

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-30165
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
November 3, 2017

Lyle W. Cayce
Clerk

ANTHONY GRIFFIN, on behalf of Morel Griffin; DOROTHY JOACHAIN, on
behalf of Morel Griffin,

Plaintiffs - Appellants

v.

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

Defendants - Appellees

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 6:14-CV-2998

Before STEWART, Chief Judge, and DENNIS and HAYNES, Circuit Judges.
PER CURIAM:*

Plaintiffs-Appellants Anthony Griffin ("Griffin") and Dorothy Joachain
("Joachain") (collectively, "Appellants") appeal the district court's grant of
summary judgment in favor of Defendants-Appellees Hess Corporation

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not
be published and is not precedent except under the limited circumstances set forth in 5TH
CIR. R. 47.5.4.

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(“Hess”) and Exxon Mobil Corporation (“ExxonMobil”) (collectively, “Appellees”) related to Appellees alleged failure to pay royalties to their deceased father pursuant to an Oil, Gas, and Mineral Lease their great-grandfather Jack Griffin entered into with Amerada Petroleum Corporation (“Lease”).¹ We AFFIRM.

I. BACKGROUND AND PROCEDURAL HISTORY

Appellants, both heirs to the estate of their father, Morel Griffin, who passed away in 1976, sought purportedly unpaid royalties from lessors of an Avoyelles Parish property partially owned by their great-grandfather Jack Griffin (“Property”). The undisputed facts establish that Appellants’ mother informed them in 1983 or 1984 that their father was allegedly owed royalty payments from oil produced on the Property. After Appellants’ mother informed them of unpaid royalties, and between the years of 1983 and 1984, Griffin visited the Clerk of Court’s office in Avoyelles Parish and the Department of Natural Resources in Baton Rouge, Louisiana to research the oil wells located on the Property. Sometime around 1986, Griffin hired an attorney to assist him in investigating the claims. Griffin noted that both his Uncle Denell and Forsythe, on behalf of her mother, confirmed to him sometime between 1983 and 1985 that they received royalty payments. Appellants continued their investigation over two decades, and in 2008 Appellants reached out to ExxonMobil directly to discuss their unpaid royalty claims.

The 2008 correspondence began with a fax from Griffin and his wife to Jane James at ExxonMobil, requesting further information as to the royalty payments allegedly owed to their father. Griffin and his wife later spoke with

¹ Pursuant to 28 U.S.C. § 636(c), the district court transferred the matter to the magistrate judge who rendered the decision on the motion for summary judgment.

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James by telephone concerning their unpaid royalty concerns. James, following up the telephone conversation by written letter, explained that ExxonMobil, similar to Hess, did not have: (1) any sales under the Lease after 1954; (2) any records demonstrating ExxonMobil currently maintained an interest in the Property; and (3) any outstanding royalty payments for their father in royalty owner records. Joachain confirmed that she was consulted before and after these communications with ExxonMobil.

Appellants filed this lawsuit on October 10, 2014, alleging that both ExxonMobil and Hess, pursuant to the Lease, produced oil on the Property without rendering royalty payments to their father. ExxonMobil and Hess filed a motion for summary judgment on prescription, contending that Appellants' claims were prescribed pursuant to the three-year prescription period for royalties provided in Louisiana Civil Code article 3494(5). Appellants argued that they were not required to bring the suit upon initially learning of royalties from their mother in 1983 or 1984, and any delay in doing so was justifiable because many members in the family lacked sufficient education to provide the full information required to bring suit.

Applying the three-year prescription period under Louisiana Civil Code article 3494(5), the district court granted summary judgment in favor of Appellees, finding that Appellants, at the latest, knew enough to file the lawsuit against Appellees in 2008. Appellants timely filed this appeal.

II. DISCUSSION

This court reviews a district court's grant of summary judgment *de novo*, applying the same standard as the district court. *See Kariuki v. Tarango*, 709 F.3d 495, 501 (5th Cir. 2013). The facts must be viewed "in the light most favorable to the nonmoving party" and "all reasonable inferences" must be drawn in favor of that party. *Id.* (internal citation and quotation marks omitted). Notwithstanding this court's resolution of factual controversies in

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favor of the non-moving party, an “actual controversy” established through “submitted evidence of contradictory facts” must exist. *See S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 494 (5th Cir. 1996). Summary judgment is warranted if “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a).

A.

