

1983

Audrey W. Taylor And Maxine T. Fazzio v. Phillips Petroleum Company, A Delaware Corporation, D & J Oil Company, A Partnership, Roosevelt Unit, Inc., A Nevada Corporation, David H. Monnich, Ballard Ward, First National Bank & Trust of Tulsa, National Banking Association, J.A. Houston, Fern Houston, First Security Bank of Utah, A National Banking Association, Zions First National Bank :
Brief of Appellant

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IN THE SUPREME COURT OF THE STATE OF UTAH

AUDREY W. TAYLOR and MAXINE
T. FAZZIO,

Plaintiffs-
Appellants,

v.

PHILLIPS PETROLEUM COMPANY,
a Delaware corporation, D & J
OIL COMPANY, a partnership,
ROOSEVELT UNIT, INC., a
Nevada corporation, DAVID H.
MONNICH, BALLARD WARD, FIRST
NATIONAL BANK & TRUST OF
TULSA, National Banking
Association, J.A. HOUSTON,
FERN HOUSTON, FIRST SECURITY
BANK OF UTAH, a National
Banking Association, ZIONS
FIRST NATIONAL BANK, a
National Banking Association,
JOHN DOES 1 through 15 and
their heirs, successors,
assigns and all other persons
unknown claiming any right,
title, or estate or interest
in or lien upon the real
property described in the
pleadings adverse to the
Plaintiffs ownership or clouding
their title thereto,

Defendants-
Respondents.

Case No. 19160

APPEAL FROM THE JUDGMENT OF THE
DISTRICT COURT OF THE SEVENTH
JUDICIAL DISTRICT, UTAH COUNTY,
STATE OF UTAH

FILED

JUN 23 1983

Clark, Supreme Court, Utah

HONORABLE RICHARD C. DAVIDSON, JUDGE

BRIEF OF APPELLANT

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IN THE SUPREME COURT OF THE STATE OF UTAH

AUDREY W. TAYLOR and MAXINE
T. FAZZIO,

Plaintiffs-Appellants,

vs.

PHILLIPS PETROLEUM COMPANY,
a Delaware corporation,
J & J OIL COMPANY, a
partnership, ROOSEVELT
UNIT, INC., a Nevada
corporation, DAVID H.
MOONICH, BALLARD WARD,
FIRST NATIONAL BANK AND
TRUST OF TULSA, a national
banking association, J.A.
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FIRST SECURITY BANK OF
UTAH, a national banking
association, ZIONS FIRST
NATIONAL BANK, a national
banking association. JOHN
DOES 1 THROUGH 15, and their
heirs, successors and
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any right, title, estate or
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the real property described
in the pleadings adverse to
the plaintiffs' ownership or
clouding their title thereto,

Defendants-Respondents.

BRIEF OF APPELLANTS

Case No. 19160

APPEAL FROM THE JUDGMENT OF THE
DISTRICT COURT OF THE SEVENTH
JUDICIAL DISTRICT, UINTAH COUNTY,
STATE OF UTAH

NATURE OF THE CASE

This is an appeal from a quiet title action brought by Audrey W. Taylor and Maxine Fazzio against Phillips Petroleum Company and its successors and assigns and other parties claiming an interest to the Plaintiffs' mineral interest in certain real property located in Uintah County, Utah, and is a companion case to Fazzio, et al vs. Phillips Petroleum Co., et al., Civil No. 19161, filed herewith.

DISPOSITION OF THE CASE IN THE LOWER COURT

The Defendant, Phillips Petroleum Company, joined by the Defendant Roosevelt Unit, Inc. responded to the Amended Complaint of the Plaintiffs by filing a Motion to Dismiss which was granted by the Honorable Richard C. Davidson, Judge of the Seventh Judicial District Court. The district court subsequently denied Plaintiffs' Motion for Reconsideration and Motion for Leave to Amend the Complaint.

STATEMENT OF THE FACTS

This is a companion case to Fazzio, et al. vs. Phillips Petroleum Co., et al., Case No. 19161, also filed for appeal before the Utah Supreme Court. In this case the Plaintiffs Audrey W. Taylor and Maxine Fazzio (hereinafter referred to as the "Plaintiffs") own mineral interests in the following-described real property located in Uintah County, State of Utah:

Township 1 South, Range 1 West, U.S.M.

Section 24: N1/2 of the NW1/4
(containing 80 acres more or less).

See Exhibit "A" hereto.

The facts surrounding this case are similar to those of the companion case, but because this matter is factually complex, certain distinctions should be emphasized by a separate brief to avoid confusion. Since there are similarities in the facts surrounding both cases and in the legal arguments supporting the Plaintiffs' position, the Court is referred to the Brief of the Appellants in Case No. 19161, which Brief is incorporated herein by reference.

