Interpreting Mineral Reservations in Louisiana

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Introduction

Over the past decade, the courts have considered whether a reservation of minerals "for a period of ten years" establishes a mineral servitude subject to a fixed term or is simply a restatement of the default prescriptive period of nonuse.[1] Although the courts have resolved the cases with the same outcome, they have applied two distinct methods of interpretation: a strict interpretation and a parol evidence approach.[2] This approach presents two problems: different reasoning creates disparate outcomes, and it ignores policy matters.

Interpretational Approaches

a. Strict Interpretation

On two separate occasions, Louisiana appellate courts have strictly interpreted the language in a reservation to establish whether a mineral servitude was subject to a term or a period of prescription.[3] In this approach, the courts have ultimately reasoned that the mineral servitude is subject to a term only if that intention is specified.[4]

Under Louisiana's Mineral Code, the phrase in a cash sale document "for a period of 10 years" either creates a fixed ten-year term or simply restates the default period of prescription. *St. Mary Operating Co. v. Champagne* addressed this issue.[5] The trial court held that "the reservation clause in the cash sale deed reserved a mineral servitude for a fixed term that was not subject to the rules of prescription."[6] Thus, even though the servitude owners used the mineral servitude, the duration of the servitude could not be perpetuated beyond the ten-year term.[7] The servitude owners appealed the trial court's decision.[8]

Ultimately, the Third Circuit affirmed, citing the comment to Louisiana Mineral Code article 74 for support.[9] It concluded that no affirmative statement specified the intent to create a term, so the language in the contract had to be interpreted as a restatement of the default prescriptive period of nonuse.[10]

In *Moffett v. Barnes*, the court reconsidered whether a reservation created a mineral servitude subject to a ten-year term (even though prescription would have been interrupted) or simply restated the default prescription period.[11] Acknowledging the comment to article 74 of the Mineral Code,[12] the court declared that parties must clearly show their intent to create a fixed term. The court suggested the use of phrases such as:

'[R]egardless of any operations for the discovery and production of minerals,' 'the parties hereto establish a term of interest, not a mineral servitude and not subject

to the rules of prescription,' or 'the vendor expressly renounces his rights to maintain the servitude for any reason after the expiration for any reason after the expiration of 10 years.'[13]

Because the court found no comparable statement in the contract, it ruled in favor of the servitude owner.[14] Furthermore, relying on Louisiana Civil Code article 2046, the court denied the inclusion of parol evidence to show the common intent of the parties.[15]

b. Parol Evidence

Contrary to *Champagne* and *Moffett*, *Taylor v. Morris* used a different analysis to determine whether the language in a contract created a mineral servitude subject to a term or a period of prescription of nonuse.[16] Most significantly, the court identified ambiguous language, and it allowed for the use of parol evidence.[17]

In *Taylor*, the Second Circuit Court of Appeals considered whether the phrase, "for a period of ten years,"[18] was intended to create a mineral servitude subject to a fixed term or simply a restatement of the default prescriptive period.[19] Unable to determine the common intent of the parties by examining the document, the court looked to the affidavits submitted by the parties for further evidence.[20] The affidavits were conflicting in nature, thus the court dismissed them as unhelpful.[21] The landowner submitted an affidavit that his intention was to establish a servitude for "10 years and 10 years only."[22] However, the court seemed hesitant to accept this argument because the language of the deed did not include the word "only."[23] Further, the affidavits admitted by the servitude holders showed that they were unaware of any term limitation on the mineral servitude.[24] The court acknowledged that they could not clearly determine the common intent of the parties' because of the countervailing parol evidence.[25] Finally, relying on Louisiana Civil Code article 2056, it held that the ambiguous language must be interpreted against the landowners because they furnished the text of the contract.[26]

The Problem With Having Two Different Interpretational Approaches

a. Chance for Different Outcomes

Different methods of reasoning have two unwanted consequences, one of which is potentially more problematic: disparate outcomes. For example, in *Moffett* and *Champagne*, the courts would only conclude that the language of a contract reserves mineral rights in the land "for a period of ten years" if those courts interpreted the language as clear and unambiguous.[27] Those courts strictly construed article 74's comment to mean that a reservation can only be considered a term if there was an affirmative statement establishing one.[28] However, in *Taylor* the court declared that the language was ambiguous and required further interpretation.[29] The court then looked to parol evidence

to further uncover the parties' common intention.[30] While the court did not believe that the evidence proved that the parties intended for a term, it is possible that the parties did intend for such a term.[31] Thus, where one interpretational method will find in favor of a period of prescription, the other interpretational method may find in favor of either construction, based on the evidence submitted by each party.

b. Policy Implications Unknown

It is possible that the courts, in trying to determine whether a fixed term or prescriptive period was intended by the reservation, have concealed their true reasoning and replaced it with a technical application of contractual interpretation.[32] No majority opinion in this line of cases has analyzed the policy implications at stake.[33] Yet in his concurring opinion, Judge Caraway sheds light on a possible reason why the literal words for a term are being avoided and effectively redacted from the contract.[34] Judge Caraway explained that, because of the nature of the mineral servitude, courts need to be careful when interpreting these contractual provisions.[35]

