

1954

W. N. Preas v. Ray Phebus et al : Brief of Respondents

Utah Supreme Court

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**IN THE SUPREME COURT
of the
STATE OF UTAH**

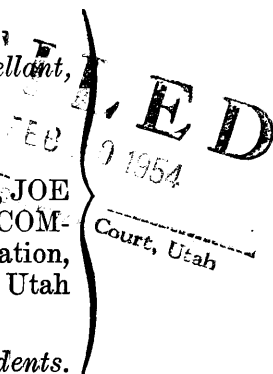
W. N. PREAS,

Plaintiff and Appellant,

— vs. —

RAY PHEBUS, PAUL STOCK, JOE
T. JUHAN, WEBER OIL COM-
PANY, a Colorado Corporation,
EQUITY OIL COMPANY, a Utah
Corporation,

Defendants and Respondents.



BRIEF OF RESPONDENTS

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Defendants and Respondents.

No. 8104

BRIEF OF RESPONDENTS

STATEMENT OF FACTS

Appellant's contention that he can prevail in this action on the theory of a suit to quiet title is dissipated by the recent decision of this Court in *Meagher v. Uintah Gas Co. et al.*, 255 P. 2d 989. The same instrument is involved in this case that the Court in the Meagher case held to have assigned a royalty interest to respondents Stock and Phebus "to be reconveyed on condition broken."

The royalty interest that appellant is contending for stems from a document (Ex. "A") denominated "Assignment and Agreement" dated February 3, 1925, whereby he obtained from M. P. Smith a royalty of 1% "of the value of all oil produced and saved" from 480 acres of land in Uintah County. The royalty interest is described in the instrument as a covenant "running with the interest of said grantors in and to the lands" and requiring payment of the royalty in the manner and at the times in the instrument stated to the grantee (Preas) or to his heirs, personal representatives or assigns.

On December 29, 1927 appellant quitclaimed his interest to N. J. Meagher of Vernal, Utah, (Ex. "B"). On October 11, 1930 appellant joined with Meagher and others in an instrument denominated "Assignment Royalty Interest" (Ex. "C") assigning one-third of the oil royalty interest to Stock and Phebus. The document is the same instrument construed by this Court in *Meagher v. Uintah Gas Co.*, supra, and appellant asks that it be given a different construction in this action.

On November 28, 1931, by Exhibit "E" signed by Meagher as first party and appellant as second party, Meagher transferred "all his right, title and interest" in the 1% royalty interest back to appellant, stating:

"It Is further understood and agreed that said 1% royalty interest covered by this agreement is the 1% royalty interest, one-third of which second party did transfer to Paul Stock and Ray Phebus by instrument dated October 11, 1930, and

now of record in Book 4 of Miscellaneous Records at pages 284, 285, 286, Uintah County, Utah records."

On April 28, 1948, by Exhibit "1", appellant and Meagher executed a document identical with Exhibit "E", except for the date and acknowledgements. Thereafter and on September 18, 1948 (T. 75) Equity Oil Company brought in a commercial oil well on the property involved. The well is some eight and one-half miles out of Vernal (T. 31), the place of appellant's residence (T. 12).

After the execution of Exhibit "C" Stock and Phebus conveyed the $\frac{1}{3}$ of 1% oil royalty to Standard Oil Company, (Ex. "D"), which company assigned to The California Company, (Ex. "G"). On March 21, 1934 The California Company reassigned the interest to Stock and Phebus, (Ex. "H"). The interest at the time of the trial was held and claimed by respondents Stock, Juhan and Weber Oil Company, with Equity Oil Company in possession of the property and obligated as operator to make royalty payments to the owners of record thereof, (Ex. "I").

Exhibit "C" was calculated by its terms to reduce outstanding oil royalties from $18\frac{1}{2}\%$ to $12\frac{1}{2}\%$ so that Stock and Phebus might negotiate "with a responsible oil production" company for the drilling of a deep test well on the ground. It was stipulated (T. 10-11) that the well therein contemplated to be drilled on the Rangely

structure in Northwestern Colorado was completed on July 31, 1933 at a depth of 7,155 feet and that no well was commenced within six months thereafter on the lands in question within the so-called Ashley Valley structure. The trial court in its Memorandum Decision (p. 35) held that after the failure of the assignees (Stock and Phebus) to drill a test well within the limitations set forth in the instrument appellant was entitled to a conveyance of the interest transferred by Exhibit "C".