Appellants argue that summary judgment is not appropriate because there is a factual dispute concerning their constructive knowledge of the claims in this suit. Although proceeding *pro se* on appeal, Appellants were represented by counsel during the district court proceedings. After Appellees filed their motion for summary judgment, Appellants, rather than filing “a separate, short and concise statement of the material facts as to which there exists a genuine issue to be tried,” filed a Statement of Uncontested Facts. *See* W.D. La. Loc. Civ. R. 56.2. Because of this error, the district court, as guided by the Local Rules for the Western District of Louisiana, “deemed admitted” “[a]ll material facts set forth in the statement...served by [Appellees].” *Id.*

Appellants make much of their counsel’s failure to submit the required statement of disputed material facts. To be sure, such a failure is a meaningful lapse by their lawyers, but, as Appellees note, the undisputed facts that touch upon Appellants’ constructive knowledge or lack thereof stem directly from the deposition testimony of Appellants. “It is...well-established that a non-movant cannot create a genuine issue of fact sufficient to survive summary judgment simply by contradicting his or her own previous sworn statement...without explaining the contradiction or attempting to resolve the disparity.” *In re Deepwater Horizon*, 857 F.3d 246, 250 (5th Cir. 2017) (internal quotation marks and citation omitted).

Appellants’ explanation—that the deposition testimony was only meant to speak of what they knew in the present tense and not to their knowledge

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prior to the actual filing of the complaint—does not remedy or sufficiently explain the contradiction in light of the repeated questions about the particular date certain events took place concerning their royalty claims accruing from the Property. The deposition questions, as Appellees counsel repeatedly indicated and Appellants affirmed, related to the Property and royalties accruing from the production of oil on the Property. The material facts in this case are not in dispute.

B.

A personal action is subject to a liberative prescription of ten years unless otherwise provided by law. *See* LA. CIV. CODE. art. 3499. Actions to recover royalty payments from the production of minerals, however, prescribe in three years. *See* LA. CIV. CODE. art. 3494(5). The district court properly held that Louisiana Civil Code article 3494(5) governs this action.² Courts are instructed to favor a construction that maintains a suit instead of one that prescribes it, so long as there are “two possible constructions.” *Carter v. Haygood*, 2004-0646, p. 10 (La. 1/19/05); 892 So. 2d 1261, 1268. With respect to royalty payments from the production of minerals, “[p]rescription commences to run from the day payment is exigible.” *Fite Oil & Gas, Inc. v. SWEPI, L.P.*, 600 F. App’x 239, 244 (5th Cir. 2015) (internal citation and quotation marks omitted). “Stated another way, prescription begins ‘as soon as the action accrues.’” *Id.* (internal citation and quotation marks omitted).

The district court concluded that because, by at least 2008, Appellants had received the assistance of an attorney and had collected information sufficient to excite attention and prompt further inquiry as to the unpaid

² For the first time on appeal, Appellants argue that, instead of Louisiana’s Civil Code, provisions from Louisiana’s Mineral Code concerning prescription of nonuse govern this case. We will not entertain arguments raised for the first time on appeal. *See, e.g., Martco Ltd. P’ship v. Wellons, Inc.*, 588 F.3d 864, 877 (5th Cir. 2009) (“[A]rguments not raised before the district court are waived and cannot be raised for the first time on appeal.”) (citation omitted).

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royalties allegedly owed to their father, their claims for unpaid royalties were prescribed.

To defeat prescription of the underlying royalty claims, Appellants reach for the extraordinary remedy flowing from the doctrine of *contra non valentem*. Louisiana courts have recognized that the prescription period should not run where, as most relevant here, “the defendant prevents the plaintiff from availing himself of his cause of action or [where] the action was not known or reasonably knowable by the plaintiff.”³ *Edmundson v. Amoco Prod. Co.*, 924 F.2d 79, 81 (5th Cir. 1991). This outgrowth of the doctrine is known as the “discovery rule.”

Appellants argue that “it was impossible to bring this law suit prior to...filing the [2014] complaint in federal court” because, in light of the “uncertainty of circumstances surrounding their father’s claim,” “they had no basis to file any claim on behalf of their father.” Any action taken prior to the filing of the October 10, 2014 complaint, Appellants contend, should not be construed or attributed to any knowledge of a specific claim against these parties. In support of that point, Appellants urge the court to consider the education and literacy of the individuals involved.

