CITRUS REALTY, LLC	*	**NO. 2018-CA-0516**
VERSUS	*	**COURT OF APPEAL**
CONSTANCE CARRERE PARKER AND CAROL CARRERE THOMPSON	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

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APPEAL FROM
25TH JDC, PARISH OF PLAQUEMINES
NO. 60-249, DIVISION "A"
Honorable Kevin D. Conner, Judge
* * * * * *
Judge Regina Bartholomew-Woods
* * * * * *
(Court composed of Judge Rosemary Ledet, Judge Sandra Cabrina Jenkins, Judge Regina Bartholomew-Woods)

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REVERSED AND REMANDED
JANUARY 30, 2019

Appellants, Constance Carrere Parker ("Parker") and Carol Carrere Thompson ("Thompson") (collectively, "Appellants"), appeal the February 20, 2018 judgment of the district court granting summary judgment in favor of Appellees, Citrus Realty, LLC ("Citrus") and White Oak Realty, LLC ("White Oak") (collectively, "Appellees"). For the reasons that follow, we reverse the judgment of the district court and remand for further proceedings.

PROCEDURAL AND FACTUAL BACKGROUND

Appellants are the former owners of a ten percent (10%) interest in three (3) noncontiguous tracts of land—Idlewild, Narin, and Braithwaite—located in Plaquemines Parish, Louisiana ("the Property"). In 1999, Appellants agreed to sell their share in the Property to Citrus, subject to a mineral servitude. Citrus agreed to the servitude, but insisted on a surface use restriction. Citrus acquired Appellants' ten percent (10%) interest in the Property pursuant to a cash sale, which provided in part:

> Seller hereby reserves all forms of minerals, including oil and gas, in, on or as a part of the soil or geological formations on or underlying the Property, however without the right to utilize the surface to

> explore for minerals but with the right to explore for minerals by off-site directional drilling or other means not involving the surface of the Property. This reservation specifically reserves to Seller all executive rights and/or other rights to grant mineral leases or conveyances encumbering and/or affecting the Property. The parties hereto further agree, as provided in La. R.S. 31:75, that an Interruption [sic] of prescription for the nonuse of the above described mineral servitude resulting from unit operations, whether conventional or compulsory, shall extend to the entirety of the hereinabove described tract of land burdened by this mineral servitude regardless of the location of the well or of whether all or only part of the hereinabove described tract of land is included in the unit.

White Oak acquired the remaining ninety percent (90%) interest in the Property subsequent to Appellants' sale to Citrus.

In 2013, Appellees began to mine a portion of the Property subject to the mineral reservation for clay. Appellants asserted their ten percent (10%) interest in the clay pursuant to the mineral servitude. In response, Citrus sought a declaratory judgment that Appellants' mineral servitude did not extend to the clay. White Oak was added as a party plaintiff by an amended petition filed on April 3, 2013. Appellants filed affirmative defenses, an answer, and a reconventional demand seeking a declaratory judgment that their servitude covered all forms of minerals.

The matter came before the district court on summary judgment in June 2013. Plaintiffs-Appellees claimed that because clay cannot be excavated without going onto the Property or by offsite drilling, the act of sale did not reserve for Defendants-Appellants a mineral servitude in the clay. In opposition, Defendants-Appellants argued the plain language of the act of sale provides that the mineral servitude covers "all forms of minerals, including oil and gas, in, on or as a part of the soil or geological formations on or underlying the Property" and that the surface use restriction only limits their right to use the surface of the Property for exploration and does not restrict their right to share in the production. Defendants-

Appellants alternatively argued that, to the extent the reservation is ambiguous, extrinsic evidence shows that the parties intended solid minerals to be covered by the servitude. On November 27, 2013, the district court denied the motion, setting the matter for further discovery and indicating it would consider the issue on subsequent motion.[1] Appellees sought supervisory review, which this Court denied. *Citrus Realty, LLC, et al. v. Parker, et al.*, 2013-1691 (La.App. 4 Cir. 2/11/14)(unpub.).

After this Court's denial of the writ application, the parties engaged in additional discovery. Appellants filed a motion for partial summary judgment as to whether the mineral servitude covered clay and whether the servitude had prescribed for non-use. The district court took the matter under advisement and ultimately entered a denial and reasons therefor on January 16, 2018. Appellees subsequently moved for summary judgment for purposes of obtaining a final, appealable judgment. On February 20, 2018, the district court granted Appellees' motion, adopting its prior reasons for judgment as to Appellants' motion for partial summary judgment.

