

1953

N. J. Meagher v. Uintah Gas Company et al : Answer to Petition for Rehearing

Utah Supreme Court

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Herbert Van Dam; Gilbert C. Wheat; Attorneys for Respondent;

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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,
et al.,

Defendants and Appellants.

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ANSWER TO PETITION FOR REHEARING.

HERBERT VAN DAM,

Felt Building, Salt Lake City 1, Utah,

GILBERT C. WHEAT,

311 California Street, San Francisco 4, California,

Attorneys for Respondent

N. J. Meagher.

INDEX

	Page
Statement of points	a
Answer to the petition.....	1
Argument	3
Conclusion	12

STATEMENT OF POINTS.

1. The Court correctly holds that the lands are subject to the outstanding lease.
2. The Court correctly holds that Meagher is the transferee of an undivided one-half interest in the rights of the lessee.
3. The Court correctly holds that Meagher's amended reply does not plead a new or different cause.
4. The Court correctly holds that the document of October 21, 1944, transferred to Meagher the then interest of Stock.
5. The Court correctly holds that the document of transfer was supported by a consideration.
6. The Court correctly holds that the equitable defenses raised by Appellant Juhan were not sustained.
7. The rights of Appellant Juhan are adequately defined.
8. No question raised by Appellant Juhan remains undecided.
9. The decision is correct as a matter of law and is sustained by the facts.

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ANSWER TO PETITION FOR REHEARING.

*To the Honorable Chief Justice and Justices of the
Supreme Court of the State of Utah:*

Respondent does not presume to suggest that this court lacks power to grant rehearing if it so desires. Yet, in the orderly administration of justice, the highest courts, including this one, recognize that litigation must have an end, and therefore have developed self-imposed limitations upon the privilege of rehearing.

The traditional grounds for rehearing are well established. Rehearing is not granted unless a decisive question has been overlooked or the court is apprehensive that

error has been made with respect to an important principle of law. Essentially, the limitation upon rehearing is that it will not be employed as a device to give the losing party another day in court merely to reargue issues which have been clearly raised, thoroughly argued and briefed, and definitely decided.

Notwithstanding that the petition at bar charges this court with error as to nearly every point covered by the opinion, it does not urge that anything was overlooked or was not considered. It could not do so in the face of an opinion so thoroughly considered and so clearly expressed.

Any suggestion that an important principle of law was erroneously decided is subject to two answers: first, no error was committed, and, second, no new or important principle of law is involved. This case makes no oil law. The decision merely determines the legal effect of a document which transferred to respondent Meagher the interest in an oil lease formerly owned by appellant Stock. True, the opinion necessarily applies the well-established principle that interests in oil leases are subject to division and co-ownership. But although the petition skirts the edges of a challenge to this principle, it carefully avoids direct attack. Counsel for petitioners are well aware that it is part and parcel of the oil business to divide and subdivide the various types of oil titles and interests. Thus, lacking any traditional basis for rehearing, the petition seeks to re-argue the entire case.

Appellants have not seen fit to correlate the specifications of error with their argument. To avoid confusion,

this reply will be addressed to petitioners' argument section by section.

ARGUMENT.

I.

The court's opinion does not hold that its former decision determined the legal effect of the transfer from Stock to Meagher. The first opinion noted the existence of such a transfer, but clearly declined to decide any issue pertinent to its effect. The current opinion holds that the Stock-to-Meagher transfer does have the legal effect of passing to Meagher the lessee's rights then owned by Stock.

The Stock-to-Meagher document does contain words of grant which render it indistinguishable in legal effect from a quitclaim deed. This point was thoroughly briefed and considered. The final clause contained in the granting clause of the document, which reads, "insofar as it conveys the lands described," might be deemed surplusage in view of the fact that the previous words of grant are sufficient to transfer Stock's interest. But if the reader of the document is in any doubt as to the intention of the transferor, the additional phrase quoted above confirms the intention of Stock to pass his interest in the leasehold as an interest in the lands described.

II.

In this section, petitioners ignore the fact that this case is now limited to the determination of the ownership of

the lessees' interests in a leasehold which has previously been held by this court to be valid. All leases contain terms which require performance of various acts by the lessees. The mere fact that oil leases contain clauses requiring lessees to perform particular acts does not convert them to mere "performance contracts" (a phrase petitioners have coined for rehearing purposes only). Moreover, oil leases are particularly subject to division of interests and to ownership in co-tenancy. It was an undivided one-half interest in the rights of the lessee which was owned by Stock. So long as he owned that interest, and so long as he wished to retain it, he was subject to the various obligations of performance contained in the lease. He transferred it to Meagher. The remaining one-half interest in the lease was then owned by Phebus, who later transferred it to Juhan. These very petitioners, in their unrecorded agreements made between themselves years ago, recognized the divisibility of the interest owned by Stock from that owned by Phebus. They expressly referred to Stock's "half interest". In this connection, note Exhibits A-48 and A-49. Exhibit A-49 is the unrecorded agreement between Juhan and Charles S. Hill. It was entered into January 5, 1946. It contains the following language:

"A 12½% interest in the said recovery from the above described acreage belongs to said Stock, *based on his half interest*, when and if the title to his interest is sustained by a court of competent jurisdiction, or if his former interest is adjudicated as belonging to N. J. Meagher, then, and in such event,

the said Stock shall have no interest.” (emphasis ours.)