“[T]he *contra non valentem* ‘discovery rule’ is only to be applied in extreme circumstances...” *Marin v. Exxon Mobil Corp.*, 2009-2368, p. 12 (La. 10/19/10); 48 So. 3d 234, 245. “When a plaintiff acts reasonably to discover the cause of a problem, ‘the prescriptive period [does] not begin to run until [he

³ Louisiana’s Supreme Court has recognized three other instances “where the doctrine may apply to suspend the running of prescription...: (1) where there was some legal cause that prevented the courts from taking cognizance of or acting on the plaintiff’s action; (2) where there was some condition coupled with the contract or connected with the proceedings that prevented the creditor (plaintiff) from suing or acting; [and] (3) the debtor (defendant) himself has done some act effectually to prevent the plaintiff from availing himself of his cause of action.” *Terrebonne Parish Sch. Bd. v. Mobil Oil Corp.*, 310 F.3d 870, 884 n.37 (5th Cir. 2002) (citations omitted).

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has] a reasonable basis to pursue a claim against a specific defendant.” *Chevron USA, Inc. v. Aker Mar., Inc.*, 604 F.3d 888, 894 (5th Cir. 2010) (quoting *Jordan v. Emp. Transfer Corp.*, 509 So. 2d 420, 424 (La. 1987)). However, “[c]ontra non valentem does not suspend prescription when a litigant is perfectly able to bring its claim, but fails or refuses to do so.” *Terrebonne Par. Sch. Bd. v. Mobil Oil Corp.*, 310 F.3d 870, 885 (5th Cir. 2002) (citation omitted). As the Supreme Court of Louisiana clarified, courts should look to “the reasonableness of a plaintiff’s action or inaction in light of his education, intelligence, and the nature of the defendant’s conduct.” *Marin*, 48 So. 3d at 246 (citations omitted).

Deposition testimony in this matter demonstrates that Appellants simply wanted, and did not require, additional information before filing the underlying lawsuit. Appellants were adults between 1983 and 1984 when their mother initially provided information about unpaid royalties. They then undertook an extensive investigation into their ownership rights and the owners of the oil wells. Public records and check stubs in Appellants’ possession revealed Hess’s past ownership interest in the property. Appellants waited until 2008 to reach ExxonMobil, and when they did finally receive response from ExxonMobil that it owed no royalties related to the Property, they waited six years to file the lawsuit subject to this appeal. Furthermore, because Appellants “have provided no evidence that [Appellees] ...deliberately [sought] to preclude them from filing suit,” they can find no relief on that basis. *Smith v. Reg’l Transit Auth.*, 827 F.3d 412, 422 (5th Cir. 2016).

Stated plainly, Appellants had a reasonable basis to pursue a claim against these specific defendants more than three years prior to the institution of the underlying lawsuit. Appellants contend that their respective educations as well as family members’ educations is sufficient to overlook their failure to bring this lawsuit before the prescription period. Griffin stated that he

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graduated high school, took up welding at a trade school, and took a paralegal class at Louisiana State University Eunice. Joachain stated that she graduated high school. Although Appellants may be correct that their level of education may, by itself, support application of the doctrine, the court cannot disregard the substance of their actions which do not indicate an inability to bring this claim. *See Edmundson*, 924 F.2d at 83–84. Additionally, Appellants received advice and meaningful information from three different lawyers on various occasions throughout their investigation of the royalty claims. These conversations ultimately culminated in them contacting ExxonMobil directly in 2008. That they now summarily deem this advice unreliable does not warrant the suspension of the prescription period. *See, e.g., Daigle v. McCarthy*, 238 F. App'x 1, *4 (5th Cir. 2007) (“The appropriate focus is not when a plaintiff develops a strong legal case but when he has a sufficiently reasonable knowledge of his legal options.”).

Moreover, courts have rejected applying the doctrine when faced with more egregious circumstances. *See, e.g., Daigle v. McCarthy*, 444 F. Supp. 2d 705, 712–13 (W.D. La. 2006), *aff'd*, 238 F. App'x 1 (5th Cir. 2007) (per curiam) (concluding that doctrine of *contra non valentem* was not applicable to failure to bring suit concerning sexual abuse allegations for 15 years despite allegations of fraudulent concealment and post-traumatic stress disorder where, among other things, plaintiff contacted a lawyer with details underlying claim). To permit the application of the doctrine on these facts would not give effect to the circumstances typically justifying its invocation. The district court did not err in granting summary judgment. *See Edmundson*, 924 F.2d at 83–84.