The district court reasoned that Appellants "may not benefit from the activities of another" by virtue of their servitude, as use of the servitude must be by its owner, the owner's representative, or someone acting on the owner's behalf, La.R.S. 31:42, which Appellees were not, La.R.S. 31:43. The court also relied on La.R.S. 31:44, which provides that servitude owners "may adopt operations or production by a person other than those designated by Article 42 [i.e., those of

[1] Considering that the district court's reasons for judgment suggest Appellants' claims "fail[ed] as a matter of law[,]" it is not clear to this Court why the original motion for summary judgment was denied based on insufficient discovery. Appellants rightly point out that the law and facts of the case did not change between the 2013 and 2016 motions for summary judgment.

owners] if his servitude includes the right to conduct operations of the kind involved." Relying thereon, the court reasoned that the contract of sale's restrictions on Appellants' surface use restricted their ability to mine for clay, which requires disturbing the surface of the land. The court further found that even if adoption were possible, Appellants failed to take appropriate action for adoption as required by La.R.S. 31:46.[2] The Court further reasoned that the rights granted by the servitude extended only to Appellants' right "to explore for minerals, and not to share in the minerals excavated by the property owners." In the district court's estimation, Appellants could only mine clay by disturbing the surface, which was prohibited. Furthermore, the court found Appellants' servitude extinguished by prescription from non-use for ten (10) years, despite Appellants' contention that such non-use had been interrupted by the operation of an oil and gas well on one of the three (3) tracts of land. However, the well in question had been authorized by the Louisiana Commissioner of Conservation, and the court cited the Commissioner's lack of jurisdiction over exploration for clay as a distinguishing factor.

STANDARD OF REVIEW

The applicable standard of review was discussed by the Louisiana Supreme Court in *Duncan v. U.S.A.A. Ins. Co.*, 2006-363, pp. 3-4 (La. 11/29/06), 950 So.2d 544, 546-47:

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[2] La.R.S. 31:46 provides provides:

> Adoption of the operations of another is accomplished when the servitude owner files for registry in the conveyance records of the situs of his servitude an instrument describing the land subject to the servitude, identifying the operations, specifying the date on which the operations commenced, and expressing the intent to adopt them as his own.

> A motion for summary judgment is a procedural device used when there is no genuine issue of material fact. The summary judgment procedure is favored and designed to secure the just, speedy, and inexpensive determination of every action and shall be construed to accomplish these ends. La. C.C.P. art. 966(A)(2). Appellate courts review summary judgments *de novo* under the same criteria that govern the district court's consideration of whether summary judgment is appropriate. *Schroeder v. Board of Supervisors of Louisiana State Univ.*, 591 So.2d 342, 345 (La.1991). A motion for summary judgment is properly granted only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue of material fact, and the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966.

ANALYSIS

In deciding the merits of this matter, we rely on provisions of the Louisiana Mineral Code, La.R.S. 31:1, *et seq*. (hereinafter, "The Mineral Code"). The Mineral Code "is applicable to all forms of minerals, including oil and gas[,]" and "to rights to explore for or mine or remove from land the soil itself, gravel, shells, subterranean water, or other substances occurring naturally in or as a part of the soil or geological formations on or underlying the land." La.R.S. 31:4. We note that the parties do not appear to dispute the general applicability of The Mineral Code to the substance at issue. Appellants submit it is "undisputed" that "[c]lay is a mineral." Appellees, on the other hand, have stated that "[w]hile [Appellants] refer to 'clay,' the mineral at issue is the soil at the Property[,]" and "soil" is explicitly contemplated by the broad language of La.R.S. 31:4. Accordingly, we find The Mineral Code is applicable to the substance discussed in this case, and this opinion will refer to that substance as "clay."

The parties also agree that basic contract interpretation principles apply to the act of sale reserving the mineral servitude. La.C.C. arts. 2045-57. It is clear that Appellants, in reserving their rights to "all minerals," also agreed to a surface use

restriction which prohibited any exploratory activities requiring disturbance of the surface of the property. This restriction is at the heart of the dispute, as Appellees would suggest that Appellants' inability to disturb the surface should also limit their ability to recover any profits from Appellees' labors in extracting minerals, such as clay, which necessarily require disturbing the surface, despite the clear and explicit reservation of rights in "all minerals" in the agreement. La.C.C. art. 2046. Indeed, the district court's judgment relied on this theory in granting summary judgment in Appellees' favor, finding that Appellants could not and did not adopt Appellees' operations, pursuant to La.R.S. art. 31:46, because the former could not, on its own, conduct operations of the same kind as the latter as a result of the surface use restriction.

As an initial matter, we agree with Appellants that the trial court's primary reliance on Articles 42 through 46 of The Mineral Code is misplaced, as those articles fall under Chapter 4, Part 4, Subpart C of The Mineral Code. Chapter 4 concerns "The Mineral Servitude" generally, while Part 4 concerns "Commencement of Prescription." Subpart A, applicable to "General Principles," includes Article 28, which provides "[p]rescription of nonuse of a mineral servitude commences from the date on which it is created." Subpart B, Article 29, in turn, states "[t]he prescription of nonuse running against a mineral servitude is interrupted by good faith operations for the discovery and production of minerals." Subpart C of Part 4, under which fall the articles relied upon by the district court, is entitled "By Whom a Use May be Made." "Principles of judicial interpretation of statutes are designed to ascertain and enforce the intent of the Legislature in enacting the statute." *Sultana Corp. v. Jewelers Mut. Ins. Co.*, 2003-0360, p. 3 (La. 12/3/03), 860 So.2d 1112, 1115. "It is well established in matters