The document from which the above statement is quoted is one of several disclosing the Stock-Hill-Juhan arrangements made for the purpose of dividing up the half interest Stock had transferred to Meagher, if Juhan should succeed in wresting it back from Meagher. It was clearly understood that Stock would get nothing if Juhan should not be successful in the anticipated litigation which is this case.

The foregoing illustrates the readiness with which petitioners themselves treated these leasehold interests as divisible. The practice of dealing with oil leases and other oil interests as undivided tenancies in common is so universal as to require no further elaboration.

III.

In this section, we are again confronted with the thrice-argued question of whether Meagher could properly plead, in his amended reply, the interest in the lease which he acquired from Stock. When he filed his original complaint, he claimed all legal interests and titles in the land by asserting that he was the owner in fee simple. Then Stock transferred his interest to Meagher, at which point, Meagher, believing the lease to be a nullity, continued to assert his claim to ownership of all outstanding interests. Then Juhan filed his answer, claiming ownership of the lease by assignments from Stock as to one-half and

from Phebus as to the other half. Then this court held the lease to be valid, but it did not pass upon the question of who owned what interests therein. Then Meagher, having claimed all rights in the land, filed his amended reply to conform his claim to the limitations which had been imposed by this court in its first decision. Meagher's amended reply was in fact nothing more than a clarification of the remaining issues.

Petitioners, in this section, again refer to the lessees' rights under the lease as being mere contractual rights and argues that such rights cannot be encompassed by a pleading which claims all interests in the property.

Petitioners refer to the lease as a mere "performance contract", speak of "contractual rights" and assiduously avoid calling the interest what all know it to be, namely, an undivided one-half interest in an oil lease.

IV.

This section continues the above argument. It deals with the undivided interest in the lease which was owned by Stock as something Stock could not transfer. The absence of authorities is noteworthy. Of all the various types of legal interests evolved by the ingenuity of industry, respondent submits that none is more generally recognized as being transferable and divisible into undivided fractions than oil interests.

Of course Stock could not assign away rights which Phebus owned or rights which Juhan acquired through Phebus. From Phebus, Juhan did acquire an undivided

one-half interest in this lease. "What are those rights?" ask petitioners, but they know full well what these rights are, and no clarification of the opinion is required to spell them out. They are the rights to explore the lands and to produce oil. They are subject to the lessor's rights owned by the landowner, and they are also subject to the equal co-extensive lessee's rights owned by the co-lessee. They can be exercised with or without the co-operation of the co-tenant. The legal consequences of such action are well established. The mere fact that the lessor and the co-lessee are one person—Meagher in this case—makes no difference, and results in no merger. As lessor, Meagher has certain rights and obligations fixed by the lease. As co-lessee, he shares identical rights and obligations as are enjoyed by Juhan and his assigns. No merger of the two estates held by Meagher is involved because of the existence of the rights of Juhan and assigns. These principles are elementary and well-known to petitioners. No further elaboration of them by this court is called for.

V.

This section deals with the subject of consideration, a point strenuously urged by appellants throughout the case, decided adversely to them each time, and expressly laid to rest in the opinion under attack. The petitioners ask: "What obligations of performance were passed on to Meagher in his role of landlord?" The answer to this question discloses its cunning but disproves its sincerity. As *landlord*, Meagher undertook no obligations when he received Stock's undivided half interest in the lease. But,

as co-lessee with the Phebus-Juhan group, he obtained the same rights and became subject to the same obligations that had previously been enjoyed and borne by Stock. Moreover, by virtue of the transfer, Stock was no longer obligated as lessee.

In this section which deals with consideration, petitioners conclude by saying:

“The Modification Agreement, once oil has been discovered, carries with it a long-term obligation of performance involving the expenditure of many thousands of dollars.”

Surely appellees are not urging that Stock is still subject to those obligations notwithstanding his transfer to Meagher. Confusion is possible at this point, since Stock subsequently purchased an interest from Juhan out of the Phebus line of title, as to which he, of course, assumes lessee obligations. But these obligations have no bearing upon his former interest which he transferred to Meagher.

