NOT DESIGNATED FOR PUBLICATION

HENRY LEON SARPY	*	**NO. 2009-C-0945**
VERSUS	*	
		COURT OF APPEAL
EXXON MOBIL CORPORATION	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

*** * * * * * ***

ON APPLICATION FOR WRITS DIRECTED TO
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2005-4929, DIVISION "L-6"
HONORABLE KERN A. REESE, JUDGE
* * * * * *
JUDGE MICHAEL E. KIRBY
* * * * * *

(Court composed of Judge James F. McKay, III, Judge Michael E. Kirby, Judge Max N. Tobias, Jr.)

McKAY, J., CONCURS
TOBIAS, J., CONCURS AND ASSIGNS REASONS

MICHAEL G. DURAND
ONEBANE LAW FIRM
P.O. BOX 3507
LAFAYETTE, LA 70502-3507
COUNSEL FOR RELATOR (EXTEX PRODUCTION, INC.)

DONALD R. ABAUNZA
JOE B. NORMAN
BRIAN A. JACKSON
KATHERINE SEEGERS ROTH
LISKOW & LEWIS
ONE SHELL SQUARE, 50TH FLOOR
701 POYDRAS STREET
NEW ORLEANS, LA 70139-5099
COUNSEL FOR RELATOR (EXXON MOBIL CORPORATION)

NOT DESIGNATED FOR PUBLICATION

THOMAS G. O'BRIEN
FRANCIS V. LIANTONIO, JR.
ADAMS & REESE LLP
701 POYDRAS STREET
SUITE 4500 ONE SHELL SQUARE
NEW ORLEANS, LA 70139
COUNSEL FOR RELATOR (THE MERIDIAN RESOURCE & EXPLORATION LLC)

STEPHEN B. MURRAY
STEPHEN B. MURRAY, JR.
ARTHUR M. MURRAY
JESSICA W. HAYES
MURRAY LAW FIRM
650 POYDRAS STREET, SUITE 1100
NEW ORLEANS, LA 70130
AND
STUART H. SMITH
MICHAEL G. STAG
AMBER E. CISNEY
SMITH STAG, L.L.C.
365 CANAL STREET, SUITE 2850
NEW ORLEANS, LA 70130
AND
RALPH R. ALEXIS, III
PORTEOUS, HAINKEL & JOHNSON, L.L.C.
704 CARONDELET STREET
NEW ORLEANS, LA 70130
COUNSEL FOR RESPONDENTS (HENRY LEON SARPY AND ROBERT HENRY SARPY, JR., ET AL.)

WRIT GRANTED; JUDGMENT REVERSED.

STATEMENT OF THE CASE

Exxon Mobil Corporation ("Exxon"), The Meridian Resource & Exploration LLC ("Meridian"), and Extex Production, Inc. ("Extex") (collectively "defendants"), seek supervisory review of the trial court judgment rendered orally from the bench on June 19, 2009, denying defendants' exception of venue. Meridian and Extex further seek supervisory review of the trial court's denial of their exception of improper cumulation of actions and joinder of parties. For the reasons that follow, we grant the writ and reverse the judgment of the trial court.

FACTS

Plaintiffs, are the owners in indivision of land located in St. Charles Parish, Louisiana, known as the New Sarpy or Good Hope Field. Exxon's predecessor, Humble Oil and Refining Company, was the original holder of an Oil Gas and Mineral Lease ("Lease") on the property, dating back to 1937. On April 1, 2000, Exxon assigned its interests under the Lease to Meridian, who continued to conduct oil and gas exploration and production activities on the property. On June 16, 2003, Meridian assigned its interest under the Lease to Extex.

On April 13, 2005, plaintiffs sued the defendants in the Civil District Court for the Parish of Orleans. The petition alleged that defendants operated wells and equipment on the property that produced waste materials including hazardous and toxic substances. The suit further alleges that defendants abandoned and improperly closed oil waste pits on the property, and represented to plaintiffs, the Louisiana Department of Environmental Quality and the Louisiana Department of Natural Resources that the closed pits complied with regulatory standards. The petition asserted joint and solidary liability among defendants.

On March 27, 2008, plaintiffs filed a first supplemental and amending petition alleging: 1) breach of the Lease, seeking a termination of the Lease against Extex, the current holder of the Lease; 2) breach of contract pursuant to a 1985 Unit Agreement wherein Exxon agreed to maintain or restore the property to as near its natural state as practical; 3) negligence; 4) strict liability; 5) misrepresentation/fraudulent concealment; 6) *contra non valentem*/continuing tort; 7) damages; 8) punitive damages; and 9) injunctive relief.

In response, defendants filed exceptions of improper venue and improper cumulation of actions and joinder of parties, as well as other exceptions. The matters were brought before the trial court on June 19, 2009, and were denied from the bench.

DISCUSSION

Exception of Venue.

The following facts were stipulated:

> Extex, Meridian, and Exxon are foreign business entities licensed to do business in Louisiana.

