

No. _____

IN THE
SUPREME COURT OF THE SUPREME COURT OF THE UNITED STATES

ANTHONY GRIFFIN, no behalf of Morel Griffin; DOROTHY
JOACHAIN, on behalf of Morel Griffin

Petitioner

v.

HESS CORPORATION, also known as Amerada Petroleum
Corporation:
EXXON MOBIL CORPORATION, trading as Humble Oil, trading as
Esso Standard Oil

Respondent

*On Petition For A Writ of Certiorari
To The United States Court of Appeals
For the Fifth Circuit*

PETITION FOR WRIT OF CERTIORARI

Anthony Griffin
106 Santa Marie Drive
Opelousas, La 70570
Dorothy Joachain
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Opelousas, LA 70570

QUESTION PRESENTED

Whether the existence of laws that allow justice to be denied, poverty to be enforced and ignorance to prevail and where any one class is privileged to feel that their society gives them a fundamental right to ignore legally binding documents which are not in dispute, thereby authorizing any class of people to become unjustly enriched at the expense of the poor and at the expense of minority land owners requires the intervention of the United States Supreme Court to reinterpret these laws and practices no matter how long these laws and practices have been in effect.

LIST OF PARTIES

PETITIONERS

Anthony Griffin

Dorothy Joachim

RESPONDANTS

Hess Corporation, also known as Amerada Petroleum Corporation

Exxon Mobil Corporation, trading as Humble Oil, trading as Esso
Standard Oil

Amerada Petroleum

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OPINION BELOW

The opinion for the United States Court of Appeals for the Fifth Circuit reported at ____F.3rd ____ (5Cir. 2017) unpublished November 3, 2017. The Fifth Circuit affirmed the February 17, 2017 ruling of the United States Magistrate for the United States District Court for the Western District of Louisiana Lafayette Division that based on undisputed facts and the applicable jurisprudence, Petitioner's claims for unpaid royalty payments were prescribed under Louisiana Civil Code Article 3494(5). The Magistrate also ruled that Petitioner's defense of contra non valentem was not applicable. In view of the foregoing, Defendant's motion for summary judgment was granted.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C.1331. The opinion of the Fifth Circuit was rendered unpublished on November 3, 2017. Also, Article III, Section 2 of the United States Constitution

provides in applicable part “The judicial power shall extend to all cases, in law and equity, arising under this Constitution...”

Petitioners appeal the denial of their Fifth and Fourteenth Amendments guaranteed by the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY AND PROVISIONS INVOLVED

Article III, Section 2 of the United States Constitution

The judicial power shall extend to all cases, in law and equity, arising under this Constitution...

United States Constitution, Seventh Amendment

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

United States Constitution, Fifth Amendment

No person shall ... be deprived of life, liberty, or property, without due process of law.

United States Constitution, Fourteenth Amendment, Section 1

Nor shall any State deprive any person of life, liberty, or property, without due process of law.

STATEMENT OF THE CASE

This is a Petition for Writ of Certiorari to the Supreme Court of the United States to review the November 3, 2017 opinion of the United States Circuit Court of Appeals for the Fifth Circuit, affirming the February 17, 2017 Memorandum and Ruling of the United States Magistrate, in the United States District Court for the Western District of Louisiana, Lafayette Division which granted summary judgment in favor of the Respondent.¹

¹ See Magistrate's MEMORANDUM RULING, dated February 17, 2017

Petitioner's, (Plaintiffs below), seek the assistance from the Supreme Court of the United States, to preserve and protect of their right to Due Process guaranteed by the Fifth and Fourteenth Amendments by the Constitution and to protect their right to Discovery also provided by the Constitution and the Federal Rules of Civil Procedure and the right to a jury trial guaranteed by the seventh amendment under the Constitution of the United States. Also, Petitioners seek the Court's equity remedy of restitution provided by Article III, section 2 of the Constitution because of Defendants/Respondents unjust enrichment. This case is controversial in that it presents to the court a matter of significant constitutional and public interest, since it involves facts and issues which are rooted at the very core of our legal process and the integrity of our judicial process, i.e. the denial of fundamental fairness by our federal courts in favor of legal technicalities which favor powerful corporations and the rich. The unique and distinguishing feature of this case which renders it ripe for certiorari is that it presents facts and issues which place the court on the horizon of continuing scrutiny because it strengthens the public's perception and awareness that the probability of a non-

corporate individuals to receive decisions which are “right” and “fundamentally fair” in the Federal Courts, as in the present case, are rare and improbable. For this reason, there appears to be an erosion of the public’s confidence that Federal Courts are no longer courts for the average or ordinary individual but has become an advocate which advances the interest and renders its decisions primarily in favor of the rich and the elite. This public misconception and correction, including the facts and evidence in this case, can be addressed solely and exclusively by the Supreme Court.