III. CONCLUSION

For the foregoing reasons, the district court's judgment is AFFIRMED.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

Griffin, et al

Civil Action No. 14-02998

versus

Judge Carol B. Whitehurst

Amerada Petroleum Corporation
et al

By Consent of the Parties

JUDGMENT

In accordance with the Memorandum Ruling issued on this date,

IT IS ORDERED that the Motion For Summary Judgment filed by defendants, Exxon Mobil Corporation and Hess Corporation [Rec. Doc. 53] is **GRANTED** and Plaintiffs' claims are **DISMISSED WITH PREJUDICE**.

THUS DONE AND SIGNED this 17th day of February, 2017 in Lafayette, Louisiana.



CAROL WHITEURST
UNITED STATES MAGISTRATE JUDGE

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

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versus

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Amerada Petroleum Corporation
et al

By Consent of the Parties

MEMORANDUM RULING

Before the Court is a Motion for Summary Judgment filed by defendants, Exxon Mobil Corporation (“ExxonMobil”) and Hess Corporation (“Hess”) (collectively referred to as “Defendants”) [Rec. Doc. 53], Plaintiffs, Anthony Griffin and Dorothy Joachain’s, Memorandum in Opposition [Rec Doc. 71] and Defendant’s Reply thereto [Rec. Doc. 74]. For the reasons that follow, the Motion will be granted.

I. Background

Plaintiffs filed this complaint seeking unpaid royalties that were allegedly owed to their father, Morel Griffin,¹ pursuant to an oil, gas, and mineral lease that their great-grandfather, Jack Griffin, and several other members of the Griffin family granted on October 19, 1935, covering property located in Eola, Louisiana, in Avoyelles Parish (the “Lease”). *R. 9, ¶¶ 2, 38; R. 9-1 (Lease)²; R. 53-2, Depo. Of*

¹ It is undisputed that Plaintiffs are the only children of Morel Griffin, *R. 71-1, Pls’ Uncontested Material Facts*.

² A copy of the Lease is attached to the Amended Complaint. *R. 9-1*.

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

Defendants have produced affidavits and deposition transcripts to support their Motion For Summary Judgment in compliance with Federal Rule of Civil Procedure 56(c). *R. 53, Exhs. A-E*. In their Opposition to the Motion, Plaintiffs filed a "Statement of Uncontested Facts." *R. 71-1*. This Court's Local Rule 56.2 states "[e]ach copy of the papers opposing a motion for summary judgment shall include a separate, short and concise statement of the material facts as to which there exists a genuine issue to be tried. All material facts set forth in the statement required to be served by the moving party will be deemed admitted, for purposes of the motion, unless controverted as required by this rule." *Local Rule, LR56.2*. Here, Plaintiffs filed a list of three "Uncontested Facts," but filed no "separate, short and concise

³ Griffin acknowledged in his deposition that the list of "Griffins" who received royalties payments were his father's brothers and sisters as well as cousins. *R. 53-2, 50:1-20*.

statement of the material facts as to which there exists a genuine issue to be tried.”
R. 71-1. Thus, because the material facts set forth by Defendants have not been
controverted, there is no genuine issue of material fact as to Defendants’
“Uncontested Material Facts,” *R. 53-7*, which state:

¶4. Hess’ corporate predecessors are the only entities that held an interest in
the Lease at issue—ExxonMobil never held an interest—and any such interest [of
Hess] was released on March 5, 1954. *R. 53-4*, Affidavit of Bradley Broussard, ¶¶
5, 6.

¶5. Hess divested itself of all its right, title and interests in all Louisiana
onshore oil and gas producing assets as of April 1, 2006, and thus, as of April 1,
2006 at the latest, neither Hess nor any of its predecessors or subsidiaries held an
ownership interest or conducted operations in Avoyelles Parish. *R. 53-5*, Affidavit
of Carl Cody Moerer, ¶ 2(a)-(b).

¶6. Neither ExxonMobil nor any of its predecessors or subsidiaries held an
ownership interest or conducted operations in Avoyelles Parish since the late
1990s. *R. 53-6*, Affidavit of Donald P. Brown, ¶¶ 3-5.

¶8. Morel Griffin died on March 5, 1976. *R. 53-2 at 11:25; R. 53-3 at*
10:14.