> Exxon and Meridian's principal place of business establishments in Louisiana, as well as their agents for service of process, are in East Baton Rouge Parish.
>
> Extex's principal place of business establishment in Louisiana, as well as its agent for service of process, is in Lafayette Parish.
>
> The property at issue is located in St. Charles Parish.
>
> None of the defendants were domiciled in or had their principal place of business in Orleans Parish.
>
> Plaintiffs signed the original Lease (with Exxon's predecessor) in Orleans Parish in 1937.
>
> Plaintiffs and Exxon signed a Unit Agreement affecting a portion of the property in Orleans Parish in 1985.
>
> The assignment of the Lease to Meridian was not executed in Orleans Parish.
>
> The assignment of the Lease to Extex was not executed in Orleans Parish.
>
> Extex never performed any work, operations, or service under the Lease or Unit Agreement in Orleans Parish.

Defendants assert that because plaintiffs' claims stem from their interests in and to immovable property, or their right in, to, or against immovable property, and because none of the defendants are domiciled in Orleans Parish, La. C.C.P. art. 80(A)(1) mandates venue in St. Charles Parish, as follows:

> A. The following actions may be brought in the parish where the immovable property is situated or in the parish where the defendant in the action is domiciled:
>
> (1) An action to assert an interest in immovable property, or a right in, to, or against immovable property, except as otherwise provided in Article 72;

Plaintiffs objected to the mandatory application of La. C.C.P. art. 80(A)(1), arguing that the article must be read in conjunction with La. C.C.P. art. 80(A)(3),

which allows for any otherwise proper venue to be applied in this case because a breach of a lease is involved. Article 80(A)(3) states:

> A. The following actions may be brought in the parish where the immovable property is situated or in the parish where the defendant in the action is domiciled:
>
> (3) An action arising from the breach of a lease of immovable property, including the enforcing of a lessor's privilege or seeking the payment of rent. **The venue authorized by this Subparagraph shall be in addition to any other venue provided by law for such action.** (Emphasis added).

Plaintiffs argue that article 80(A)(1) does not apply to this case because this action does not assert an interest in immovable property, as plaintiffs are the owners. Instead, plaintiffs submit that they are bringing an *in personam* action for damages under the Lease, to which section (A)(3) specifically applies.

Plaintiffs further argue that La. C.C.P. art. 80(A)(3) allows for venue to be predicated on La. C.C.P. art. 76.1, which permits venue in Orleans Parish because the 1937 Lease and 1985 Unit Agreement were executed there. Article 76.1 provides: "An action on a contract may be brought in the parish where the contract was executed or the parish where any work or service was performed or was to be performed under the terms of the contract." Additionally, plaintiffs submit that La. C.C.P. art. 74 allows venue in Orleans Parish because that is where Exxon's alleged misrepresentations occurred. Article 74 states, in pertinent part: "An action for the recovery of damages for an offense or quasi offense may be brought in the parish where the wrongful conduct occurred, or in the parish where the damages were sustained."

Finally, plaintiffs assert that because venue is proper in Orleans Parish as to Exxon (based on the fact that the Unit Agreement was executed in Orleans Parish and Exxon's misrepresentations allegedly occurred in Orleans Parish), La. C.C.P.

art. 73 allows for venue in Orleans Parish as to all defendants as joint and solidary obligors. Specifically, article 73 provides:

> A. An action against joint or solidary obligors may be brought in a parish of proper venue, under Article 42 only, as to any obligor who is made a defendant provided that an action for the recovery of damages for an offense or quasi-offense against joint or solidary obligors may be brought in the parish where the plaintiff is domiciled if the parish of plaintiff's domicile would be a parish of proper venue against any defendant under either Article 76 or R.S. 13:3203.

Defendants counter that La. C.C.P. art. 80(A)(3) does not apply because this action does not involve a "breach of a lease of immovable property" as contemplated by the article. Defendants submit that subsection (A)(3) by its language only contemplates personal rights, such as those in a predial lease of immovable property. They argue that an oil and mineral lease is not a lease of immovable property in the traditional sense. Pursuant to La. R.S. 31:15, "a landowner may . . . lease has right to explore and develop his land for production of minerals and to reduce them to possession." We note also the provision of La. R.S. 31:16 which designates a mineral lease as a "mineral right" and provides that mineral rights are real rights.

In further support of their argument that La. C.C.P. art. 80(A)(1) governs exclusively in this instance, defendants rely on *CLK Co. v. CXY Entergy, Inc*., 98-0802 (La. App. 4 Cir. 9/16/98), 719 So.2d 1098.

In *CLK*, plaintiff filed suit in Orleans Parish to enforce the terms of a Confidentiality Agreement, which provided for the conveyance of a royalty interest to it in return for services rendered to defendant. Pertinent operating agreements had been recorded in Vermilion Parish, and plaintiff filed a notice of *lis pendens* in that parish. Defendant, CXY, excepted to venue, arguing that venue was proper in

Vermilion Parish, where the immovable property subject to the royalty interest was located, or Lafayette Parish, where its principal business establishment was located, not Orleans Parish. Plaintiff opposed the exception, arguing that its claim was based on a contract that was entered into in Orleans Parish; and, therefore, La. C.C.P. art. 80 did not apply.