Simply stated Petitioners herein merely seek fundamental fairness.

Of notable interest is that Petitioners have suffered material losses in the legal system from the misfeasance or malfeasance of their attorneys, for example an experienced trial attorney, without explanation, failed to appear at a scheduled deposition, a second attorney in a prominent law firm, experienced in litigation representing Petitioners somehow failed to comply with an important local rule and a third attorney was suspended from

practice and recovered no information in this case. Each of these incidents contribute to critical defenses which would otherwise be unavailable to the respondents and relied upon by our federal courts, thereby permitting the Respondents to avoid responding to the merits of the Petitioner's claim pursuant to the 1935 lease.²

Specifically, Petitioners, (Plaintiffs below) filed a civil action on October 10, 2014,³ seeking unpaid royalties owed to their father, Morel Griffin⁴ pursuant to an oil, gas and mineral lease that their great-grandfather, Jack Griffin and other members of the Griffin family granted on October 19, 1935, covering property located in Eola, Louisiana, in Avoyelles Parish (the "Lease") *R.9 paragraph 2,38; R. 9-1 (Lease);⁵ R. 53-2, Depo. Of Griffin, 77: 10-78:3; 53-3, Depo. Of Joachain, 60:9-12*

² The validity of the 1935 lease is undisputed.

³ See Complaint filed October 10, 2014

⁴ It is undisputed that Plaintiffs are the only children of Morel Griffin, *R. 71-1, Plaintiff's Uncontested Material Facts.*

⁵ A copy of the Lease is Attached and attached to the Amended Complaint *R.9-1*

Plaintiffs allege that production occurred on the leased property between 1940 and 1969, during which several members of the Griffin family received royalty payments. *R. 9 Paragraph 14,16,17,20, 38; R.53-2 at 77:10-78:3; R53-3 at 60:9-12. Plaintiffs further allege that their father, Morel Griffen, did not receive royalty payments.R.9, Paragraph 20.*⁶ Plaintiffs confirmed in their depositions that the only claims asserted against the defendants in this litigation are for unpaid royalties that were allegedly owed to their father, Morel Griffin under the lease. *R. 53-2, 77:10-78:3; R. 53-3, 60:9-12.*

The Magistrate ruled that there was no genuine issue of material fact in dispute and that the deposition testimony of both plaintiff's "acknowledges unequivocally" that they first became aware of their claims for the unpaid royalties between 1983 and 1984 (30) years earlier prior to the institution of this action in 2014 and that the complaint for unpaid royalties were prescribed and therefore time barred under Louisiana Civil Code Article 3494(5) The Magistrate

⁶ Griffin acknowledged in his deposition that the lists of "Griffins" who received royalties were his father/s brothers and sisters as well as cousins R.53-2, 50:1-20

also found that the Plaintiff's had constructive knowledge of their claim at that time.

The magistrate also ruled that the Plaintiffs' defense of *contra non-Valente* was inapplicable.

REASONS FOR GRANTING THE PETITION

I. THE SEVENTH AMENDMENT RIGHT TO JURY TRIAL IS SUCH A FUNDAMENTAL CONSTITUTIONAL GUARANTEE THAT SHOULD NOT BE AVOIDED BY OUR JUDICIAL PROCESS EXCEPT IN RARE AND EXTREME CIRCUMSTANCES

The Supreme Court of the United States has historically noted and recognized the importance of the fundamental right to a jury trial guaranteed by our Seventh Amendment. This right has been protected by the courts by judicial rules of discovery. Therefor the denial of the Seventh Amendment constitutional right to trial by jury should be sanctioned only in rare and extreme cases based on

applicable rules of discovery to avoid the smallest opportunity for a miscarriage of justice. The court in Chauffeurs, Teamsters, and Helpers Local No. 391 v. Terry, 494 U.S. 558, 565 (1990) and Dimick v. Schiedt, 293 U.S. 474, 486 (1935) left no doubt that the “maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any curtailment of the right to a jury trial should be scrutinized with the utmost care.” As far back as 1830 the court in Parsons v. Bedford, Breedlove & Robeson, 28 U.S. 433, 446 (1830) held that “as soon as the constitution was adopted, this right was secured by the Seventh Amendment of the constitution proposed by congress; and received the assent of the people so great, as to establish its importance as a fundamental guarantee of the rights and liberties of the people.”

In the instant case, Petitioners were never allowed this valuable guaranteed right to a jury trial under the seventh amendment. Petitioners were never afforded the right to discovery and as a result, material facts were never fully developed or surfaced, and Respondents were unjustly enriched at the expense of the

Petitioners. Accordingly, Petitioners were denied the right to fundamental fairness, restitution and their seventh amendment guaranteed right to a jury trial by a fair and impartial tribunal. The prescription prohibition of Louisiana Article 3493 and Article 3493(5) was mistakenly misapplied in a way that denied Petitioners previously enumerated Constitutional and Federally Protected Rights.

