, although the promise or contract was made without his knowledge and without any consideration moving from him.’ *Montgomery v. Rief*, 15 Utah 495, 50 Pac. 623; *Brown v. Markland*, 16 Utah 360, 52 Pac. 597, 67 Am. St. Rep. 629. Though

the plaintiff is not expressly named in the bond as an obligee, still, if he is one of the persons who were intended to be benefited by its obligations, he is entitled to maintain an action thereon for a breach of covenants made for his benefit."

Assets Realization Co. vs. Cardon, 72 Utah 597, 272 P. 204:

"* * * plaintiff relies upon the rule of law announced by many authorities to the effect that when two persons enter into a contract for the benefit of a third person, such third person may enforce such contract so made for his benefit."

"The rule of law announced by the foregoing authorities is supported by the weight of American authority and has become the settled law in this jurisdiction."

M. H. Walker Realty Co. vs. American Surety Co., 60 Utah 435, 211 P. 998:

"Whenever it appears from a contract that there is a clear intent to benefit a third party whether specifically named in a contract or not, such person ordinarily may sue in his own name for the enforcement thereof, or for the benefits arising therefrom."

McKay vs. Ward, 20 Utah 149, 57 P. 1024, 46 L. R. A. 623.

We respectfully submit that the Modification Agreement applies to the North Forty and that the decision and decree of the trial court, as far as this Appellant is concerned, should be reversed to the extent that it grants entire

North Forty (subject to land owner's royalty) to Respondent and does not award the operating rights thereon to Ashley Valley.

Respectfully submitted,

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