The major difference between the instant case and its companion (case No. 19161) is that the lands subject to this action were included in the Roosevelt Unit (Exhibit "G" to the Affidavit of Nicholas F. McKean) whereas the lands which are the subject of Case No. 19161 were excluded from the Roosevelt Unit (See Exhibit "A" to this Brief).

Phillips' purported interest in the lands involved in this case are subject to the same defects as those in the companion case. Phillips' leasehold interest was acquired under the same leases. The 1946 lease is defective because of the fraud of Phillips against the Plaintiffs and the fact that the Plaintiffs had no intent for the 1946 lease to act as a new and separate conveyance, as set out in the first and second causes of action of the Amended Complaint. Also, because of the imprudent and unreasonable operation of these lands by Phillips and its successors and assigns, and because of their failure to further explore for potentially productive oil and gas bearing formations

underlying these lands and the surrounding areas, Phillips and the other defendants are in breach of the covenants implied in the oil and gas leases, as alleged in the third and fourth causes of action.

This quiet title action was filed May 12, 1982. The Amended Complaint was filed to correct minor errors in the names of the parties. Phillips responded by way of a Motion to Dismiss on July 26, 1982, joined by the Roosevelt Unit, Inc. Hearing was held on the Motion to Dismiss on November 9, 1982, before the Honorable Richard C. Davidson. As with all memoranda filed in this case, the main emphasis and arguments were on the companion case since it contained all of the issues of this present case, and additional issues. The arguments, as they related to the causes of action in this case, were incorporated by reference from the companion case.

On December 6, 1982, Judge Davidson issued a Minute Entry dismissing the first, second and portions of the fifth causes of action of this case with prejudice and the third and fourth causes of action and portions of the fifth cause of action without prejudice. Motion to Reconsider and Motion for Leave to Amend the Complaint were filed by the Plaintiffs and denied by the district court. Thereafter, this appeal was taken.

ARGUMENT

- I. THE STANDARD ON APPEAL REQUIRES THAT FACTS ALLEGED IN THE AMENDED COMPLAINT BE ACCEPTED AS TRUE AND INTERPRETED IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFFS.

The standard on appeal in this case is identical to the standard which governs the companion case. The factual allegations plead in the Amended Complaint must be accepted as true and viewed in a light most favorable to the Plaintiffs. This court is referred to the Brief filed in the companion case for a more complete discussion of points and authorities relating to the standard on appeal.

- II. THE DISTRICT COURT ERRED BY RESOLVING FACTUAL ISSUES IN ITS DECISION GRANTING PHILLIP'S MOTION TO DISMISS.

A. The court improperly dismissed without prejudice the Plaintiff's third and fourth causes of action when it found, as a matter of fact, that adequate notice of the default had not been given to Phillips.

The third and fourth causes of action in this present case are identical to the fifth and sixth causes of action against Phillips in Case No. 19161. They allege that Phillips breached the implied covenants of the oil and gas leases in question to develop the subject parcel and further explore for oil and gas. The district court ruled that "adequate notice of default and opportunity to correct had not been given to the defendant Phillips." The question of notice and its adequacy are questions to be determined by the trier of fact and not by the court in its motion to dismiss. The record shows that there has been substantial contact between the parties concerning the problems and delays in the development of the subject parcel, especially of the deeper formations which are not included within the

Roosevelt Unit participating area. Again, the court is requested to refer to the specific points and authorities relating to this point in the companion brief filed in Case No. 19161.

B. The district court improperly dismissed Plaintiffs' first cause of action on factual grounds.

The first cause of action of the Amended Complaint of this case is identical to that of the first cause of action in the companion case. It alleges that at the time the 1945 leases were executed, Phillips did not have authority to conduct business within the State of Utah. Under Section 18-8-5, Utah Code Ann. (1943), then in effect, the leases were void. Phillips induced the Plaintiffs to execute another lease in 1946. As alleged in the Amended Complaint, Phillips misled the Plaintiffs as to the validity of the 1945 leases, and the Plaintiffs relied upon such misrepresentation to their detriment in executing the 1946 lease.

The district court dismissed the first cause of action with prejudice stating in its Minute Entry that "the Plaintiffs ... had notice or could have discovered the facts which they now claim to give rise to the allegation of fraud on the part of Phillips Petroleum." This is clearly a finding fact by the district court and as such must be reversed on appeal to allow plaintiffs to have their day in court to prove these allegations to be true. The Court again is referred to the points and

authorities made in the appellant's brief filed in case No. 19161.

C. The district court failed to recognize factual issues contained in the second cause of action of the Amended Complaint in dismissing it with prejudice.

As with the first cause of action, the second cause of action of the Amended Complaint of this case is identical to the companion case. This cause of action raises factual issues as to the intentions of the Plaintiffs when they executed the 1946 lease. As alleged in the Amended Complaint, it was their intent only to correct errors contained in the 1945 leases. There was no intent to execute a new lease on the property, and as such the 1946 lease related back to and inherited the same defects as the 1945 leases, and was therefore void. The district court ruled that the 1946 lease was a new lease and replaced the 1945 leases.