II. SUMMARY JUDGMENT WAS NOT APPLICABLE IN THIS CASE BECAUSE THERE REMAINS SUBSTANTIAL AND NUMEROUS GENUINE MATERIAL FACTS WHICH REMAINED AND CONTINUES TO REMAIN AT ISSUE EXCEPT THE VALIDITY OF THE LEASE.

As noted by the Court of Appeals the failure of Petitioner's counsel to submit the required statement of disputed material facts was a meaningful lapse. The Court critically noted that the undisputed facts that touch upon the Petitioners' constructive knowledge, or lack thereof, stem directly from the deposition testimony of Appellants-Petitioners. Petitioners concur with the circuit court that a nonmoving party cannot create a genuine issue of fact, sufficient

to survive a summary judgment simply by contradicting his or her own prior sworn statement without explaining the contradiction or attempting to resolve the disparity. See also In Re Deepwater

Horizon, 857 F.3d 246,250 (5th Cir. 2017) The court also noted, and Petitioners agree, that the deposition questions were related to the property and royalties accruing from the production of oil on the property. In view of Petitioners' confusion, vulnerability and overall trauma and considering the elegance and sophistication of Respondents' attorneys who tenaciously took advantage of the untimely and unexplained absence of Petitioner's counsel and who quickly ushered the Petitioners' into moving forward with their deposition, rendered the testimony of these deponents inaccurate and critically unreliable. This deposition environment was tantamount to the farmer leaving the door open with the fox in the henhouse. Given the Petitioners trauma, it is inconceivable that the Petitioners would either understand or could have answered the deposition questions in a clear and concise manner.⁷ In view of this traumatizing experience, including the unexpected absence of legal

⁷ An attorney was present but confirmed that he knew nothing about the facts of the case.

counsel or any familiar individual with knowledge of the facts of this proceeding or to explain questions to Petitioners or to rehabilitate questions and to answer Petitioners' questions or concerns during the course of this proceeding explains the likelihood, probably, and the actual fact that mistaken and unreliable testimony was elicited. In Re Deepwater Horizon, 857 F.3d 246,250 (5th Cir. 2017) In view of the foregoing unreliable deposition testimony due to this circumstance seriously and adversely affects the fairness, integrity, or public reputation of these judicial proceedings and should be disregarded Puckett v. United States, 556 U.S. 129, 135, 129 S. Ct. 1423, 173 L.Ed.2d 266 (2009)

Also, there remains genuine and material issues of facts which remain disputed and unresolved such as the time, dates, and circumstances of entitlement to oil royalty payments to Morel Griffen, including the identity and dates of successor entities to the lease to which entitlements remain outstanding. Respondents own affidavits creates genuine and material disputed issues since these affidavits appear to conflict with public records regarding the amount, time and dates of oil production and mergers. In addition,

the time date and location of financial records are additional material facts which remain in issue. Conflicts and disputes between Respondents' affidavits and the Louisiana Official Records relative to Charter Numbers 18802530F, 30018160F, 808190F, 09502050F and 17603770F are of state-wide importance and have a direct bearing on the facts of this case. Clearly the court should have taken judicial notice of these Public State Documents.

Respondents affidavits were concealed from Petitioners until the Petitioners appealed to the United States Court of Appeals well after the deposition.

Petitioners note that the only genuine material issues of fact, in this case, which remains undisputed, is the validity of the lease and the extraction of oil and mineral in extraordinary and undocumented amounts from petitioner's property with little or no compensation to Morel Griffen by at least one of the Respondent Oil Corporations.

One can hardly imagine that money paid to members of the Griffin family by the one remaining Respondent (who incidentally claims not to have been involved with mineral and oil extractions from the

Petitioners property) was money paid as a benevolent gift. Given this history and on these facts, if Petitioners were to have access to the judicial tools of discovery and proper legal representation the court would have ordered summary judgment in favor of Petitioners or at least awarded a trial by Petitioners' peers with an impartial tribunal.

Respondent's only recourse is to disingenuously raise the technical defense of prescription and to seek judicial protection from this miscarriage of justice rather than simply comply with the terms of the lease and provide fair compensation for the oil and mineral extractions from the Petitioners property.

For the foregoing reasons, summary judgment is not appropriate because of the genuine and material issues of fact which remain in dispute.

**III. THIS CASE PRESENTS
ISSUES OF PUBLIC POLICY
AND PUBLIC CONCERN**

This not an isolated instance which raises issues between the specific parties but, in addition, raises questions on behalf of the people and the State of Louisiana, various communities and other affected landowners and impacts on local, state and National Civil Rights issues. This case presents increasing social and moral issues as well as issues of flagrant and extreme economic abuse specifically directed at a protected class of people.

