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N. J. Meagher v. Uintah Gas Company et al : Brief of Respondent N. J. Meagher Pertaining to the "North Forty"

Utah Supreme Court

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CIVIL No. **7723**

In the Supreme Court
OF THE
State of Utah

N. J. MEAGHER,

Plaintiff and Respondent,

VS.

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

Defendants and Appellants.

BRIEF OF RESPONDENT N. J. MEAGHER
PERTAINING TO THE "NORTH FORTY".

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INTRODUCTORY STATEMENT.

This brief is directed to the controversy between Meagher and appellant Ashley Valley Oil Company with respect to the 40-acre parcel referred to throughout this litigation as the North Forty.¹

It will be noted that Ashley does not appeal from that portion of the decree which deals with the 440-

¹The legal description of the parcel is: Northeast Quarter of Southeast Quarter of Section 15, Township 5 South, Range 22 East, Salt Lake Base and Meridian.

acre parcel, and separate briefs have been filed with respect to that controversy.

During the pretrial proceedings Meagher and Ashley were able to reduce their controversy by stipulation to a single issue. It has been agreed that Ashley is the owner of all lessee's rights in the North Forty if the Sheridan lease was modified as to the North Forty. On the other hand, it was also agreed that Meagher owns the North Forty free of all claims of Ashley if the Sheridan lease was not modified as to the North Forty.

We suggest that reference to the chart appended to Meagher's other brief filed herewith may be of assistance in following the argument in this matter.

STATEMENT OF FACTS.

On June 24, 1924, the entire 480 acres with which this case is concerned, together with other lands not involved, were leased by the owners, the Sheridans, to one R. C. Hill for oil and gas exploration and development (A-1).

In October of 1924, R. C. Hill assigned to Utah Oil Refining Co. (A-2) the working interest in this lease, namely, the right to explore for and produce oil and gas from the property. However, the assignment from R. C. Hill to Utah Oil Refining Co. relates to only 440 acres of the lands in litigation and *does not purport to affect the North Forty.*

Under the assignment from R. C. Hill to Utah Oil Refining Co. (A-2) the assignee, in addition to the landowners royalties payable to the lessor and his assigns, agreed to pay R. C. Hill royalties in the amount of six per cent of any oil and gas that might be produced. Thus the assignment (A-2) created "overriding royalty" in favor of R. C. Hill, this being the customary description of royalty created by a lessee in transferring a lease as distinguished from "landowner's royalty" which is royalty created by the landowner-lessor.

In addition to excluding the North Forty from the assignment A-2, Hill stipulated for appropriate provisions protecting his overriding royalty in the event that Utah Oil Refining Co. should not perform the lessee's obligations under the lease. These provisions also relate to the 440-acre parcel only and not to the North Forty.

On November 10, 1924, R. C. Hill assigned the rights he had reserved in his deal with Utah Oil Refining Co. to Ashley (A-3), which company thereby became entitled to the overriding royalty and to the rights Hill had to protect that royalty under the provisions of A-2.² The assignment from R. C. Hill to Ashley (A-3) did not purport to transfer to Ashley any interest

²In the trial Ashley claimed a present interest in overriding royalty of four per cent only. That claim was not disputed by any litigant and was awarded to Ashley by the decree. Thus, this appeal is in no way concerned with Ashley's overriding royalty which has been recognized and protected.

whatsoever in Hill's leasehold rights in the North Forty.

Thus after the original lessee, R. C. Hill, had assigned the lessee's rights as to the 440 acres, to Utah Oil Refining Co. and also had assigned his overriding royalty to Ashley, also limited to the 440 acres, R. C. Hill had no further interest in the Sheridan lease except with respect to the North Forty as to which Hill remained as the sole lessee. Conversely, neither Utah Oil Refining Co. nor Ashley had any interest whatsoever in the North Forty.

On November 14, 1924, the Sheridans, who were the original lessors, conveyed their entire interest in the entire 480 acres to M. P. Smith (A-4). Thus M. P. Smith became the owner of the lands, subject, however, to the outstanding Sheridan lease.

