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OIL AND GAS

ESTOPPEL BY DEED — AFTER ACQUIRED TITLE

Oklahoma. Two recent Oklahoma Supreme Court decisions involved the doctrine of after-acquired title. In *Hanlon v. McLain*¹ grantor executed a mineral deed, including a general warranty, at a time when there was a valid outstanding mortgage on the property involved. The mortgagee later brought suit to foreclose, grantee disclaimed, and the property was sold at the sheriff's sale in the foreclosure proceeding. In *Equitable Royalty Corp. v. Hullet*² grantor, who owned no interest in the property, joined with her husband, who owned the full title, in the execution of a mineral deed conveying a one-half mineral interest and including unconditional covenants of warranty. There were two outstanding mortgages at that time, one of which was later foreclosed in an action to which the owners of said mineral interest were parties. In both cases the grantor later acquired full title to the property by mesne conveyances, and the mineral grantees brought separate suits to quiet title as to their interests in the minerals.

The grantor in the *Hanlon* case defended on the ground that the title acquired by the grantor was a new, separate and independent title and was not to be disturbed by the statute³ with reference to an after-acquired title. Since the judicial sale in the foreclosure proceeding cut off the title of both grantor and grantee, the grantee was now estopped, the grantor argued, to set up any claim adverse to that of the grantor for the reason that in the foreclosure action the grantee filed a general disclaimer of any right, title or interest in and to the property involved and asked to be discharged without cost. The grantor in the *Hullet* case argued that she was not bound by the covenant of warranty in the mineral deed because

¹Okla....., 242 P. 2d 732 (1952).

²Okla....., 243 P. 2d 986 (1952).

³ 16 OKLA. STAT. ANN. (Perm. ed.) § 17: "All rights of a mortgagor or grantor in and to the premises described in the instrument and existing at the time or subsequently accruing, shall accrue to the benefit of the mortgagee or grantee, and be covered by his mortgage or conveyed by his deed, as the case may be."

she signed only as the wife of her husband and the doctrine of estoppel was not applicable since the grantor did not make a false representation, which is a necessary element of estoppel.

The decisions from the substantial majority of states support the rule that a grantor is estopped from asserting an after-acquired title as against his grantee to whom he has given a deed with or without warranty of title, as distinguished from a quit claim, no matter what conduit or circuitry of conveyancing the title may pass through in returning to the grantor.⁴ There is authority for a holding that a statute with reference to an after-acquired title does not apply to a title acquired from an independent source after the conveyance containing the warranty is set aside or rendered nugatory by judicial decree,⁵ but these decisions appear to be in the minority.

Although the definitions of "disclaimer" by the courts are not uniform,⁶ the Oklahoma Supreme Court interpreted the purpose and function of its disclaimer statute to admit plaintiff's claim and to permit the disclaimant to be relieved from all costs.⁷ A disclaimer confers no right upon the grantor, as defendant in the foreclosure action, and this also appears to be the Texas view.⁸

An Oklahoma statute provides that a married woman may sue and be sued in the same manner as if she were not married.⁹ The tendency of modern authority is toward the endorsement of the estoppel against a married woman, especially when legislation has clothed her with partial or complete capacity to deal with her property as though she were single. Even independently of this legislation there is a decided preponderance of authority sustain-

⁴ See Note, 58 A. L. R. 345, 350 (1929).

⁵ *Schultz v. Cities Service Oil Co.*, 149 Kan. 148, 86 P. 2d 533 (1939); *Rowell v. Rowell*, 119 Mont. 201, 174 P. 2d 223 (1946).

⁶ See cases cited in 26 C. J. S., *Disclaimer*, p. 1331.

⁷ *Brusha v. Board of Education*, 41 Okla. 595, 139 Pac. 298 (1913).

⁸ *Tull v. Wilbarger County*, 36 S. W. 2d 316 (Tex. Civ. App. 1931).

