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REAL PROPERTY

Collins v. Oxley, 897 F.2d 456

Author: Judge McWilliams

Plaintiff, Collins, the surface owner, brought suit against defendant, Oxley, the holder of the oil and gas lease. Collins alleged that Oxley's use of the surface to develop and produce oil and gas resulted in its damage. Accordingly, Collins sought damages under the Oklahoma Surface Damage Act (the "Act"). Oxley filed a motion for summary judgment, arguing that the Act did not apply to him since his leases predated the effective date of the Act. The district court granted Oxley's motion for summary judgment. The district court also ruled that since Collins conveyed his land to the Oklahoma Wildlife Department ("OWD"), he could no longer maintain an action against Oxley. Collins subsequently appealed.

The Tenth Circuit reversed and remanded in part and affirmed in part. First, the court ruled that under Oklahoma law, as it existed before the Act, the holder of an oil and gas lease only had an implied right to enter onto the surface and conduct drilling operations. The owner, however, did not have an implied right to be free of liability to the surface owner. Accordingly, the court ruled that Oxley did not have a vested right to drill without liability on Collins's land. Moreover, summary judgment for Oxley on the ground that OWD was the real party in interest, was improper. The court reasoned that Collins was the record owner of the land when the wells were drilled and the damage incurred. Also, he was the record owner when the litigation was instituted.

Amoco Prod. Co. v. Heimann, 904 F.2d 1405

Author: Judge Baldock

Defendants, the Heimanns, executed three carbon dioxide ("CO₂") and mineral leases with plaintiff, Amoco Production Company ("Amoco"), between 1971 and 1974. Each lease contained a "unitization clause" granting Amoco the right to unitize the Heimanns' mineral interests with other lands, subject to approval by "any government authority." In return, the Heimanns received a one-eighth royalty on the net proceeds from all oil, gas, and CO₂ produced on their lands. Amoco subsequently proposed to unitize the mineral rights to approximately 1.2 million acres, including the Heimanns' land (the "Bravo Dome Unit"). This proposal allocated royalties on the basis of surface acreage. The New Mexico Oil Conversation Commission ("OCC") approved the Bravo Dome Unit, finding that approval would prevent waste and protect the landowners' correlative rights. The state district court and supreme court affirmed the OCC. In 1984, Amoco filed suit in federal district court, seeking a declaratory judgment that it properly unitized the interests covered by the leases. The Heimanns counterclaimed,

alleging, *inter alia*, allocation of royalties. The jury awarded the Heimanns \$4 million on the royalty allocation claim. Furthermore, the court held that Amoco violated its duty of good faith and declared the unitization of the Heimanns' land void.

The Tenth Circuit reversed, holding that the OCC's approval of the unitization made it unnecessary for the district court to consider the lessee's good faith and precluded the Heimanns' challenge of the royalty allocation formula. The OCC is a regulatory agency whose function is similar to that of a trial court. Thus, when it approved the Bravo Dome unitization plan, it acted in a judicial capacity, and in federal court its decision is given the same preclusive effect as it would be given in New Mexico courts. Because the fairness issue was already litigated by the same parties in state courts, the Heimanns were collaterally estopped from challenging the participation formula again in federal court.

Stichting Mayflower Recreational Funds v. Newport Resources Inc., 903 F.2d 741

Author: Judge Brown

The district court dismissed plaintiff's, Stichting Mayflower Recreational Funds ("Stichting"), claim for slander of title. The district court also quieted title to the disputed parcel in favor of Stichting, but forced Stichting to reimburse defendant, Newport Resources Incorporated ("Newpark"), for expenses it incurred regarding the property. The district court then determined the parties' rights under a 1975 mining lease and awarded both sides attorney's fees. Stichting argued that the district court erred in: (1) requiring Stichting to pay Newport on the quiet title claim; (2) misconstruing the language of the mining lease; and (3) not allowing Stichting to amend its complaint to allege a claim for abuse of process. Also, both parties appealed the award of attorney's fees.

The Tenth Circuit affirmed in part, reversed in part, and remanded. First, the court found that the record did not clearly establish that Newport was lawfully entitled to the entire parcel. Newport had an equitable interest in the property even though a third party held the record title to the parcel. The district court did not abuse its discretion in fashioning an appropriate equitable remedy under the circumstances. Second, the court reversed and remanded the district court's interpretation of the 1975 mining lease. The lease allowed the lessor to determine whether a proposed mining activity "would" or "might" interfere with the lessor's actual or contemplated use of the surface. The court held that it must be presumed that the parties of the lease knew the effect of the words chosen and intended those words to have their ordinary meaning. The district court's judgment allowed mining activities that might interfere with Stichting's contemplated use of the property. Third, the court reversed the award of attorney's fees. The 1975 mining lease provided that the prevailing party is entitled to recover attorney's fees. Since the district court found that neither party was the prevailing

party, attorney's fees should not be awarded. Finally, the court held that the district court did not abuse its discretion in denying Stichting's request to amend its complaint.