of statutory interpretation that courts begin with the plain language and structure of the statutes." *Barringer v. Robertson*, 2007-0802, p. 9 (La.App. 1 Cir. 10/31/08, 2008 WL 4763539. "Judicial statutory interpretation must give consideration and meaning to an entire statutory framework and context." *Dalme v. Blockers Manufactured Homes, Inc.*, 2000-00244, p. 3 (La.App. 3 Cir. 1/25/01), 779 So.2d 1014, 1017. Given the foregoing authority, we presume the Legislature deliberately placed Articles 42 through 46 under that part of Chapter 4 concerning prescription for a reason. We, therefore, conclude that those articles are relevant to the issue of "use" as it relates to prescription, and not to the substantive issues presented by the facts of this case. For example, the trial court relies on Article 46 of The Mineral Code relative to "Procedure for Adoption" to suggest Appellants did not "adopt" the operations of Appellees and therefore cannot benefit from Appellees' labors in extracting the clay. However, those adoption procedures relate to adoption of another's use for purposes of interrupting prescription.

Here, the agreement is clear in Appellants' reservation of rights in all minerals. "A provision susceptible of different meanings must be interpreted with a meaning that renders it effective and not with one that renders it ineffective." La.C.C. art. 2049. Appellees attempt to impart a different meaning by reference to the surface use restriction, suggesting the agreement excludes those minerals that require surface disruption. To do so would violate the requirement of Article 2049, as it would render the explicit preservation of rights in "all minerals" meaningless in favor of an implied exclusion of those minerals requiring surface disruption for extraction. However, the agreement can be interpreted to give meaning to both provisions – that is, Appellants have reserved rights in all minerals, but limited their ability to explore for certain of those minerals.

However, the parties dispute exactly what "rights" were preserved by the contract – the rights to explore and share in production, or uniquely to explore. "The basic mineral rights that may be created by a landowner are the mineral servitude, the mineral royalty, and the mineral lease." La.R.S. 31:16. A mineral servitude is defined as "the right of enjoyment of land belonging to another for the purpose of exploring for and producing minerals and reducing them to possession and ownership." La.R.S. 31:21. Appellees submit that Appellants attempt to seek the benefits provided by a separate portion of The Mineral Code, those provided by a "mineral royalty," which is "the right to participate in production of minerals from land owned by another or land subject to a mineral servitude owned by another." La.R.S. 31:80. Appellees submit that the servitude only allows one to actively explore and produce minerals on one's own and enjoy the profits thereof.

However, La.R.S. 31:82 provides that "[a] mineral royalty may be created either by a landowner who owns mineral rights or by the owner of a mineral servitude." For a servitude owner to create a right to a mineral royalty necessarily requires the servitude owner to possess that right first. *See Town of Homer v. United Healthcare of Louisiana, Inc.*, 41,512, pp. 9-10 (La.App. 2 Cir. 1/31/07), 948 So.2d 1163, 1169 (citing *Del-Remy Corp. v. Lafayette Ins. Co.*, 616 So.2d 231, 233 (La.App. 5th Cir. 1993); *Carte Blanche Corp. v. Pappas*, 216 So.2d 917, 919 (La.App. 2d Cir. 1968)). Indeed, Louisiana jurisprudence also acknowledges that a mineral royalty is an inferior right dependent on the existence of a superior mineral interest. *See Union Oil & Gas Corp. of La. v. Broussard*, 237 La. 660, 710-11, 112 So.2d 96, 113-14 (1958) (providing that a royalty right is but an appendage of a mineral right, and a mineral right, due to its nature, is necessarily superior to a royalty right); *Horton v. Mobley*, 578 So.2d 977, 983 (La.App. 2d Cir. 1991)

(stating that a mineral royalty is "an inferior and conditional real right" to share in the production of minerals from land owned, or subject to a mineral servitude owned, by another "*when and* if production is obtained" (emphasis in original)).

Furthermore, the comments to La.R.S. 31:16 provide that "the [mineral] lease, like the mineral servitude, conveys rights to explore and develop, to produce minerals, to reduce them to possession, ***and to assert title to a specified portion of the production***" (emphasis added); *see also Wall v. Leger*, 402 So.2d 704, 709 (La.App. 1st Cir. 1981) ("There is a functional similarity between the lease and the servitude in that the mineral lessee obtains a right to a share of production and to operating rights much the same as the owner of a mineral servitude.").

In light of the foregoing, we find that the district court erred in granting summary judgment in favor of Appellees, and accordingly we reverse its judgment in that regard.

CONCLUSION

For the foregoing reasons, we reverse the district court's judgment granting summary judgment in favor of Appellees. Accordingly, we remand this matter to the district court for further proceedings.

REVERSED AND REMANDED