As with the prior point involving the seventh amendment right to trial by jury the public policy issue here involves a clear fundamental right that can be found deeply rooted in American history and tradition which is the fundamental fairness of our judicial process...In Snyder v. Massachusetts, 291U.S. 97, 105 (1934) the Supreme Court held that due process is violated when “ a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental. This clause prevents the government from depriving a person of their constitutional right to life, liberty or property without due property of law. In the instant case Petitioners seek the right to fundamental fairness guaranteed

by Constitution and protection of this guarantee by the United States Supreme Court.

The United States Federal Courts are the sole means afforded to the Petitioners and other royalty owners to redress this injustice. The Respondents and the lower federal courts have ignored all previous efforts of the Petitioners to the “right” and “fundamentally fair” judicial decision.

This case raises issues relating to the Public Trust and to the integrity of our trade and commercial giants to do business fairly with minority and small landowners in the State of Louisiana and throughout the United States. Here multinational oil corporations have entered into a valid lease agreement with minority land owners, extracted huge, undetermined and undocumented amounts of oil, and perhaps other minerals, sold and or transferred the land and mineral rights to successors and have paid the rightful owners little or nothing. This is apparent from a cursory review of the October 10, 2014 complaint. Yet America’s most powerful and prestigious oil corporations have purposefully elected to disregard a legally binding lease with the

purported support of our Federal Judicial Process. Profoundly, the validity of the 1935 lease between the parties has never been disputed by either party

Clearly this is a matter of National Public Interest and should be a matter of Judicial Concern. It is the type of behavior and a breach of conduct which undermines the very integrity of our legal and judicial process and threatens the public confidence of our judiciary.

This is not just a historical fact but remains a current reality. These Oil Corporations would choose to hide behind the Courts and the legal technicality of proscription and become unjustly enriched at the expense of the poor and at the expense of minority land owners.

Without a just and fair and equitable resolution by the United States Supreme Court and other Federal Courts and without an order to enforce a just remedy, including the reasonable and fair payment from these "rich and powerful" defendants for prior oil and mineral extractions to which the Petitioners and other royalty owners are due and justly entitled to fair compensation would leave the Petitioners

as “innocent and defenseless” victims without recourse in our judicial system of fundamental fairness. The judicial tools of discovery are essential to fact finding and truth and the right to a fair trial is a fundamental guarantee to rights and liberties to protect the integrity of our legal system and from breach of legal responsibility. This Court was clear about this in Chauffeurs, Teamsters, and Helpers Local No. 391 v. Terry, 494 U.S. 558, 565 (1990) and Dimick v. Schiedt, 293 U.S. 474, 486 (1935) and as far back as 1830 in Parsons v. Bedford, Breedlove & Robeson, 28 U.S. 433, 446 (1830)

Petitioners on behalf on behalf of the poor and on behalf of these minority landowners petition the United States Supreme Court for a Writ of Certiorari to make right this wrong for all America.

IV. NEITHER THE MAGISTRATE IN ITS THE FEBRUARY 17, 2017 MEMORANDUM AND ORDER NOR THE NOVEMBER 3, 2017 OPINION OF THE APPEALS COURT WERE ABLE TO REACH A DECISION ESTABLISHING THE COMMENCEMENT DATE OR DUE DATE OF MONTHLY PAYMENTS TO WHICH MOREL GRIFFIN WAS ENTITLED THUS RENDERING IMPOSSIBLE ANY PRESCRIPTION PERIOD AND PRESCRIPTION INAPPLICABLE. THEREFORE

**THERE CAN BE NO ACTUAL OR CONSTRUCTIVE
NOTICE TO TRIGGER THE PRESCRIPTION STATUTE.**

The magistrate in the lower court relied on Frey v. Amoco Prod. Co., 943 F.2d 578 (5th Cir. 1991), withdrawn in part on reh'g and question certified, 951 F.2d 67 (5th Cir.1992), certified question answered, 603 So.2d 166 (La.1992). reinstated in part on reh'g 976 F.2d 242 (5th Cir.1992); Fite Oil & Gas, Inc. v. SWEPI, L.P., 600 Fed. Appx. 239, 245 (5th Cir.2015) ruled that the prescriptive period for an unpaid royalty claim generally begins to run from each monthly royalty payment, or in cases involving unpaid royalties, when the royalty payment was otherwise due.

In Frey v. Amoco Production Company, 943 F2d 578, (5th Cir. 1992) the court held that Louisiana claims for royalty underpayment are subject to a three-year liberative prescription (effectively a statute of limitations). In Fite Oil & Gas, Inc. v. SWEPI, L.P., 600 F. App'x 239,244 (5th Cir. 2015) the court used this specific language that prescription

“commences to run from the day payment is exigible”

Stated another way, prescription begins as soon as the action accrues. According to Black’s Law Dictionary and the American Legal Jurisprudence the usual and customary meaning of the word “exigible” is considered to mean that which may be exacted or “demandable or requirable”.

