No. 121668

IN THE SUPREME COURT OF ILLINOIS

Ramsey Herndon LLC,	)	
	)	Appeal from the Appellate Court,
Plaintiff-Appellee,	)	Fourth District 4-15-0853
	)	Justices Appleton & Steigmann,
v.	)	Justice Pope dissenting
	)	
Lisa Whiteside (f/k/a Lisa E. Luchtefeld)	)	Appeal from the Circuit Court,
d/b/a Beam Oil Company and	)	Sixth Judicial Circuit, Macon
John R. Basnett,	)	County, Illinois, No. 2015-L-27
	)	Honorable Thomas E. Little,
Defendants-Appellant.	)	Presiding

BRIEF OF THE PLAINTIFF/APPELLEE RAMSEY HERNDON, LLC

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ORAL ARGUMENT REQUESTED

I. BACKDROP

On October 30, 2009, Whiteside takes an assignment of an oil and gas lease that already had an existing under-performing well on the premises (C8) and a primary term set to expire on March 31, 2010 (C10-13). She immediately (November 13, 2009) sells an overriding royalty interest ("ORRI") to Basnett (C53, C56-57). Whiteside then reworks the well and makes it a paying proposition, but delays selling oil production until April, 2010 (C8), the month after the primary term was set to expire. Whiteside also enters into a new lease with the original lessor dated April 15, 2010, under the same terms as the original lease (C55). It must be noted that this second lease was unnecessary and possibly even a nullity since the original lease continued under its terms due to the ongoing production. Despite the continuation of the original lease, Whiteside makes no effort to pay either Ramsey Herndon its ORRI created in the 2007 assignment or Basnett his ORRI created in 2009 (C8).

Basnett, as a local concern (Fairfield, Illinois) (C36), finds out about the ongoing production and confronts Whiteside through his attorney concerning his unpaid ORRI (C54-55). Ultimately, Whiteside accedes and begins paying Basnett his ORRI, albeit under a newly (March 21, 2011) executed assignment (C55). An inescapable inference is that Whiteside executed the new assignment, as well as the new lease, to avoid having to recognize the continuing validity of Basnett's ORRI under the original lease, which validity would have applied equally to Ramsey Herndon's ORRI under the original continuing lease. Years later, Ramsey Herndon, a Colorado concern, finds out

about the ongoing oil production, and files suit to enforce its ORRI, just as Basnett had earlier done.

The most reasonable explanation for the above scenario is that Whiteside knew full well what the prior assignment documents contemplated and that she purposefully developed and implemented a scheme to avoid paying any ORRI.

II. ARGUMENT

Ramsey Herndon fully supports the decisions of the Appellate Court and the rationales set forth in these opinions. Rather than repeat those, Ramsey Herndon will focus on the criticisms and attacks launched by Whiteside.

A. Nature of Overriding Royalty Interest ("ORRI") - Whiteside proclaims that it is "well-settled" and "beyond dispute" that ORRI are interests in real estate and governed by the rules of construction applicable to property deeds. If anything is well-settled and beyond dispute, it is that ORRI are personal property, the assignment of which is governed by normal contract law, as the Appellate court so held.

Whiteside supports her position with false and misleading assertions, including the following:

1. Waiver - Whiteside claims that Ramsey Herndon did not raise the point that ORRI were interests in personal property until filing its appellate reply brief and, therefore waived the right to now assert this position. While this terminology was not specifically used in Ramsey Herndon's initial appellate brief, the following statements were made:

> "ORRI is not a right or interest created under an oil and gas lease. It is an interest created under a subsequent contractual agreement between the Lessee and a third party. Although the duration of an ORRI is tied to a lease term, it is not a component or element of the lease. Williams v. Sohio Petroleum Company, 18 Ill. App. 2d 194, 198 (4th 1958)
>
> An assignment of an oil and gas lease, alone, does not carry with it an assignment of an independent and subsequent ORRI that was created by a contractual agreement to which the lessor was not a party."

The above language, at least implicitly, distinguishes ORRI from real estate interests. When Whiteside first asserted her position that an ORRI is an interest in real estate in her appellate brief, it was perfectly within Ramsey Herndon's rights to challenge this assertion with its own assertion that ORRI is an interest in personal property in its appellate reply brief.

2. Appellate Court Changed Position - Whiteside claims that in its decision on rehearing, the Appellate Court changed its position and concluded that assignments of ORRI are governed by deed construction law. Ths is blatantly false.

The Appellate Court's discussion of the real property cases cited by Whiteside was prefaced with the following phrase:

> "If we did construe the assignment as we would a deed . . . (¶39, emphasis added)"

The Appellate Court then went on to discuss these cases and conclude that even under their holdings, the result does not change.

At no point did the Appellate Court reverse its original conclusion that ORRI are interests in personal property, the assignments of which are governed by normal contract law.

