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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

RUBY MAE CONSTANCE, ET AL.

Plaintiffs

V.

**AUSTRAL OIL EXPLORATION
COMPANY, INC., ET AL.**

Defendants

* **CIVIL ACTION NO. 2:12-CV-1252**
* **(LEAD CASE) CONSOLIDATED WITH**
* **2:12-CV-1253 (MEMBER CASE)**
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* **JUDGE MINALDI**
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* **MAGISTRATE JUDGE KAY**
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ORDER

Considering the Motion to Stay Proceedings, Motion for a More Definite Statement, Motion to Strike, Partial Motion to Dismiss for Failure to State a Claim, and Motion for Preliminary Hearing in Response to Plaintiffs' "First Supplemental Petition [Doc. 65], filed by Wainoco Oil and Gas Company (Wainoco); the Motion for More Definite Statement Pursuant to Rule 12(e) and Partial Motion to Dismiss Pursuant to Rule 12(b)(6) [Doc. 88], filed by Beem Oil and Gas Company (Beem); Beem's Motion for Preliminary Hearing [Doc. 78]; Plaintiff's Motion to Strike [Doc. 100]; Smith Production Company of Mississippi's Motion for Preliminary Hearing and Motion to Dismiss for Failure to State a Claim [Doc. 61 in case no 2:12-cv-1253]; Duncan Oil's Company's Motion for More Definite Statement and Motion to Dismiss for Failure to State a Claim [Doc. 100 in case no. 2:12-cv-1253]; and BP America Inc.'s Motion for a More Definite Statement Pursuant to FRCP 12(e) [Doc. 85], in conjunction with all the various Oppositions and Replies filed in response to the aforementioned Motions [See, e.g., Docs. 23, 26 in case no. 2:12-cv-1253, 51, 55, 60, 90, 92, 98, 102, 105, 106, 107, 108], and for the reasons set forth in the accompanying Memorandum Ruling,

IT IS ORDERED that the defendants' Motions [Docs. 65, 88, 61 in case no. 2:12-cv-1253, and 100 in case no. 2:12-cv-1253] are **DENIED AS MOOT** insofar as they seek dismissal pursuant to Rule 19 of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the defendants' Motions [Docs. 65, 85, 88, and 100 in case no. 2:12-cv-1253] be and hereby are **DENIED** insofar as they seek a more definite statement pursuant to Federal Rule of Civil Procedure 12(e).

IT IS FURTHER ORDERED that the defendants' Motions to Dismiss for Failure to State a Claim [Docs. 65, 88, 61 in case no. 2:12-cv-1253, and 100 in case no. 2:12-cv-1253] be and hereby are **GRANTED** as to the plaintiffs' claims for recovery of civil fruits, recovery based on the defendants' ultra-hazardous activity, and for obligations owed by a servitude owner.

IT IS FURTHER ORDERED that the defendants' Motions to Dismiss for Failure to State a Claim [Docs. 65, 88, 61 in case no. 2:12-cv-1253, and 100 in case no. 2:12-cv-1253] as to the plaintiffs' claims for fraud be and hereby are **GRANTED**. Dismissal of the fraud claim, however, shall be without prejudice to the right of the plaintiffs. Should the plaintiffs be able to present a sufficient factual basis for fraud in a timely fashion, they are free to do so. *See, e.g., Adner v. Int'l Paper Co.*, No. 13-cv-0368, 2013 U.S. Dist. LEXIS 143476, at *11-12 (W.D. La. Aug. 30, 2013).

IT IS FURTHER ORDERED that the defendants' Motions to Dismiss for Failure to State a Claim [Docs. 65, 88, 61 in case no. 2:12-cv-1253, and 100 in case no. 2:12-cv-1253] as to the plaintiffs' claims under the continuing tort doctrine be and hereby are **GRANTED**.

IT IS FURTHER ORDERED that the defendants' Motions to Dismiss for Failure to State a Claim [Docs. 65, 88, 61 in case no. 2:12-cv-1253, and 100 in case no. 2:12-cv-1253] as to the plaintiffs' claims for continuing trespass be and hereby are **GRANTED**.