In this case, the lower court and the court of appeals did not establish the month from which Morel Griffin was entitled to receive royalty payments nor in the alternative did either court establish when royalty payments were otherwise due, demandable or requirable. There can be no prescription period in law or fact because there is no established day from which payment was exigible. Therefore, there can be no actual nor constructive notice of a date that is nonexistent or unknown.

For the foregoing reasons summary judgment and prescription is inappropriate and must be reversed in this case.

**V. RESPONDENTS ARE AWARE THAT
PETITIONERS DID NOT HAVE THE
REQUIRED NOTICE TO PURSUE
A CLAIM AGAINST THESE SPECIFIC
DEFENDANTS AND DEFENDANT'S
CLAIM OF PETITIONER'S NOTICE
IS NOT IN GOOD FAITH**

Respondents were particularly privileged and benefitted from the vague conclusions of Petitioners' mother and were quick to take advantage of their superior advantage and knowledge over the Petitioners. They did not waste a moment in their encouragement of the Petitioners' deposition despite their knowledge that Petitioner's Lead Legal Counsel, was for some unknown reason, absent.⁸ For these reasons the Deposition testimony of the Petitioners, as presented by the Respondents, are mischaracterized, taken under duress and without the benefit of reliable legal counsel rendering the testimony of this deposition unreliable.

⁸ Petitioner's lead counsel was absent although an attorney from her office was present who was unfamiliar with the facts of the case and did not provide assistance or advice during the deposition.

A fair and objective reading of this testimony under the “totality of the circumstances” *emphasis added*, does not lead to a reasonable conclusion or support a finding that Petitioners had a sufficiently reasonable knowledge of their respective legal options. Daigle v. McCarthy, 238 F. App’x 1, 4 (5th Cir.2007) Moreover Respondents were without facts or evidence to support their claim that Petitioners had a reasonable basis to pursue a claim against a specific defendant relating to Morel Griffin, prior to the October 10, 2014 filing date, as outlined by Chevron USA, Inc. v. Aker Mar., Inc., 604F.3rd 888,894 (5th Cir.2010) (quoting Jordan v. Emp. Transfer Corp, 509 So. 2d 420, 424 (La. 1987)).

Also, an objective reading of the Defendant’s Statement of Material Facts, (which, for some unknown reason, legal counsel did not address) contain material inconsistencies and conflict with official public records of mergers also material to this action. Petitioners argue that the lower courts should have taken judicial notice of these public records.

Important here is that none of the above factors previously relied on have anything to do with Morel Griffin or the date Morel was entitled to his royalty payments. To date Petitioners have not received one bit of evidence relating to their father Morel.

At issue here is what constitutes constructive notice and does the three-year prescription statute under Louisiana Civil Code Article 3494(5) require the filing of a civil action when there are no bases in law or fact. Such action would undermine the good faith verification that an advocate must execute stating that he/she has reasonable grounds in law or fact to pursue the civil action.

In this case Petitioners appear to be under the prescriptive time line when the only available and reliable means to pursue a valid cause of action is through discovery especially when there is a valid lease agreement between the parties and one party is unable to secure the necessary facts without the availability of the court's discovery rules. The inability to pursue discovery in this situation has caused Petitioners to be unable to discover the facts thereby

making it impossible to ascertain the date Morel Griffin was entitled to royalty payments based on the undisputedly valid lease.

The Petitioners did not acquire sufficient notice to excite attention to put Petitioners on guard or call to which a reasonable inquiry might lead, and such information or knowledge as ought to reasonably put the Petitioners on inquiry which was sufficient to start the running of prescription. Although Petitioners contend this is sufficient, as a matter of law, to negate any required notice to trigger prescription, at the very least, it presents itself as a genuine and disputed material fact of which reasonable persons may disagree for jury consideration. Also, reasonableness of the Petitioners action or inaction considering the surrounding circumstances is certainly a jury matter.

Constructive knowledge has been established and defined by Hogg v. Chevron USA, INC. 45 So 3d 991 (2010); Campo v. Correa, 828 So.2d. 502,510-511(2002); Albritton v. Inter. Minerals & Chem. Corp., 2007 WL 3119282 (W.D. La. Oct. 25, 2007) (citing Campo v. Correa, 2001-2707 (La.6/21/02) 828 So.2d 502, 510-511);

Kambitsis v. Schwegmann Giant Supermarket 665 So. 2d

500,502(La. App. 5Cir. 11/15/95) as whatever notice is enough to excite attention and put the injured party on guard or call to which a reasonable inquiry might lead, and such information or knowledge as ought to reasonably put the injured party on inquiry is sufficient to start the running of prescription. In assessing whether an injured party possessed constructive knowledge sufficient to commence the running of prescription is the reasonableness of the injured party's action or inaction considering the surrounding circumstances. See also Griffin V. Kinberger, 507 So.2d 821 n.2 (La.1987).