This action was commenced on May 16, 1950 and the trial court held that Stock, Juhan and Weber Oil Company are now the record holders and owners of the $\frac{1}{3}$ of 1% oil royalty interest and the action barred by the provisions of Section 78-12-23, subsection 2, *Utah Code Annotated* 1953 (p. 41-42). The Statute of Limitations was expressly pleaded as a defense to the action as well as laches. There is nothing in the record to toll or otherwise avoid the defense of the Statute of Limitations.

STATEMENT OF POINTS

Appellant transferred an oil royalty interest to Stock and Phebus on October 11, 1930 (Ex. "C") to be reconveyed on condition broken. Exhibit "C" is a transfer of interest.

Appellant's right to a reconveyance accrued more than six years prior to the commencement of the action. The action is barred by the Statute of Limitations.

ARGUMENT

1. EXHIBIT "C" IS A TRANSFER OF INTEREST.

Appellant premises his argument on the proposition that no right was vested in Phebus or Stock until they performed the drilling obligations and he says that the trial court misconstrued the clear intent of the parties in that regard. That Exhibit "C" transferred an interest to Stock and Phebus is clearly stated by the terms thereof. The language "* * * the owners of the respective royalties interests as hereinafter set opposite their respective signatures, do hereby sell, assign and set over unto the parties of the second part One third $\frac{1}{3}$ of their respectice royalty interests in the oil produced and saved from said land." The further language of the instrument "If said test well upon the Ashley Valley structure shall not be drilled as herein contemplated, then in that event the parties of the second part (Stock and Phebus) hereby agree to reconvey the royalty interests herein assigned to them to the respective parties of the first part," substantiates the interest as having vested. Furthermore, appellant recognized the interest as having been assigned to Stock and Phebus by his contracts with Meagher on November 28, 1931 and April 28, 1948. This Court in *Meagher v. Uintah Gas Co.*, supra, construed the instrument, Exhibit "C", as being an assignment of the royalty interest "to be reconveyed on condition broken."

The interest having vested, there is no occasion to discuss the "unless" oil and gas lease or the proposition that appellant's remedy is a suit to quiet title.

2. APPELLANT'S RIGHT TO A RECONVEYANCE ACCRUED MORE THAN SIX YEARS PRIOR TO THE COMMENCEMENT OF THE ACTION.

Section 78-12-1, *Utah Code Annotated* 1953, requires that civil actions be commenced only within the periods prescribed in the chapter "after the cause of action shall have accrued." This Court in the case of *Last Chance Ranch Co. v. Erickson*, 82 Utah 475, 25 P. 2d 952, in a suit brought for specific performance, at page 958 held:

"It is urged by the appellant, and it is conceded by the respondent, that the action was required to be commenced within four years after the cause of action accrued. 'It is a rule of universal application,' said this court in the case of *Sweetser v. Fox*, 43 Utah, 40, at page 48, 134 P. 599, 602, 47 L.R.A. (N.S.) 145, Ann. Cas. 1916C, 620, 'that a cause or right of action arises the moment an action may be maintained to enforce it and that the statute of limitations is then set in motion.' The same doctrine is stated in 17 R.C.L. 748, Section 116. It also is well recognized that, where an agreement is absolute and unconditional, the general rule is that no demand for performance is necessary before action may be brought thereon."

In the instant case the agreement is absolute and unconditional to the effect that if the well was not commenced on the lands involved within six months after the completion of the deep test well to be first drilled on the Rangely structure in Northwestern Colorado Stock and Phebus would reconvey the royalty interest. No demand was contemplated nor was the same necessary before an action might be brought. The deep test well was completed on the Rangely structure on the 31st day of July, 1933. It was not until May 16, 1950 that this action was commenced — more than a year and a half after the discovery of oil on the premises. The action was properly held to be barred by the six year Statute of Limitations relating to written instruments, Section 78-12-23, subsection 2, *Utah Code Annotated* 1953, and most certainly by laches, so dramatically evidenced by the record.

CONCLUSION

Appellant in his academic brief would attempt to divert our energy. Appellant would welcome some expression from this Court encouraging the assertion of stale demands but, in light of what this Court has said in the Meagher case and what the legislature has said about

the timely assertion of actions upon contract, we doubt the necessity of joining with appellant in the realm of conjecture and in the mooted of academic problems.

The judgment appealed from should be affirmed.

Respectfully submitted,

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