IT IS FURTHER ORDERED that the defendants' Motions to Dismiss for Failure to State a Claim [Docs. 65, 88, 61 in case no. 2:12-cv-1253, and 100 in case no. 2:12-cv-1253] as to the plaintiffs' claims for unjust enrichment be and hereby are **GRANTED**.

IT IS FURTHER ORDERED that the defendants' Motions to Dismiss for Failure to State a Claim [Docs. 65, 88, 61 in case no. 2:12-cv-1253, and 100 in case no. 2:12-cv-1253] as to the plaintiffs' claims for punitive damages be and hereby are **DENIED** at this time.

IT IS FURTHER ORDERED that the defendants' Motions to Dismiss for Failure to State a Claim [Docs. 65, 88, 61 in case no. 2:12-cv-1253, and 100 in case no. 2:12-cv-1253] as to the plaintiffs' claims for restoration of the property to its original condition be and hereby are **DENIED** at this time.

IT IS FURTHER ORDERED that Wainoco's Motion to Dismiss for Failure to State a Claim [Doc. 65] as to the plaintiffs' claims for recovery under Louisiana Civil Code Article 2688 be and hereby is **GRANTED**. However, as to the plaintiffs' claims under Louisiana Civil Code Article 2688 against all other defendants, the Motions [Docs. 88, 61 in case no. 2:12-cv-1253, and 100 in case no. 2:12-cv-1253] are **DENIED** until such time as those defendants have made a showing that Article 2688 likewise is inapplicable to their respective lease agreements.

IT IS FURTHER ORDERED that the defendants' Motions to Dismiss [Docs. 65, 88, 61 in case no. 2:12-cv-1253, and 100 in case no. 2:12-cv-1253] any of the plaintiffs' breach of contract claims on the basis of prematurity be and hereby are **DENIED**.

IT IS FURTHER ORDERED that the defendants' Motions to Dismiss [Docs. 65, 88, 61 in case no. 2:12-cv-1253, and 100 in case no. 2:12-cv-1253] as to any of the plaintiffs' claims on the basis of prescription be and hereby are **DENIED** at this time.

IT IS FURTHER ORDERED that the defendants' Motions to Dismiss [Docs. 65, 88, 61 in case no. 2:12-cv-1253, and 100 in case no. 2:12-cv-1253] be and hereby are **DENIED** at this time as to the plaintiffs' claims under Section 324A of the Restatement (Second) of Torts.

IT IS FURTHER ORDERED that the defendants' Motions for Preliminary Hearing [Docs. 61 in case no. 2:12-cv-1253, 100 in case no. 2:12-cv-1253, 65 & 78] be and hereby are **DENIED**.

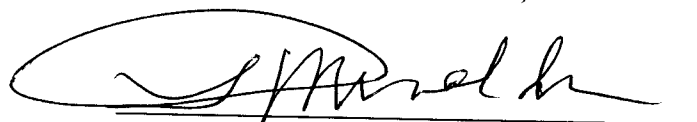
IT IS FURTHER ORDERED that the plaintiffs' Motion to Strike [Doc. 100] is hereby **DENIED AS MOOT**.

IT IS FURTHER ORDERED that the defendants' Motion to Stay [Doc. 65] be and hereby is **DENIED**.

IT IS FURTHER ORDERED that Wainoco's prior Motions [Docs. 23, and 26 in case no. 2:12-cv-1253] are hereby **DENIED AS MOOT**, insofar as the substance of those Motions was reasserted in Wainoco's later Motion [Doc. 65] which has now been considered in full and ruled upon.

IT IS FURTHER ORDERED that Beem's prior Motion [Doc. 51] is hereby **DENIED AS MOOT**, as Beem's later Motion [Doc. 88] is substantially the same Motion; however, the latter was filed after the submission of the plaintiffs' First Supplemental and Amended Petition for Damages [Doc. 59], and the court's disposition of Beem's later Motion [Doc. 88] adequately addresses all arguments made by the defendant, Beem.

Lake Charles, Louisiana, this 13 day of December, 2013.



PATRICIA MINALDI
UNITED STATES DISTRICT JUDGE