A simple reading of Hogg illustrates the type of situation or facts which typically exemplify constructive notice. In Hog letters were written by the Louisiana Department of Environmental Quality ("LDEO") informing plaintiffs and all surrounding land owners of environmental contamination near Burt's Chevron. The first letter reported that "environmental contamination has been detected near Burt's Chevron," as a result "of leaking underground storage tank system." The letter stated the contamination was "detected in the

subsurface soil and ground water,” migrating in a “west-northwesterly direction toward an unnamed stream that flows north of Gaines Avenue.” LDEQ reported that water samples collected from the unnamed stream, which is located on the Hoggs’ property, indicated “the presence chemicals commonly found in gasoline. The letter specifically explained: “Due to the direction of the ground water flow, there is a possibility that gasoline may have migrated underground from the Burt’s Chevron site to your property or that such migration may occur in the future.”

In a second letter, dated April 26, 2002, LDEQ transmitted to plaintiffs the results of ambient air sampling conducted as part of an ongoing investigation into the release at Burt's Chevron; sampling revealed the presence of chemicals associated with gasoline in the area adjacent to the unnamed stream. A map attached to the letter revealed the tests were conducted on the Hoggs' property. Based on the test results, LDEQ recommended that landowners limit the time spent in the area immediately

adjacent to the stream. Both LDEQ letters informed the landowners they might be contacted in the future requesting permission to access their property to determine the extent of the contamination.

On or around September 12, 2006, the Hoggs received correspondence from a company with which LDEQ had contracted requesting permission to access the Hoggs' property for purposes of conducting remediation on the property. On September 6, 2007, the Hoggs filed suit against Young, Burt and Chevron, seeking damages for diminution of the value of their property, the stigma of owning contaminated property, loss of enjoyment of use of the property, and exemplary damages.

Responding to the petition, defendants filed motions for summary judgment asserting the plaintiffs' claims had prescribed pursuant to the one-year liberative Louisiana prescription of LSA-C.C. arts. 3492 and 3493. Defendants argued that plaintiffs acquired, or should have acquired, knowledge of the contamination and damage to their property with the receipt of the 2001 and 2002 letters from LDEQ but failed to file suit until 2007.

The Louisiana State Supreme Court found that a reading of the “LDEO” letters belied the plaintiff’s contention of the absence of constructive notice. The Hogs were advised by a credible authority of specific circumstances of an imminent threat of water contamination on their property and were cautioned to limit their time around the stream and received a memorandum detailing the potential health effects.

Despite what appears to be fruitless investigative efforts Petitioners are now told you are out of time and your efforts to seek your claim through the courts were illusory.

For the forgoing reasons prescription in this case should be interrupted and rendered a nullity because it belies basic principles of equity and denies fundamental fairness. The evidence in this case is insufficient to establish the appropriate level and standard to reach a finding that Petitioners had constructive notice as enumerated by the leading authority of Hogg v. Chevron USA, INC. 45 So 3d 991 (2010) and other previously enumerated authorities.

CONTRA NON VALENTEM PRESCRIPTION**VI. IT WAS IMPOSSIBLE TO BRING
THIS CAUSE OF ACTION BECAUSE
PETITIONERS WERE WITHOUT
REASONABLE NOTICE TO BRING
THIS ACTION BECAUSE THEY
WERE WITHOUT SUFFICIENT
RESOURCES OR EXPERTISE**

Under the doctrine of contra non valentem, prescription will not run against a person who is unable to bring an action or who for some reason is unable to act. Dagenhart v. Robertson Truck Lines, Inc., 20 So.2d 916, 918 (La.Ct.App.1970).

It was legally impossible to bring this action. As mentioned in the prior argument despite Petitioners' due diligence, neither the parties nor the courts, have been able to ascertain the monthly royalty payment dates for their father Morel, nor has anyone been able to discover when royalty payments were due as required in Fite Oil & Gas, Inc. v. SWEPI, L.P., 600 Fed. Appx. 239, 245 (5th Cir.2015.) Respondents have been clear that they have no record regarding

Petitioner's claim or any record regarding the 1935 lease transactions. Even if the Court were to rely on the erroneous deposition testimony of Petitioners the testimony does not come close to the notice required and illustrated in the cases of Hog, Fite, or Frey. Therefor it was legally impossible for Petitioners to bring this Action. Petitioners did not have the required notice, the previously enumerated resources or expertise.

For these reasons prescription is inappropriate, and Summary Judgment should be reversed.

