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2018 Case Law Update

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2018 CASE LAW UPDATE

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§1.01 INTRODUCTION

This paper summarizes and analyzes selected oil and gas cases from across the United States that were decided during 2018. This summary is not exhaustive, but is necessarily limited to some of the more important oil and gas cases selected for discussion by the authors.

§1.02 ACCOMMODATION DOCTRINE

Texas

Harrison v. Rosetta Res. Operating, LP, No. 08-15-00318-CV, 2018 Tex. App. LEXIS 6208 (Tex. App.—El Paso Aug. 8, 2018, no pet.)[3]

Facts: The Harrison Trust ("Harrison") owned the surface of a 320-acre tract, which mineral estate had been severed and was now owned by the State of Texas. Harrison executed an oil and gas lease on behalf of the State with Eagle Oil & Gas Co. ("Eagle"). The lease had a clause regarding water use:

> Lessee shall have the right to use water produced on said land necessary for operations under this lease except water from wells or tanks of the owner of the soil; provided, however, Lessee shall not use potable water or water suitable for livestock or irrigation purposes for waterflood operations without the prior consent of the owner of the soil.

Eagle assigned the lease to Comstock Oil and Gas ("Comstock"), which agreed to indemnify Eagle from claims arising from its operations. A few months later Harrison sued Eagle for negligence. As part of the settlement agreement, Comstock agreed to make repairs to a water well on Harrison's land and to buy 120,000 barrels of water from Harrison at fifty cents a

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[3] *See also* William B. Burford, Texas – Oil & Gas, 35 MIN. L. NEWSL. (Rocky Mountain Mineral Law Found., Westminster, Colo.), no. 4, 2018, at 22, 23.

barrel. Comstock bought that amount of water at the agreed upon price. A plastic-lined "frac pit" was also built to store water from the well, though that was outside the settlement agreement.

After drilling two oil wells, Comstock assigned its lease to Rosetta Resources Operating, LP, ("Rosetta"). Rosetta began purchasing water from an adjacent property and brought that water onto Harrison's property, without permission, using temporary water lines.

Harrison sued for breach of contract (alleging that a Rosetta employee had orally agreed to continue the water purchase agreement); violation of a local custom known as the "West Texas Rule" (where oil and gas lessees customarily buy water from the surface owner); and trespass as well as negligence for bringing the hoses and extra equipment onto the land. Rosetta filed motions for summary judgment. Harrison additionally alleged that Rosetta violated the "accommodation doctrine" because by not purchasing its water, Rosetta had made the well and frac pit useless, thereby causing damage to the surface property.

Procedural History & Result: The trial court granted Rosetta's motion for summary judgment. Harrison appealed to the El Paso Court of Appeals. The El Paso Court of Appeals affirmed.

Holding: The accommodation doctrine does not require mineral lessees to buy water from surface owners, nor is it negligent for a mineral lessee to reasonably use the surface as contractually allowed.

Rationale: The court first addressed and rejected Harrison's claim that Rosetta violated the accommodation doctrine, stating that "categorizing a refusal to buy goods produced from the land as 'interference' with the land for purposes of the accommodation doctrine would stretch the doctrine beyond recognition." The court declined to stretch the doctrine, as doing so would require all oil and gas operations to buy their water from the surface owner, if available.

The court also rejected Harrison's claims for breach of contract, trespass, negligence and gross negligence. Harrison only argued evidence to support his negligence claim so the court only considered that claim. Harrison argued that a reasonable operator would have purchased his water and if Rosetta had acted as such, the new roads and openings in his fence would not have been necessary. The court rejected this argument because the lease allowed such land use and Harrison did not present evidence that Rosetta used more of the land than reasonably necessary nor did he present evidence that Rosetta used less care than that of a reasonable operator. Thus the court upheld summary judgment on all claims in favor of Rosetta.

§1.03 ANTITRUST

Federal Court

Encana Oil & Gas (USA) Inc. v. Zaremba Family Farms, Inc., 736 F. App'x 557 (6th Cir. 2018)[4]

Company sued Mineral Owner, seeking the return of $1.8 million of the $2 million that had been exchanged upon the agreement between the parties to negotiate a binding lease agreement. Because the intended agreement between Company and Mineral Owner failed to come to fruition, Company requested the $1.8 million and subsequently sued Mineral Owner for breach of contract. Contrary to the unquestioned prior agreement between the parties, an employee of Company mistakenly told Mineral Owner that it could keep the entirety of the $2

[4] Case summary from *Recent Case Decisions*, 4 OIL & GAS, NAT. RESOURCES & ENERGY J. 261, 262 (2018).

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