NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 0776

QUALITY ENVIRONMENTAL PROCESSES, INC., MICHAEL X. ST. MARTIN AND VIRGINIA RAYNE ST. MARTIN

VERSUS

I. P. PETROLEUM COMPANY, INC., INTERNATIONAL PAPER COMPANY, MONTGOMERY, BARNETT, BROWN, READ, HAMMOND & MINTZ, L.L.P., AND JOHN Y. PEARCE

Judgment Rendered: FEB 25 2013

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On Appeal from the 32nd Judicial District Court
In and for the Parish of Terrebonne
Trial Court Number 149,973

The Honorable John R. Walker, Judge Presiding

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BEFORE: PARRO, HUGHES, AND WELCH, JJ.

Parro, J., concurs in the result.

HUGHES, J.

This is an appeal of a judgment rendered in favor of the plaintiffs in an action for mineral rights and royalties, decreeing 100% ownership of the mineral rights in the plaintiffs, and ordering the payment of over eleven million dollars in royalties, penalties, interest, and attorney fees to plaintiffs. The defendants have appealed, asserting the trial court erred in failing to grant a declinatory exception of lis pendens,[1] in failing to grant an exception of prescription, and in awarding damages. Finding this appeal appropriate for disposition as a summary opinion, pursuant to the Uniform Rules of Louisiana Courts of Appeal, Rule 2-16.2, we set forth only the controlling facts and law.

A June 23, 1992 cash sale from Contran Realty Corporation to plaintiff Michael X. St. Martin, conveying the immovable property at issue in this case, provided, in pertinent part, as follows:

> VENDOR and VENDEE acknowledge, with the exception of [the] tract more particularly described on Exhibit "B", and without intending to interrupt any prescriptive periods which may presently be accruing, that the oil, gas and other minerals lying in, on or under the subject property have been previously conveyed, and that the existence of mineral servitudes shall not constitute a failure of title under the limited warranty set forth hereinabove.
>
> VENDOR specifically reserves all of the oil, gas and other minerals situated on or under [the] tract described on Exhibit "B". . . .
>
> * * *
>
> VENDOR and VENDEE agree that the act of sale herein is made subject to all such servitudes and/or pipeline rights of way, canal servitudes, and other noncancelable surface leases, as are in actual existence, or of record, including without limitation, the following, to-wit:

[1] We note that the defendants' motions to strike and exceptions of no cause of action, no right of action, and lis pendens were denied by the trial court on May 23, 2007, and the defendants' applications for supervisory review as to the motions and exceptions resulted in writ denials by this court. See **Quality Environmental Processes, Inc. v. I.P. Petroleum Company, Inc.**, 2007-1080, 2007-1081 (La. App. 1 Cir. 8/7/07) (unpublished). We find no reason to disturb the ruling of this court as to the exception of lis pendens.

> (a) Canal Use Agreement dated January 26, 1970, by and between Southdown, Inc. and Union Oil Company of California, recorded in COB 489, Folio 685, under Entry No. 376196, records of Terrebonne Parish, Louisiana.
> (b) Surface Lease dated April 6, 1983, by and between Contran Corporation and The Superior Oil Company, recorded in COB 919, Folio 627, under Entry No. 703480, records of Terrebonne Parish, Louisiana.
>
> * * *

Exhibit "B" to the St. Martin cash sale stated, in pertinent part, as follows:

> A tract of land comprising 105 acres, more or less, being the Southwesternmost 105 acres more or less in the SW/4 of Section 3, T18S-R16E, Terrebonne Parish, Louisiana, a plat of which is attached as Exhibit "D" to that certain Mineral Conveyance from Southdown, Inc. to Southdown Exploration, Inc., dated August 31, 1966, recorded under Entry No. 315794, Records of Terrebonne Parish, Louisiana.

Since the June 23, 1992 cash sale to Mr. St. Martin did not purport to transfer any mineral rights in the property, he was put on notice that he was not receiving, at that time, any mineral rights in the property.

Further, at the time Mr. St. Martin purchased the immovable property at issue, the 1966 conveyance referenced in Exhibit "B" of the cash sale to him had been recorded and appeared in the public records. The recorded "1966 Deed" purported to convey the mineral rights under dispute in this case, and it is not disputed that minerals were produced and royalties were paid under the 1966 deed and/or pursuant to subsequent dispositions and/or to successors-in-title. Though the 1966 deed itself did not contain a metes and bounds description, it stated, in pertinent part:

> SOUTHDOWN, INC., a Louisiana corporation, hereinafter referred to as "Grantor", does hereby grant, bargain, sell, convey, set over and deliver unto SOUTHDOWN EXPLORATION, INC., a Louisiana corporation, hereinafter referred to as "Grantee", all of Grantor's right, title and interest in and to the oil, gas and other minerals located in, on or under the lands outlined in blue on the plats marked Exhibits "A" through "H", which said Exhibits are attached hereto and made a part hereof in full by reference, covering lands located in St. James, Terrebonne, Ascension and Lafourche Parishes,

Louisiana. The lands outlined in blue on Exhibits "A" through "H" are herein sometimes referred to as "Productive Area".