**VII. RESPONDENTS SHOULD NOT BE ALLOWED
TO PROSPER AND BECOME UNJUSTLY
ENRICHED BY VIOLATING THE TERMS
AND CONDITIONS OF THE 1935 LEASE
VOLUNTARILY ENTERED INTO BETWEEN
THE PARTIES**

Alternatively, Petitioners are entitled to restitution because of Respondents undocumented and unjustified mineral and oil exactions from the Petitioners. See 1 Dan B. Dobbs, *Law of Remedies: Damages- Equity- Restitution* Section 1.1 at 5 (2d ed.

1983) “In an action for damages the plaintiffs are entitled to recover for the harm done, whereas in restitution Petitioners can recover because of the unfair windfall and Unjust Enrichment of the Defendants- Respondents through their wrongful act.” See also 1George E. Palmer, *The Law Restitution*, Section 2.1 at 51 (1978)⁹ Petitioners cannot go back in time and recover the oil and minerals extracted from their property or recover their reputation from the Respondents. Respondents claim under Civil Code Article 3494(5) in conjunction with Petitioners’ losses clearly illustrate that these losses are both extraordinary and irreparable and without a legal remedy, although proof of these factors have been held unnecessary, to recover in this type of equity action.

The core of this action is rooted in the belief and based on the traditional perception of public trust in our courts and system of justice that no one should legally prosper because of their wrong doing.

⁹ See also 1 Dobbs at 280, 552, 555; Douglas Laycock, *Modern American Remedies: Cases and Materials* 622-23, 651-52 (4th ed. 2010); Doug Rendleman & Caprice Roberts, *Remedies: Cases and Materials* 473 (8th ed.2011)

Respondents acquired their profit to the detriment of the Petitioners in the sense that Respondents' profits were derived from the violation of petitioner's legally protected right, or more precisely by Respondents' violation of their duties and responsibilities, created and agreed upon by the parties based on terms and conditions of the 1935 lease. In other words, Respondents' gain was at the expense of Petitioner's character, reputation and integrity and was economically unfair. This prohibition is rooted in traditional black letter law which clearly states in Section 1 Restatement (Third) the broad principle that no person or entity can profit from their own wrong doing. This principle is so intertwined with our judicial system of "fundamental fairness" (emphasis added) that it identifies an outlook or an objective, rather than a cause of action. In fact, traditional rules of cause of action came later in our judicial journey and the entitlement to restitution, because of unjust enrichment, should not be preempted by a more recent civil prescription code and allowed to erode our public trust in our system of law. See Edwards v. Lee's Administrator 96 Sw. 2d. 1028, 1030 (Ky. 1936)

The United States District Court Magistrate's ruling that the continuous and ongoing production of oil wells on Petitioner's property was unimportant and irrelevant and the oversight by the Appeals Court to address these and other issues relating to the materiality of ongoing and continuous activity pose a serious and harmful threat to traditional principles of judicial fairness. Any threat to fundamental fairness in our courts is a matter of strong public concern. These issues relate to the heart and integrity of our American Legal and Judicial Process and appropriately compels the attention and guidance of the Supreme Court to address the Public's perception in the erosion of confidence in our Federal Courts to reach decisions which are "right" and "fundamentally fair" rather than decisions that favor business and corporate entities. and as it relates to the Petitioner's entitlement to restitution because of the Respondent's unjust enrichment

**VIII. THIS CASE IS GOVERNED BY TITLE 31:37,
RS 31:2 AND RS 31:37 OF THE LOUISIANA
MINERAL CODE, WHICH PREEMPTS
ARTICLE 3494(5) OF THE LOUISIANA
CIVIL CODE AND THE 1935 LEASE
BETWEEN THE PARTIES**

The application of Title 31 of the Mineral Code and RS 31:37 regarding unit production as an interruption of prescription and RS 31:2 as it relates to the Louisiana Civil Code govern the standard of law in this case. According to RS: 31:2, in the event of a conflict between the provisions of the Mineral Code and those of the Civil Code, or other laws, the provisions of the Mineral Code shall prevail. Therefore Article 3494(5) of the Louisiana Civil Code is preempted by RS 32:2 and RS 31:37 of the Louisiana Mineral Code and thus prescription does not apply.

Specifically, RS 31: 37 provides in applicable part the following:

Production from a conventional or compulsory unit
Embracing all or part of the tract of land burdened
by a mineral servitude interrupts prescription....”

The code further states that if the unit well is on land other than -
that burdened by the servitude, the interruption extends only to
that portion of the servitude tract included in the unit.

Respondents in this case rely on the three-year prescription requirement of Article 3494(5) of the Louisiana Civil Code.

They would restrict the application of the mineral code to the continuation of mineral servitudes, exclusive of oil royalties. Such an interpretation belies comprehension and flies in the face of the literal and plain meaning of the English language of the mineral code. Simply stated “unit production within the mineral servitude interrupts prescription” thereby allowing and enabling the payment and receipt of oil royalty payments created by the lease agreement. Had the framers of this language intended the result advanced by respondents the language of the mineral code would have been otherwise stated.