The reality of mineral law is that many cases involve the implementation of policy factors to resolve the disputes.[36] When policy factors are merely mentioned by the courts, but not analyzed in the opinions, this leads to different reasoning in how courts resolve the issue.[37] Judge Caraway recognizes that matters of public policy are clearly at stake, as the notion of a "fixed-term mineral servitude inherently promotes the possibility of some harsh, if not absurd consequences."[38] The major policy that seems to be at stake is the reasonable development of minerals.[39] Reasonable development is the basic notion that servitude owners, who do not use their rights, should lose them in order to keep minerals in the stream of commerce.[40] The policy of reasonable development punishes those who do not develop, and it rewards those who do by extending prescription of the servitude.[41] In this situation, the unjust or irrational finding of a fixed term would actually punish those servitude owners who have been developing.[42] Courts may use the strict interpretational approach to avoid a finding for a term because of the consequences at stake. The courts' silence on this policy issue has created multiple technical approaches that do not shed light on the real reasoning behind the courts' opinions. Although the courts have ruled the same way, this policy implication should be discussed so practitioners and judges have a clearer understanding of the courts' rationale.[43]

Book 'Em a Proposal for the Judiciary

Long before the enactment of the Mineral Code, the Louisiana judiciary was a "determining factor in defining frontier interpretation of new social and economic policies."[44] Yet, Louisiana courts have struggled to define these policies when interpreting whether a reservation of minerals in a tract of land "for a period of ten years" establishes a mineral servitude subject to a fixed term or a period of prescription of nonuse.[45] The courts have clearly ignored the literal meaning of

the language in this reservation and instead presume intent.[46] Most unsettling, judges have not provided their reasoning, creating uncertainty in exceptionally difficult cases.[47] Judge Caraway is the only judge in Louisiana who has recognized the importance of considering policy when making this interpretation in opinions.[48] Other members of the judiciary have skipped this important discussion, resulting in opinions that clearly violate public policy.[49] General principles of law call for greater judicial uniformity in order to render consistent decisions.

Instead of waiting for the Louisiana Legislature to revise the Mineral Code and provide for a black letter rule of interpretation, courts should apply a simple, new method that considers both public policies and civilian principals. The judiciary needs to map out the relevant public policy factors that should be recognized when determining if the reservation establishes a term or a period of prescription of nonuse. This will direct the courts and protect the policies at stake during their deliberations. Courts will ultimately determine that two of the biggest policies in the balance are the development of minerals and the freedom to contract. The discussion of these policies should expose two explicit dangers that must be avoided. First, the freedom to contract clearly allows the establishment of a mineral servitude for a fixed term. Therefore, regardless of its rarity, courts should not rewrite the contract or fix what they presume is a bad bargain; a fixed term is simply uncommon, not improper. Second, the reasonable development of minerals warns against the finding of an unwarranted fixed term because it punishes the servitude owner for developing minerals and impedes the State's need for development. Because of this danger of finding an unwarranted fixed term, courts need to take the default position that the proper construction is for a prescription period.

After analyzing all pertinent policies, courts should begin interpreting of the agreement or contract itself. The most important inquiry is the common intent of the parties. Courts should determine if the language is ambiguous, which creates two possible interpretations: a liberal construction in favor of a fixed-term based on the literal language and one that rests on the presumption that the parties' most likely intended to create a prescriptive period. Because the written language is ambiguous, parol evidence should be permitted. This will protect the public policy factors discussed by avoiding another interpretational method, such as article 2056.[50] Thus, if a court finds that the evidence clearly shows mutual intent to create a term, then the default construction will be overruled for one in favor of a fixed term. Otherwise, that court should end its interpretation and presume that the servitude was intended to be for a prescriptive period. This will prevent an unwarranted finding of a term while fulfilling all public policy goals.

Conclusion

The proposed judicial method of interpretation will not only help bring clarity and uniformity to jurisprudence, but it will also fulfill the public policies of reasonable development and freedom to contract. The language of reservation creates

ambiguity and two possible constructions: a literal construction based on the language of the document and one that rests on the presumption that parties will rarely wish to fix a mineral servitude for a term. Thus, parol evidence is needed to further uncover the intent of the parties. In application of this evidence, the courts can bypass an unwarranted conclusion in favor of a fixed term while honoring parties' freedom to contract. This proposed judicial interpretational method is directly in line with the public policies in play and fits neatly within the civilian methods of contractual interpretation.