¶9. Plaintiffs’ mother informed them in 1983 or 1984 that their father was

allegedly owed the royalty payments that are at issue in this lawsuit. *R. 53-2 at 37:25-38:15; R. 53-3 at 30:14-31:11.*

¶10. Dorothy Joachain relied on her brother to handle her claims at issue in this lawsuit. *R. 53-3 at 20:1-18.*

¶11. Between the years of 1983 and 1984, Anthony Griffin visited the Clerk of Court's office in Avoyelles Parish and the Department of Natural Resources in Baton Rouge and researched the oil wells located on the property from which his father could have been owed royalties. *R. 53-2 at 30:2-33:6.*

¶12. Around the same time, Griffin hired an attorney to represent him with respect to these claims. *Id. at 41:4-23.*

¶13. In the course of that representation, Mr. Griffin's attorney discovered an abstract of title that Mr. Griffin's uncle, Denell Griffin, had previously commissioned in connection with potential oil company operations on the property. *Id. at 40:2-42:14.*

¶14. Griffin then spoke with his Uncle Denell and another family member, Lorinda Forsythe, "in reference to our claim" and inquired as to the royalty payments that they received from the property. *Id. at 42:15-44:19.*

¶15. Forsythe provided Griffin with some documentation regarding her royalty payments, which included correspondence with Hess' predecessor-in-

interest and a copy of a check received from the oil company. *Id.*

¶16. Griffin additionally gathered documents from an attorney that formerly represented the Griffin family, including check stubs for royalty payments related to the property and numerous letters between the attorney and ExxonMobil's predecessors-in-interest regarding payments made—and owed—from the oil operations identified by Plaintiffs in this litigation. *Id. at 44:8-45:7, 69:16-73:9.*

¶17. Plaintiffs continued their investigation intermittently for two decades, and in 2008 Plaintiffs reached out to ExxonMobil directly regarding their unpaid royalty claims. *Id. at 60:1-65:17; R. 53-3 at 46:10-49:9.*

¶18. With Joachain's full knowledge, Griffin and his wife sent a letter to Jane James at ExxonMobil, along with a packet containing several of the documents they had previously gathered (including information related to both ExxonMobil's and Hess' predecessors), requesting further information as to the royalty payments allegedly owed to their father. *R. 53-2 at 61:17-62:23, R. 53-3 at 46:10-47:4.*

¶19. Less than one month later, James participated in a telephone call with Griffin and his wife, which was immediately followed by a written letter explaining that: (1) ExxonMobil had no sales under the referenced lease after July 1954; (2) they found no outstanding royalty payments held in suspense for the

names provided in their royalty owner records; and (3) they searched their records for the acreage described and found it not to be under lease to ExxonMobil. *R.53-2 at 62:24-64:22.*

¶20. Griffin discussed James' response with Joachain shortly after he received this letter. *R. 53-3 at 44:23-45:23.*

¶21. Plaintiffs disagreed with James' response and filed this lawsuit on October 10, 2014. *R.53-2 at 64:4-22.*

Plaintiffs filed this lawsuit on October 10, 2014.

A. Contentions of the Parties

Defendants contend that Plaintiffs' claims for unpaid royalties have prescribed and are therefore time barred under Louisiana Civil Code article 3494(5) which expressly provides that the prescriptive period for a claim for unpaid royalties is three (3) years. They assert that Plaintiffs' deposition testimony "acknowledges, unequivocally" that they first became aware of their claims for the unpaid royalties at issue between 1983 and 1984—thirty years before they instituted this action on October 10, 2014.

Plaintiffs argue "there existed many circumstances that justify [Plaintiffs] delay in filing this lawsuit." *R. 71.* They contend that between 1983 and 1984 they merely "began the process of seeking out those who were responsible for the

payment of royalties” attributable to the Lease. They further contend that many members of their family were uneducated and that their father could not sign his name. Finally, Plaintiffs assert that there are currently twenty-two (22) wells located in the vicinity of the land under the Lease and prescription has not run from the “continuous production to the current date.”

II. Summary Judgment Standard

Under Federal Rule of Civil Procedure 56, “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(a). The moving party bears the initial burden of informing the court of the basis for its motion by identifying portions of the record which highlight the absence of genuine issues of material fact. *Topalian v. Ehrmann*, 954 F.2d 1125, 1132 (5th Cir.1992). A fact is “material” if proof of its existence or nonexistence would affect the outcome of the lawsuit under applicable law in the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute about a material fact is “genuine” if the evidence is such that a reasonable fact finder could render a verdict for the nonmoving party. *Id.*

If the moving party can meet the initial burden, the burden then shifts to the nonmoving party to establish the existence of a genuine issue of material fact for

trial. *Norman v. Apache Corp.*, 19 F.3d 1017, 1023 (5th Cir.1994). The nonmoving party must show more than “some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). In evaluating the evidence tendered by the parties, the Court must accept the evidence of the nonmovant as credible and draw all justifiable inferences in its favor. *Anderson*, 477 U.S. at 255.