Grantor and Grantee herein agree to execute such further instruments as may be necessary or desirable to effect the conveyance set out hereinabove; in this connection, the parties agree forthwith to cause an accurate survey to be made of each of the areas outlined in blue, and the detailed survey plats, when approved by the parties and filed of record, shall be substituted for Exhibits "A" through "H" and shall constitute a part of this agreement. It is agreed particularly that if the area outlined in blue does not include all existing units or acreage assigned to producing wells within the Productive Area, the conveyance will be [illegible text[2]] dated retroactively to include such additional acreage.

On the plats annexed hereto to Exhibits "A" through "C", there is outlined in red an additional area adjacent to each of the Productive Areas shown on said plats. The lands lying between the limits of the Productive Area as outlined in blue and the red outline in each instance are hereinafter referred to as the "Protective Area". The Protective Area shall also be surveyed forthwith; and the detailed survey plats, when approved by the parties and filed of record, shall also be substituted for Exhibits "A" through "G" and shall constitute a part of this agreement.

For all purposes of this agreement, the sands known to be productive or capable of production in the Productive Area, which may be subject to the additional assignments herein provided for relating to the Protective Area are agreed by the parties to be described and fully identified on the descriptive list thereof attached hereto and expressly made a part hereof as Exhibit "I", hereinafter referred to collectively as "Known Productive Sands" or individually as "Known Productive Sand".

As an essential and integral part of the consideration paid for this conveyance, Grantor binds and obligates itself to convey to Grantee, from time to time as required, all of its right title and interest in and to the oil, gas and other minerals in each Known Productive Sand when and if such sand is established to be productive or capable of production in the Protective Area. It shall be considered that a Known Productive Sand in the Protective Area will have been established to be productive or capable of production when a well located in the Protective Area is completed in such sand as a producer or as a well capable of production of oil or gas, or whenever any Known Productive Sand in the Protective Area shall have been included within the geographical confines of a unit created for such sand by or pursuant to an order of the Louisiana Department of Conservation or other governmental agency having jurisdiction to create units if said unit has, as the unit well, a well productive or capable of production. If and when any Known

[2] The copy of the 1966 deed filed into evidence was a poor copy of the original and several words were illegible; however, the illegible portions were minor and do not affect the decision we render herein.

Productive Sand is established to be productive or capable of production within the Protective Area is above provided, Grantor shall then be obligated to convey to Grantee the mineral rights in such Known Productive Sand as to the entirety of that Protective Area; and this obligation shall exist irrespective of whether the productive portion of the Protection Area forms a common reservoir with the present Productive Area of said Known Productive Sand or is separated therefrom.

For the purposes hereof, any unit on which is located a shut-in gas well shall be deemed to constitute a producing Conservation Unit. The term "Conservation Unit" shall also include units hereafter established, existing units hereafter revised and reservoir-wide or field-wide units now or hereafter established or revised.

Each obligation to make such additional mineral conveyances as to Known Productive Sands shall arise immediately and automatically whenever any Known Productive Sand is established to be productive or capable of production in any portion of the Protective Area as provided above. This agreement and obligation of Grantor is and shall be a continuing one which shall be binding during the entire life of the mineral ownership of Grantee in the respective Productive Areas; provided, that Grantor's obligation under this agreement shall terminate and no longer be effective as to any mineral servitude created hereunder which may have prescribed. As heretofore provided, conveyances shall be made from time to time whenever the conditions set forth above shall occur, and the execution of the conveyance of mineral rights in an area or as to one Known Productive Sand shall not relieve Grantor of the obligation to make additional conveyances in the same area or as to additional Known Productive Sands if the conditions set forth above requiring such additional conveyances thereafter occur. Each conveyance shall be effective as of the date that a Known Productive Sand, or Known Productive Sands, is established to be productive or capable of production in the Protective Area. Each obligation of Grantor to make an additional assignment shall be subject to enforcement through specific performance by Grantee.

Grantor further agrees that during the existence of this obligation, any alienation, mortgage or encumbrance granted by Grantor and affecting the Protective Areas lying between the blue lines and the red lines on Exhibits "A" through "G" will specifically stipulate that the vendee, mortgagee or grantee thereunder shall accept the same, subject to the terms and conditions of this agreement, and shall commit itself to the performance of Grantor's obligations hereunder as to the lands affected by such alienation, mortgage or encumbrance, unless Grantor, in such Act, reserves all mineral rights as to such lands.

This Agreement is herein specifically made subject to the terms and conditions of the present Oil, Gas and Mineral Leases covering and affecting the Productive Area, together with all recorded agreements, instruments or documents presently in

force and effect covering and affecting the said leases and presently binding upon Grantor.