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[1] *Compare* Moffett v. Barnes, 49,280–CA (La. App. 2 Cir. 10/1/14); 149 So.3d 475, 478 (looking to the mineral code comments and finding affirmative language is needed to create a fixed term) *with* Taylor v. Morris, 49,425–CA (La. App. 2 Cir. 10/1/14), 150 So.3d 952, 958 (finding that the provision must be applied against the one who wrote it because the intent of the parties was ambiguous from examining the contractual provision and extrinsic evidence).

[2] *Id.*

[3] *E.g.*, *Barnes,* 149 So.3d 475 *and* St. Mary Operating Co. v. Champagne, 06-984 (La. App. 3 Cir. 12/6/06); 945 So.2d 846 [hereinafter *Champagne*].

[4] *Champagne*, 945 So.2d at 851 ("The Comments to La.R.S. 31:74 explains [*sic*] that if a party wants to create a term and deny the benefit of the interruption of prescription, that intention must be specified.").

[5] *Champagne*, 945 So.2d at 847.

[6] *Id.*

[7] *See* La. Rev. Stat. Ann. § 31:27(4) (2015).

[8] *Champagne*, 945 So.2d at 847.

[9] *Champagne*, 945 So.2d at 851.

[10] *Id.* at 852.

The Comment to La.R.S. 31:74 teaches that even though a ten-year prescriptive period is legislatively added to all mineral servitudes and royalties, '[p]arties are, of course, free to specify that the stated number of years is the term of the interest and not a prescriptive period.' In this case, because there is no such affirmative

statement specifying that the mineral servitude created for a period of ten years would not be subject to prescription, we find that it is subject to prescription.

[11] *See*, *Moffett*, 149 So.3d at 475 (reservation stating: "Vendor retains all oil, gas and other mineral rights in the land herein conveyed for ten (10) years.").

[12] *Moffett*, 149 So.3d at 477.

[13] *Id.* at 478.

[14] *Id.*

[15] *Id.* La. Civ. Code art. 2046 ("When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent.").

[16] *Taylor*, 150 So.3d at 952.

[17] *Compare Moffett*, 149 So.3d at 478 (The court looked to the mineral code comments and found that they stated that affirmative language is needed to create a fixed term) *with* Taylor, 150 So.3d 952 (The court found that the provision must be applied against the one who wrote it because the intent of the parties was ambiguous from examining the contractual provision and extrinsic evidence).

[18] *Id.* at 954.

[19] *Id.* at 956.

[20] *See id.* at 956–59.

[21] *Id.* at 958.

[22] *Taylor*, 150 So.3d at 958.

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.* (citing La. Civ. Code. art. 2056 (2015).

[27] *E.g. Moffett*, 149 So.3d at 477; *Champagne*, 45 So.2d at 847.

[28] *Id.; see supra* note 91 (Article 74).

[29] *Taylor*, 150 So.3d at 956–59.

[30] *Id.* at 958.

[31] *See id.* at 958.

[32] *See e.g. Taylor*, 150 So.3d at 952; *Moffett*, 149 So.3d at 475; *Champagne*, 45 So.2d at 846. *See* George W. Hardy, III, *Some Thoughts on Judicial Method in Louisiana Mineral Law*, 17 Loy. L. Rev. 13, 16 (1971).

[33] *See e.g. Taylor*, 150 So.3d at 952; St. Mary Operating Co. v. Guidry, 06-1495 (La. App. 3 Cir. 4/4/07); 954 So.2d 397; *Moffett*, 149 So.3d at 475; *Champagne*, 45 So.2d at 846.

[34] *Morris*, 150 So.3d at 959–60 (Caraway, J., Concurring).

[35] *Id.*

[36] *See* Hardy, *supra* note 32 at 13–14 (1971).

[37] *Id.*

[38] *Taylor*, 150 So.3d at 959–960 (Caraway, J., Concurring).

[39] *See* George W. Hardy, III, *Public Policy and Terminability of Mineral Rights in Louisiana*, 26 La. L. Rev. 731, 749 (1966); Debra Dobray, *Explanation of Louisiana Mineral Law and the Doctrine of Liberative Prescription: Policy Considerations for Common Law Jurisdictions*, 6 J. Energy L. & Pol'y 153, 180 (1983).

[40] *See* Hardy, *supra* note 39 at 740–743.

[41] *E.g.* Frost-Johnson Lumber Co. v. Salling's Heirs, 91 So. 207 (La. 1922).

[42] *See* Hardy, *supra* note 32 at 13–14.

[43] *Id.*

[44] Daggett, Mineral Rights in Louisiana pp. xxxiv–xxxv (1939).

[45] *See generally Taylor*, 150 So.3d at 952; *Moffett*, 149 So.3d at 475; *Champagne*, 945 So.2d at 846.

[46] *Id.*

[47] *Taylor*, 150 So.3d at 959.

[48] *Id.* at 959–61 (Caraway, J. concurring).

[49] *See generally Taylor*, 150 So.3d at 952; *Moffett*, 149 So.3d at 475; *Champagne*, 945 So.2d at 846.

[50] *See* La. Civ. Code. art. 2056 (2015).