⁹ 12 OKLA. STAT. ANN. (Perm. ed.) § 926.

ing the estoppel against her.¹⁰ In Texas this doctrine usually does not apply to a married woman.¹¹

In neither case was there any contention of fraud or false representations, but none was needed since estoppel *in pais* is not involved and estoppel by deed alone is applicable. The distinction between the two is that estoppel by deed appears from the face of a conveyance and may conclude a party without reference to the moral qualities of his conduct.¹²

The Oklahoma Supreme Court, in holding that both grantors came within the doctrine of estoppel by deed and could not escape their promise to warrant and forever defend the title they had conveyed, continued to align itself with the majority of American courts which apply the doctrine of after-acquired title in favor of the grantee in a mineral deed containing unconditional covenants of warranty. For the court to have decided otherwise and to have allowed a grantor to evade his obligation to protect his grantee in a mineral deed, by permitting a mortgage to be foreclosed and repurchasing the property from the purchaser at a sheriff's sale, could easily open the door to fraud in future transactions.

EXCEPTION TO SPACING RULE

Texas. In *Railroad Commission of Texas v. Humble Oil & Refining Co.*¹³ Maxwell acquired a 194-acre tract in 1916 and leased the same tract in 1925 for oil and gas development. In 1926 Maxwell perfected a ten-year limitation title to the tract in issue, a 0.95-acre tract out of the adjoining tract that had been enclosed by Maxwell's fence since 1916. In 1929 Maxwell conveyed a one-fourth undivided interest in the 194-acre tract; subject to the 1925 mineral lease. When the 1925 lease expired in 1930, Maxwell, along with the mineral grantee, leased for oil and gas development

¹⁰ 3 POMEROY, EQUITY JURISPRUDENCE (5th ed.) § 814, p. 237.

¹¹ See cases cited in 1 Oil & Gas Reporter 841 (1952).

¹² 31 C. J. S., *Estoppel*, § 10, p. 195.

¹³Tex., 245 S. W. 2d 488 (1952).

the south 150 acres of the 194-acre tract. It was not until 1946 that Maxwell leased the 0.95-acre tract to a lessee who filed with the Railroad Commission an application for a permit to drill on the 0.95-acre tract in order to prevent confiscation; *i.e.*, to prevent along with the mineral grantee, leased for oil and gas development depriving the owner or lessee of a fair chance to recover the oil and gas in or under his land.

Rule 37 is the general spacing rule in Texas. In the absence of an express order as to a given field, the spacing pattern provides that oil wells shall be located at least 660 feet from each other and not nearer a boundary line than 330 feet, unless such a well is necessary to prevent waste or to avoid confiscation. The order provides for an exception to the rule, to prevent confiscation, as to any tract which became too small for a regular location prior to 1919, the year the rule was promulgated. The same is true if the small tract was sold or reserved prior to oil activity in the area. Where confiscation is the ground, a permit will not be granted if the tract as to which an exception is necessary was subdivided from a tract as to which an exception would not be necessary, subsequent to oil and gas activity in the vicinity in question and after 1919.¹⁴

The Railroad Commission granted the application for the permit, and Humble Oil & Refining Company filed this suit to vacate the order for the reason that the 0.95-acre tract was created by a voluntary subdivision after Rule 37 had become applicable in the area involved. The district court upheld the permit, but the court of civil appeals reversed and rendered judgment for the Humble Company, holding that the 0.95-acre tract should have been included in the 1930 lease and the failure to do so amounted to a voluntary subdivision.¹⁵ The Texas Supreme Court was called upon to determine whether the 0.95-acre tract was such a sub-

¹⁴ Masterson, *A 1952 Survey of Basic Oil and Gas Law*, 6 Southw. L. J. 1, 10 (1952).

¹⁵ 241 S. W. 2d 364 (Tex. Civ. App. 1951).

division which is required to be disregarded in determining the rights to a permit to prevent confiscation of property.

The court upheld the Railroad Commission for the following reasons: (1) there was no evidence in the case to indicate that Maxwell by his actions created any conditions concerning the 0.95-acre tract in order to circumvent the application of Rule 37, and (2) the two tracts were acquired by Maxwell separately, and during the time that both tracts have been owned by him, they have never, for purposes of Rule 37, become a unit or one whole tract. Only in the event the two tracts of land came under common ownership and control, so as to constitute one tract of land, would the rule against subdivision become applicable. The Texas Supreme Court felt that the two tracts were not under common ownership in 1930, since the mineral ownership under the larger tract was different from that under the 0.95-acre tract. This case illustrates that the courts apply not only the objective test but also the subjective test of whether the small tract was sold or reserved for the very purpose of securing an exception to the general spacing rule.¹⁶

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¹⁶ 1 Oil and Gas Reporter 179 (1952).