Oil royalty payments do not exist without the production of oil and “production from a conventional or compulsory unit embracing all or part of a tract burdened by a mineral servitude interrupts prescription...” Therefore, according to Title 31:2 and RS 31:37 the unit production of oil within the mineral servitude stops prescription. Since oil royalty payments are the fruit of Mineral Servitudes there can be no interruption of prescription relating to

mineral servitudes without likewise the interruption of prescription as it relates to oil royalties since they are inextricably intertwined and connected.

In the instant case, oil wells are currently and have been continuously producing oil on Petitioner's property by Respondent's successors, and possibly others who may very well be in privity with the Respondents' as their predecessors, agents or assignees. In any event the unjust enrichment continues.

Contrary to the November 3, 2017 opinion of the Court of Appeals, Petitioners raised the issue of the current and continuous production of oil by those in privity with the respondents, i.e. their predecessors, agents, assignees, and successors, as a material issue in the case. The Magistrate ruled that Plaintiffs' contentions were irrelevant since one Respondent executed affidavits that they had no relationship to any production of the oil wells on the Petitioners' property for more than three years leaving the remaining issues of those responsible unanswered. Yet for some unknown reason the appeals court refused to address these issues,

erroneously stating that the matter was not addressed in the district court.¹⁰

Lease

In addition, the 1935 lease remains valid and current. The lease defines the duties and responsibilities of the parties and includes their respective, heirs, assignees, transferee and successors. The continuous and current production oil wells on this property are very much material and relevant to the Petitioners' claims.

Petitioners cannot go back in time and ask Respondents to replace their oil underneath the surface of their land nor can they reinstate their loss reputation as reputable oil producing landowners and business persons. Proof of these facts are contemporarily unnecessary, according to Laycock¹¹ in the law of restitution and public policy, for entitlement to restitution because unjust enrichment. Petitioners merely point to the existence of these factors, though unnecessary, for the relief sought, to demonstrate

¹⁰ See note 2 of the November 3, 2017 Opinion of the Court of Appeals, the Magistrate's February 17, 2017 Memorandum and Page 10,53 of the Appellant's Brief.

¹¹ Laycock, *supra* note 3, at 8-9, 283 i, Douglas Laycock, *The Neglected Defense of Undue Hardship (and the Doctrinal Train Wreck in Boomer v. Atlantic Cement)* 257 N.E.2d 870 (1970), 4 J. Tort L. 1, 31 (2012) explaining that the irreparable injury rule is in effect dead in our modern times, posing no impediment to the award of equitable relief.

the presence of traditional requirements for equitable relief i.e. 1.

The inadequate remedy at law and 2. irreparable harm.

Respondents have gone the extra mile to prove that Petitioners have no remedy at law because the civil code prescribes the action.

Petitioners cannot go back in time and recover the undocumented oil taken from their property nor can they restore their reputation as reputable oil land owners engaged in the production of oil.

Respondents acknowledge their unwillingness to comply with their duties and obligations under the 1935 lease and merely state that it's too late and the law will not allow us to make good on our obligation, so we have through the years been able to extract free oil and minerals from Petitioners' property and we have been able to obtain a windfall without paying one cent, as legally obligated to Morel Griffin. The harm to these Petitioners are irreparable. The public has a right to its confidence and opinion that The Supreme Court and our federal courts are committed to the basic principle of law that no one, whether rich, powerful, or famous nor the poor is above and beyond the law because it occupies some special class or privilege or can find some technicality of the law. Simply stated the Public has a right to an opinion that our Supreme Court will not

support or sanction the profit of one because of his own wrong acts. The Respondents profits were based on their voluntary noncompliance with their undisputed duties and obligations, established by the terms and obligations of the 1935 lease between the parties.

Defenses in this action are tantamount to The Respondents' effort to seek court protection to validate their unjust enrichment by arguing Petitioners are not entitled to bring this action and not entitled to relief pursuant to the technical rule of Article 3494(5) of the Louisiana Civil Code.

Petitioners are entitled to both legal and equitable remedies.

CONCLUSION

When the existence of laws that allow justice to be denied, poverty to be enforced and ignorance to prevail and where any one class is privileged to feel that their society gives them a fundamental right to ignore legally binding documents which are

not in dispute, thereby authorizing any class of people to become unjustly enriched at the expense of the poor and at the expense of minority land owners requires the intervention of the United States Supreme Court to reinterpret these laws and practices no matter how long these laws and practices have been in effect.

For all the forgoing reasons set forth throughout petitioners' brief, petitioners respectfully request that the Supreme Court grant review

Respectfully submitted,

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