Irrelevant to the subject of consideration, but in this section of the petition, it is argued that, since Meagher, as landlord, could gain if the lease were defaulted, he is an antagonistic co-tenant who can force the other co-tenants to carry the financial load and risk. But Meagher, as co-tenant, is merely the successor of Stock, and certainly, if Stock had retained his interest and had not seen fit to contribute to the cost of exploration, his co-tenants could not have forced him to act otherwise. They would have been in the same position as any co-lessee whose associates will not take an active part in development. In

such cases, the active co-tenant can proceed alone. If he fails to get production, the loss is his. If he succeeds, he can charge the inactive co-tenant with the latter's share of proper expenses provided he has not been guilty of over-reaching the inactive co-tenant. In the latter situation, the law grants full recovery to the inactive co-tenant, free of the expense offset. But the point here is that Juhan and assigns are in no different position after Meagher acquired Stock's rights than they were before. There is no principle of law which requires a co-tenant to default his rights because of antagonism toward or by his associates.

VI.

Here petitioners attack the determination that Stock's interest passed to Meagher. They ask: "What was the interest, and how did it pass?" The answer to this question has been repeatedly argued, briefed, and twice decided. The interest was an undivided one-half interest in the rights of the lessee under the leasehold. It passed by virtue of a signed document from Stock to Meagher. It transferred to Meagher whatever interest Stock had in that leasehold.

Petitioners repeat that the rights of Juhan and assigns and their relationship to Meagher are not determined. This point has been answered above. There is no issue before this court under which this court may now decide how these parties must conduct themselves in the future as co-tenants. It is not the province of the

court to anticipate hypothetical controversies. The issue here is to determine ownership and title, and that determination has been made.

Petitioners argue that Juhan and assigns were not put on notice that Meagher claimed or could claim an assignment of Stock's interest. The quick answer is found in Exhibits A-48 and A-49 discussed above. They were not only notified of Meagher's claim by his complaint, but they actually knew about it and were so apprehensive that they carefully and expressly agreed between themselves that Stock would get nothing by virtue of his former interest unless Juhan, financed by Dougan, could succeed in defeating Meagher's claim in this litigation.

VII.

Petitioners' concluding section asserts that the issues of laches and estoppel against Meagher have not been determined. The defenses were pled and twice decided adversely to petitioners. Throughout the case, petitioners have sought to make it appear that they are persons who, without knowledge of outstanding claims, have innocently spent their money to develop the property. This presents a strong equitable position, but the facts are otherwise. What these petitioners did was to spend their money *after* Meagher had sued. This litigation was commenced before petitioners spent a single dollar in oil development. When they did make their expenditures, they knew that Meagher had an outstanding claim; they knew his litigation was still pending; they had discussed it

among themselves, and they had even made provision for it in their private agreements. One cannot build an estoppel by claiming he relied on the hope that his adversary would overlook his rights.

The point that possibly innocent purchasers have a position here is touched upon so lightly that respondent cannot tell whether it is actually asserted. Certainly throughout this protracted litigation no such position has been taken. The petition says that, "As to Juhan, Weber and Equity, this court makes no expression of principles of right, justice or morality." Any suggestion that Juhan, at any stage of the proceedings, was an innocent purchaser for value without notice is ridiculous. As to Weber and Equity, Juhan's assignees, the record is clear that the commencement of this litigation and the *lis pendens* thereunder (which was filed by petitioner's counsel), preceded the acquisition of any interest by these companies. Exhibit A-49 discloses that J. L. Dougan (an officer and director of Equity and Weber), as of January 5, 1946, had agreed to finance *this litigation* to support whatever title Juhan had obtained by assignment from Phebus as to one-half of the lease and from Stock as to the other half. This claimed interest from Stock was obtained by Juhan via Chas. S. Hill *after* Stock had transferred to Meagher and all concerned had full knowledge of that transfer and full knowledge that this litigation was then pending. For any of these parties to seek the role of an innocent dealing without notice was too obviously untenable to assert below. Certainly it cannot first become an issue upon rehearing.

This section suggests that this court's opinion condones reprehensible conduct. Respondent submits that the converse is true; the court has merely refused to yield to the false equities asserted by petitioners.

The statement in the petition that petitioners share their reward "with a sizeable portion of our citizenry" has not escaped our notice. The suggestion that this court will consider any political factor in reaching its decision is unthinkable. But it does disclose the weakness of petitioners' legal position.

CONCLUSION.

Respondent respectfully submits that this litigation has been thoroughly presented and considered. One by one the arguments presented by petitioners have been met and answered. Any suggestion that this court has not given the matter thorough and ample consideration is refuted by the opinion itself. It is not a basis for rehearing that substantial values are involved. Petitioners have had their day in court. Respondent submits that this protracted litigation should be brought to an end and the petition denied.

Dated, April 9, 1953.

Respectfully submitted,
 HERBERT VAN DAM,
 GILBERT C. WHEAT,
Attorneys for Respondent
N. J. Meagher.