This Court rejected plaintiff's argument and held that the right asserted by plaintiff, though stemming from a contract, was one brought to enforce an interest in or a right in, to, or against immovable property, and therefore the exclusive venue provisions of La. C.C.P. art. 80 were held to apply to plaintiff's cause of action. Specifically, the Court stated:

> CLK presents several theories of recovery, but they all arise out of the same transaction and the failure of CXY to convey the overriding royalty interest. It is the immovable nature of this royalty interest and the fact that CLK's claim to the immovable overriding royalty is triggered by CXY's alleged acquisition of interests in immovables that are the object of the Confidentiality Agreement, that limits CLK's venue choices. Because CLK is both seeking damages on a contract and asserting an interest in immovable property, there is plainly a conflict between the venue provisions of Article 76.1 and Article 80. Regardless of CLK's purported theories of recovery, its claim remains essentially one for the overriding royalty interest which is a claim "asserting an interest in immovable property, or a right in, to, or against immovable property." As such, pursuant to Article 45(1), LSA-C.C.P. art. 80 "governs the venue exclusively." Venue is proper only in Vermilion Parish, where the immovable is situated.

CLK, 98-0802, at pp. 21-22, 719 So.2d at 1109.

In *Ironwood Resources., Ltd. v. Baby Oil, Inc*., 2005-0467, (La. App. 3 Cir. 2/1/06), 921 So.2d 1189, plaintiffs were the owners of an undivided working interests in and to certain oil, gas, and mineral leases in the Deer Island Field of Terrebonne Parish, Louisiana. The leases were governed by a Model Form

Operating Agreement. Plaintiffs filed suit in Lafayette Parish, alleging violations of and/or seeking enforcement of various provisions of the Operating Agreement, as well as damages and attorney fees. The Operating Agreement was executed in Lafayette Parish, the last duly designated operator was domiciled in Lafayette Parish, and the assignment whereby defendants acquired their interests in the subject oil, gas, and mineral leases was executed in Lafayette Parish. Defendants filed an exception of improper venue, asserting that, pursuant to La. C.C.P. art. 80(A)(1), the matter should proceed in Terrebonne Parish, not Lafayette Parish. Plaintiffs argued that Lafayette Parish was the proper venue pursuant to La. C.C.P. art. 76.1. Based in part on this Court's analysis in *CLK*, the Third Circuit held that venue was proper in Terrebonne Parish pursuant to La. C.C.P. art 80(A)(1).

In the present case, the trial judge agreed with plaintiffs' argument and applied article 80(A)(3). However, based on the jurisprudence cited herein, that decision was in error. Plaintiffs are seeking damages both in contract (La. C.C.P. art. 76.1) and in tort (La. C.C.P. art. 74). Additionally, as in *CLK* and *Ironwood*, plaintiffs are seeking to protect their interest in immovable property by enforcing the terms of a mineral lease. Pursuant to the jurisprudence, and the application of La. C.C.P. art. 45, La. C.C.P. art. 80(A)(1) governs exclusively in this instance. Accordingly, because the defendants are foreign corporations not domiciled in this state, venue is only proper in St. Charles Parish, where the immovable property is located. Defendants' exception of venue should have been granted.

Exception of Improper Cumulation of Actions and/or Improper Joinder of Parties.

Defendants submit that because venue is not proper as to Meridian or Extex in Orleans Parish, even if venue is proper as to Exxon in Orleans Parish, the

actions against Meridian and Extex are improperly cumulated. It is therefore argued that the exception of improper cumulation of actions and joinder of parties should have been granted as to Meridian and Extex since the actions against Meridan and Extex do not share a common venue with the action against Exxon in Orleans Parish.

La. C.C.P. art. 461 defines the cumulation of actions as "the joinder of separate actions in the same judicial demand, whether by a single plaintiff against a single defendant, or by one or more plaintiffs against one or more defendants." When two or more defendants are joined in the same suit there must be: (1) a community of interest between the parties joined; (2) each of the actions cumulated must be within the jurisdiction of the court and is brought in the proper venue; and (3) all of the actions cumulated must be mutually consistent and employ the same form of procedure. La. C.C.P. art. 463. If the court lacks jurisdiction of, or if the venue is improper as to, one of the actions cumulated, that action shall be dismissed. La. C.C.P. art. 464.

The exception of improper cumulation and joinder is based exclusively on defendants' argument that venue is improper in Orleans Parish. Because La. C.C.P. art. 463(2) requires that venue be proper as to both actions for a proper cumulation, the issue is whether venue is proper in Orleans Parish as to Extex and Meridian. Plaintiffs argue that venue is proper as to Exxon in Orleans Parish where the contract was signed and the misrepresentations took place. Plaintiffs further argue that Exxon, Extex, and Meridian are joint or solidary obligors, making venue proper under La. C.C.P. art. 73.

Based on our finding that venue is not proper in Orleans Parish, the exception of improper cumulation of actions and improper joinder of parties is moot.

CONCLUSION

For the foregoing reasons, the trial court erred in denying the exceptions of venue and improper cumulation. Accordingly, we grant the writ and the trial court's judgment is reversed.

WRIT GRANTED; JUDGMENT REVERSED.