3. Taxation of ORRI - At page 11 of Whiteside's Brief, she claims that all ownership interests in active wells, including overriding royalties, are taxed as real estate under the Real Property Tax Code 33 ILCS 200/9-145 and Updike v. Smith, 378 Ill. 600 (1942). This is patently false. The referenced tax code deals with the valuation of a landowner's property, and underlying minerals. It has nothing to do with the taxation of ORRI held by non-property owners. The Updike case deals with landowner royalties, not ORRI held by others.

4. Deverick v. Bline - Whiteside cites this case for her claim that "it is well settled that an overriding royalty in an oil and gas lease is an interest in real property" (Whiteside Brief - page 19). However, overriding royalty interests are never discussed or even mentioned in this case.

This very Court eliminated the need to fret over whether the last paragraph on page 2 of the assignment to Whiteside (C24) should be construed based on property law or contract law. In Walter v. Sohio Petroleum Co., 402 Ill. 33 (1949), this Court stated:

> "We have held that the assignment of an oil and gas lease subject to a royalty or overriding royalty is a qualification upon what is conveyed" at 41.

This "subject to" language was included in the assignment to Whiteside and what she acquired was reduced by all existing royalty and overriding royalty interests, including those of Ramsey Herndon.

B. Interpretation of Whiteside Assignment

1. Presumptions - Whiteside asserts that this assignment should be construed against Ramsey Herndon since it prepared the document. There is absolutely nothing in the record to indicate which party prepared the assignment or, for that matter, whether a standard form prepared by neither was used. In any event, there is no basis for making any presumptions one way or the other.

2. Third Party Claim - Whiteside asserts that the "subject to" language with respect to overriding royalty interests only applies to such interests held by third parties. The language is plain and simple. It contains no such references or limitations. Whiteside cannot magically read this limitation into the agreement to now serve her needs.

3. All "Personal Property" - Since the Appellate Court had rejected Whiteside's argument that an ORRI was an interest in real estate, she has now developed a fall back position that the ORRI, as an item of personal property, passed to her under the Assignment and Bill of Sale.

Whiteside never raised in her appellate brief a claim that Ramsey Herndon's ORRI passed to her as personal property under the Assignment. She should not be allowed to do so now.

But, even if the court entertains this notion, the use of the term "all" in connection with personal property obtained in connection with the mineral leases or post effective time oil production cannot literally mean everything. Undeniably, that portion of the production needed to satisfy the owner's royalties and ORRI does not pass to the assignee.

C. INDUSTRY IMPACT

If any problems for purchasers of oil are created, it is not because of the Appellate Court's misapprehension of the law, it is because of Whiteside's questionable (devious) actions. Whiteside recorded a second, virtually identical lease, knowing that the original lease was still operative due to her own production activities.

Any potential buyer examining title records would see the latter recorded deed and quite naturally conclude that the earlier, recorded deed had lapsed. If this were the case, then the recorded ORRI to Ramsey Herndon under the original lease would have expired as well.

Without this second recorded deed, a perspective buyer would at least be on notice to the extent of requiring some investigation into the status of Ramsey Herndon's ORRI under the original lease.

Whiteside's dire forecasts of impeding doom to Illinois oil and gas industry are illusory and should be dismissed out of hand.

III. CONCLUSION

The assignment to Whiteside clearly and unequivocally made it subject to overriding royalty interests, period. Ramsey Herndon had such an interest associated

with the original mineral lease which remained operative due to the continuous and ongoing oil production from the leased premises.

If the court reverses the Appellate Court's sound and well-reassured opinions, Whiteside's efforts to circumvent her obligations to pay ORRI will have been successful. Accordingly, Ramsey Herndon respectfully requests that the Court affirm the Appellate Court decision and allow the clear, intended consequences of these business transactions to occur.

RESPECTFULLY SUBMITTED
RAMSEY HERNDON, LLC

By: _____
Its Attorney

CERTIFICATE OF COMPLIANCE WITH SUPREME COURT RULES 341 (a) and (b)

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained the Rule 341 (d) cover, the Rule 341(c) certificate of compliance and the certificate of service, is 7 pages.

Mark S. Cochran
One of the Attorneys for
Plaintiff-Appellee

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify, under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, that the statements set forth in this Certificate are true and correct and that a true and correct copy of the Brief of Plaintiff/Appellee was mailed to:

David M. Foreman
Foreman & Kessler, Ltd.
204 East Main Street
Salem, IL 62881

in compliance with Rule 12 of the Rules of Practice of the Illinois Supreme Court, by placing said copy in an envelope, legibly addressed to the foregoing, securely sealed and sufficiently stamped and depositing same in the United States Mail at Springfield, Illinois on the 7th day of June, 2017, all in compliance with said Rule.

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