On May 21, 1927, the terms of the original lease were modified by an agreement (A-5) between Smith, the then landowner-lessor, and Ashley, who was then the owner of the overriding royalty. R. C. Hill was not a party to the modification agreement although R. C. Hill was then the *only person having any lessee's rights* in the Sheridan lease so far as concerns the North Forty.

Also, Utah Oil Refining Co. who then owned the lessee's rights under the lease so far as concerns the 440-acre parcel, was not a party to the modification agreement A-5. However, on June 9, 1927, a second

modification agreement (A-6) was entered into between Utah Oil Refining Co. and Ashley, under which Utah Oil Refining Co. agreed to be bound by the terms of A-5, the previous modification agreement.

It will be noted that R. C. Hill, the lessee of the North Forty, was not a party to either modification agreement.

After the foregoing transactions, Meagher became the owner of the lands by mesne conveyances from M. P. Smith and by virtue thereof became the lessor and acquired the property subject, of course, to the outstanding royalties and to the outstanding lease.

The only other conveyance pertinent to this phase of the case is an assignment executed on October 30, 1930, A-16, from the successor of R. C. Hill to Ashley, which transferred all of Hill's rights as lessee of the North Forty to Ashley.

Since it is stipulated that R. C. Hill's leasehold of the North Forty reverted to the landowner prior to the execution of A-16, unless Hill's lease with respect to the North Forty was previously modified by the agreements A-5 or A-6, we come to the single issue in this phase of the case which has been accurately stated from Ashley's point of view in its Statement of Points. We now repeat it from Meagher's point of view.

STATEMENT OF POINTS.

The Sheridan lease so far as concerns the North Forty was not modified and, therefore, Meagher is the owner thereof free of all claims of Ashley.

ARGUMENT.

Five basic facts establish that the lease as to the North Forty was never modified. They are:

(1) The only efforts to modify the lease are found in the two modification agreements, A-5 and A-6.

(2) Those two modification agreements do not purport to modify the lease as to the North Forty.

(3) Even if an attempt had been made to modify the lease as to the North Forty in the modification agreements they could not have had that effect because R. C. Hill was then the only party having any lessee's rights in the North Forty and he was not and never became a party to either modification agreement.

(4) Ashley, who was a party to both agreements, had no interest whatsoever in the North Forty when those agreements were executed.

(5) It has been stipulated that by the time Ashley sought to acquire an interest in the lease of the North Forty by assignment (A-16) from Hill's successors, the lease had reverted to the landowner unless prior

thereto it had in some manner been subjected to modification.

Ashley has put forth two theories: First, the doctrine of relation, and second the doctrine of third party beneficiary. The former theory was urged below but not here. The latter is urged here but was not presented below.

Before the trial court, Ashley sought to apply the doctrine of relation in such a manner as to permit Ashley to treat the lease of the North Forty as though it had been modified. It was there demonstrated that the doctrine of relation could not be applied because, among other reasons, a contrary intention on the part of the contracting parties existed. This contrary intention is found in the modification agreement (A-6) executed by Utah and Ashley, in which Ashley specifically and expressly stated that the North Forty was not to be affected and instead of purporting to commit the North Forty to modification Ashley expressly precluded that result. Paragraph 5 of modification agreement A-6 contains the following statement:

"It is distinctly understood that although said modification agreement, Exhibit 'A' hereto,³ involves the 480 acres of land therein described and therein referred to as 'the lands the subject of this agreement', the lands covered by this agreement between the parties hereto shall be limited

³The parties here refer to the modification agreement of Mar. 21, 1927 (A-5).

to the 440 acres covered by said agreement of October 30, 1924 so entered into between R. C. Hill, trustee, and said Utah Oil Refining Company and shall not include the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, Township 5 South, Range 22 East, SLM, which 40 acre tract is expressly reserved to the party of the first part hereto, free and clear of any right or claim of the party of the second part.”

Regardless of any other intention Ashley may have had concerning this North Forty, in which it then had no interest at all, this modification agreement unequivocally and expressly *excluded the North Forty*.

Thus Ashley could not modify the lease as to the North Forty because (1) it had no interest therein at the time, and (2) it expressly denied such intention. For these reasons Ashley cannot claim modification by application of the doctrine of relation.