This Agreement and all rights, interests and titles of the parties hereto shall be binding upon and inure to the benefit of the respective parties, their heirs, successors and assigns. [Emphasis added.]

Exhibit "I" to the "1966 Deed" listed more than sixty separate "Sands" in the parishes of St. James, Terrebonne, Ascension, and Lafourche, twenty of which were in the "Lake Hatch - Sunrise Field, Terrebonne Parish, Louisiana." Exhibit "D" to the "1966 Deed" consisted of a map captioned as the "Lake Hatch Field [-] Sunrise Field [-] Terrebonne Parish, LA." Although the map lacked certain other identifying information, the designation "16E" appeared in large type in the lower left hand corner,[3] the map was gridded in numbered sections,[4] "Lake Hatch" was depicted as falling at the intersection of Sections 11, 12, and 14, the "Intracoastal Waterway" was shown as traversing Sections 1-3, the "Minor Canal" was shown as descending through Sections 2, 12, and 13, and the names of various landowners were inscribed on tracts throughout the map. The mineral rights disputed by the plaintiffs fall within this field. Further, though the 1966 conveyance required subsequent "accurate" surveys to be made and thereafter "substituted for Exhibits 'A' through 'H,'" which was not done, it also required title to any subsequently discovered "Productive Sand" to be conveyed and that the "Agreement and all rights, interests and titles of the parties hereto shall be binding upon and inure to the benefit of the respective parties, their heirs, successors and assigns."

[3] Though the word "Range" did not appear with the designation "16E" on the map, Exhibit "I" to the conveyance showed all of the twenty "Sands" for which mineral rights were being conveyed in the "Lake Hatch - Sunrise Field, Terrebonne Parish, Louisiana," and these were stated as being in "Range 16 East."

[4] The Section numbers appearing on the map, reading from the upper left-hand corner, were: 83, 82, three unnumbered sections (these section numbers are shown by Exhibit "A," filed as an exhibit in the instant suit, to be 60, 61, and 62), 63, 64, 65, 66, 1, 2, 3, 10, 11, 12, 13, 14, and 15.

After a thorough review of the record presented in this appeal, we conclude that the June 23, 1992 cash sale to Mr. St. Martin did not transfer any mineral rights in the property sold, as the parties thereto expressly stated that no mineral rights in the property were being conveyed; therefore, Mr. St. Martin had actual notice that the mineral rights were owned by some other person(s). See **McClendon v. Thomas**, 99-1954 (La. App. 1 Cir. 9/22/00), 768 So.2d 261, 264 (indicating that, where possible, the intent of the parties should govern the extent of the property conveyed). We also conclude that the public records were, at all pertinent times, sufficient to give plaintiffs notice that Mr. St. Martin did not obtain ownership of any mineral rights by virtue of the June 23, 1992 cash sale, as the 1966 conveyance of mineral rights, referenced hereinabove, and subsequent transfers to successors-in-title were sufficient notice of such title in other persons. See **Citizens National Bank v. National Union Fire Insurance Company**, 597 So.2d 1130, 1131 (La. App. 1 Cir. 1992); **Amoco Production Company v. Slaughter**, 491 So.2d 760, 763 (La. App. 1 Cir.), writs denied, 494 So.2d 333, 540, 541, and 542 (La. 1986); **Bishop Homes, Inc. v. Devall**, 336 So.2d 313, 318-19 (La. App. 1 Cir.), writ denied, 338 So.2d 1155 (La. 1976) (holding that it is well settled in Louisiana law that where a deed is partially defective or erroneous as to description, it is nevertheless susceptible of conveying property, provided the property intended to be transferred can be ascertained with certainty with the aid of such extrinsic evidence as is admissible under the rules of evidence).

For these reasons, we find the trial court erred in holding that the plaintiffs obtained one hundred percent ownership rights on the date of purchase, encompassing the mineral rights at issue, and in awarding damages, penalties, interest, attorney fees, and costs to plaintiffs in this

matter. Therefore, we vacate the October 28, 2011 judgment. However, because the ruling by the trial court obviated the need for the trial court to render judgment as to the plaintiffs' claims based on after-acquired titles to the mineral rights at issue (i.e., by subsequently-acquired mineral deed(s) and/or settlement agreement(s) by and/or with Noble Energy, Inc. and/or Phillips Petroleum Company), we remand for a ruling on these claims by the trial court.

CONCLUSION

For the reasons assigned, the judgment of the trial court granting judgment in favor of the plaintiffs, Michael X. St. Martin, Virginia Rayne St. Martin, and Quality Environmental Processes, Inc., is vacated, and the matter is remanded for further proceedings in accordance with the foregoing. All costs of this appeal are to borne by the plaintiffs, Michael X. St. Martin, Virginia Rayne St. Martin, and Quality Environmental Processes, Inc.

JUDGMENT VACATED; REMANDED.