It should be clear from the Minute Entry of the court dismissing with prejudice the second cause of action that it failed to recognize factual issues relating to the intent of the Plaintiffs when executing the 1946 lease, taking from the Plaintiffs their right to a trial on this issue. Reference is made to the brief of the Appellant in case No. 19161 for a more complete discussion of the points and authorities supporting this argument.

CONCLUSION

This case involves lands which were leased to Phillips Petroleum Company by the Plaintiff and her husband and parents. The leases were joined to the Roosevelt Unit. Unlike the lands which are the subject of the companion case, No. 19161, these lands were included in the participating area of the Roosevelt Unit.

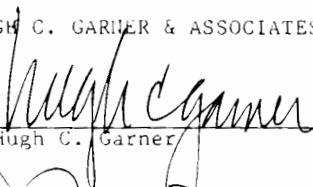
The same errors which plague the district court's judgment dismissing the companion case (Case No. 19161) infect its decision dismissing the instant case. The district court permitted itself to act as the trier of fact at the initial stages of this action by concluding that no adequate notice had been given to Phillips of its breach of certain implied covenants almost thirty years ago. Likewise, the district court found fact when it concluded that the Plaintiffs did not discover, nor could have discovered, the fraud of Phillips in acquiring the 1946 lease from the Plaintiffs, and that there was intent on the part of the Plaintiffs to grant a new lease by the execution of the 1946 lease. These errors require the reversal of the district court's judgment in this case and its remand.

For these reasons, Plaintiffs-Appellants respectfully request that this Court reverse the district court's judgment granting Defendants-Respondents Motion to Dismiss the Amended Complaint and remand the case.

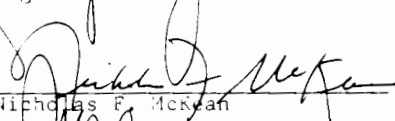
Respectfully submitted this 23rd day of June, 1983.

HUGH C. GARNER & ASSOCIATES, P.C.

By


Hugh C. Garner

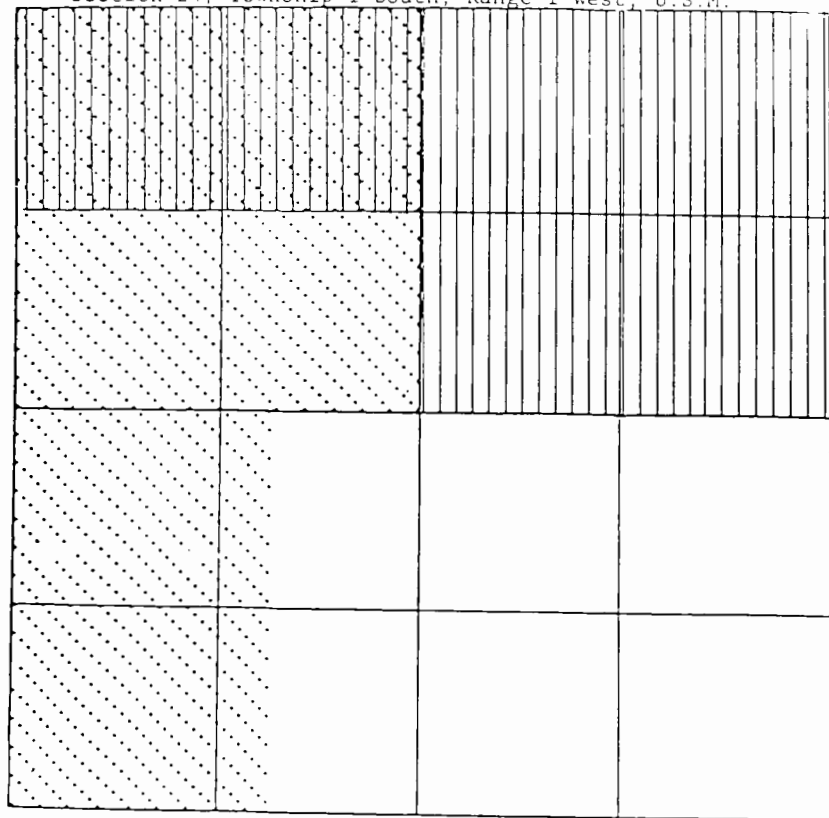
By


Nicholas F. McKean

By


Randy K. Johnson

Section 24, Township 1 South, Range 1 West, U.S.M.



1945/1946 leases



Taylor, et al. v. Phillips
Petroleum Co., et al.
Case No. 19160



Roosevelt Unit



Fazzio, et al. v. Phillips
Petroleum Co., et al.
Case No. 19161



1954 lease

EXHIBIT "A"

CERTIFICATE OF MAILING

I hereby certify that on the 23rd day of June, 1983, a true and correct copy of the foregoing Brief of Appellant was mailed, postage prepaid, by United States Mail, to the following:

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