We note that on appeal Ashley does not invoke the doctrine of relation but we have gone into the subject because a cursory inspection of the documents does suggest that the doctrine might be applicable and for the further reason that this was the theory upon which Ashley proceeded below.

Turning to the theory now first proposed by Ashley in its brief on appeal, we find that they urge the doctrine of third party beneficiary. They claim that the modification agreement “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.”

There is nothing in either modification agreement A-5 or A-6 which mentions or indicates any intention on the part of Ashley or Smith or Utah Oil Refining Co. to modify the terms of the lease in behalf of R. C. Hill or to negotiate for his benefit. There is not even a reference to R. C. Hill in these two modification agreements, except in the delineation of the title.

It is true that the modification agreements contained provisions much more liberal from the standpoint of the lessees than the provisions of the original Sheridan lease. For the sake of argument we can agree that if R. C. Hill had been a party to the transaction he might have been willing to broaden the lessee's rights which he had retained in the North Forty in the same manner as the lessee's rights in the 440-acre parcel were broadened by the modification agreements. But merely because the landowner was willing to grant modification concessions, it does not follow that such concessions must be read into the portion of the lease which was solely owned by R. C. Hill who was never a party to any modification.

There remains only for consideration the effect of the language contained in the first modification agreement (A-5) which when casually read might be construed as a modification of the entire lease rather than

a modification of only the 440-acre parcel. Document A-5 does describe the entire 480-acre tract as "the lands the subject of this agreement." But the document also says "it is the desire of the parties hereto in so far as they have the legal rights and power to do so, to change and modify the terms of said oil and gas lease." Thus, Ashley's intentions must be construed as limiting the modification to 440 acres only, for Ashley had neither right nor power to act with respect to the North Forty at the time the modification agreements were entered into.

The first modification agreement is a verbose document. However, the following is a fair resume of its provisions so far as concerns the issue of what was modified:

1. Sheridans had leased 480 acres to Hill;
2. Hill had assigned the lease to Utah as to 440 acres only;
3. Hill had transferred his interest in his agreement with Utah to Ashley "to the extent only that said agreement relates to the above-described lands." (The "above described lands" are the 440-acre tract.)
4. Ashley owns the rights it acquired from Hill under the above assignment "in so far as same pertains to said 440 acres * * * of said 480 acre tract of land."

The agreement then refers to Sheridans' transfer to Smith and the various assignments of landowners royalty by Smith.

5. Then the parties set forth their intentions thus:
 "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."
6. Thereafter the parties define the lands subject to the agreement as the entire 480 acres embodied in the Sheridan lease. However, this does not change the acreage in which Ashley had legal rights nor the acreage over which Ashley had any power to act. The specific intention of the parties is already limited to the lands as to which they have rights and powers and those lands are accurately defined as limited to the 440-acre parcel and exclude the North Forty.

We accept appellant Ashley's citation of *Montgomery v. Rief*, 5 Utah 495, 50 Pac. 623, as illustrative of the very principles which prevent Ashley from now asserting that Hill could ever have asserted the status of a third party beneficiary. Their extract from the above case points out that "there must be an *intention* on the part of the contracting parties to secure some direct benefit to him". The case also notes that "there must be some *privity* or some *obligation* or *duty* from the promisor to the third party which will enable him

to enforce the contract.” And the extract from the opinion finally states that “there must be some *legal right* on the part of the third party *to adopt and claim the benefit* of the promise or contract.” (Emphasis ours.)

CONCLUSION.

That Ashley cannot invoke the doctrine of relation has been determined in the proceedings below and that theory has not been advanced on this appeal. That Ashley cannot apply the doctrine of third party beneficiary is evident from their failure to meet the conditions expounded by their own authorities. They point out in their brief “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.” But the doctrine of third party beneficiary does not apply merely because it subsequently appears that a party would have been benefited if there had been an intention to confer benefits upon him. There is absolutely no evidence indicating that, when the modification agreements were entered into, any of the parties thereto had any intention or duty or right or power to contract for the benefit of R. C. Hill.

It is respectfully submitted that the decree of the trial court which awards to Meagher full title to the

North Forty as against the claims of Ashley should be affirmed.

Dated, San Francisco, California,
October 29, 1951.

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