III. Analysis

In Louisiana, actions to recover under payments of royalties from the production of minerals, such as Plaintiffs assert in this case, are limited by a three year prescriptive period. La. C.C. art. 3494(5). Article 3493(5) provides in pertinent part:

Art. 3494. Actions subject to a three-year prescription

The following actions are subject to a liberative prescription of three years:

(5) An action to recover underpayments or overpayments of royalties from the production of minerals, provided that nothing herein applies to any payments, rent, or royalties derived from state-owned properties.

LA C.C. Art. 3494. Louisiana courts are unanimous in holding that any claim seeking payment of additional royalties owed to a mineral lessor under a lease, regardless of how styled, is subject to the three-year prescriptive period of La. Civ.

Code art. 3494.⁴ 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. *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).

Prescriptive statutes are to be strictly construed against prescription and in favor of the obligation sought to be extinguished. *Wimberly v. Gatch*, 635 So.2d 206 (La.1994). The defendant has the initial burden of proving that a claim has prescribed, but if the defendant shows that three years have passed between the tortious acts and the filing of the lawsuit, then the burden shifts to the plaintiff to prove an exception to prescription.

One such exception is found in the doctrine of *contra non valentem*, which prevents the commencement of the running of prescription when the plaintiff does

⁴ Royalty owners cannot circumvent the three-year prescriptive period by characterizing their claims as "breach of contract," "breach of implied obligations," or some other type of claim that would otherwise be subject to a longer prescriptive period. *See, e.g., Parker v. Ohio Oil Co.*, 186 So. 604, 610 (La. 1939) (suit for "accounting" of royalties subject to 3-year, not 10-year, prescription); *Acadia Holiness Association v. IMC Corp.*, 616 So.2d 855 (La. App. 3 Cir. 4/7/93) (rejecting plaintiff's characterization of suit for additional royalties as breach of contract claim in order to circumvent the 3-year prescriptive period of La. Civ. Code art. 3494).

not know nor reasonably should know of the cause of action. *Terrebonne Parish School Bd. v. Columbia Gulf Transmission Co.*, 290 F.3d 303, 320 (5th Cir. 2002).

Although not specifically stated, it appears from Plaintiffs' arguments that they rely on the doctrine of *contra non valentem*. Plaintiffs contend that their delay in filing this lawsuit was "justified" by "many circumstances" including that the family members with whom they discussed the Lease and the unpaid royalties in 1983 and 1984 were uneducated; and, their actions taken thereafter were merely "to seek[] out those who were responsible for the payment of royalties attributable to the [] Lease."

"Under the doctrine of *contra non valentem*, the prescription period does not run when the cause of action is not known or reasonably knowable by plaintiff, even though his ignorance was not induced by defendant. As a judicial exception to the statutory rule of prescription, Louisiana courts strictly construe this doctrine and only extend its benefits up to "the time that the plaintiff has actual or constructive knowledge of the tortious act. That is defined as the time at which the plaintiff has information sufficient to excite attention and prompt further inquiry." *Eldredge v. Martin Marietta Corp.*, 207 F.3d 737, 743 (5th Cir. 2000).

Suit need not be filed when there is a "mere apprehension that something might be wrong." *Ducre v. Mine Safety Appliances*, 963 F.2d 757, 760 (5th

Cir.1992). Rather, there must be “[k]nowledge of the tortious act, [] damage caused by the tortious act, and the causal link between the act and the damage before one can be said to have constructive notice of one’s causes of action.” *Id.* On the other hand, a plaintiff will be responsible to seek out those whom he believes may be responsible for a specific injury. When prescription begins to run depends on the reasonableness of a plaintiff’s action or inaction. *Carter v. Matrixx Initiatives, Inc.*, 391 Fed.Appx. 343, 345 (5th Cir. 2010) (citing *Jordan v. Employee Transfer Corp.*, 509 So.2d 420, 423 (La.1987)).

Here, the undisputed facts establish that Plaintiffs began investigating their claims of unpaid royalties in 1983 or 1984 after their mother told them about the family property and asked that they check into it. During this period Griffin visited the Clerk of Court’s office in Avoyelles Parish and the Department of Natural Resources in Baton Rouge and researched the oil wells located on the property from which his father could have been owed royalties. In the “mid-1980’s,” Griffin continued the investigation by gathering documents identifying Defendants’ corporate predecessors in connection with royalty payments made to various members of the Griffin’s family. During this time Griffin retained an attorney to represent him with respect to these claims. Griffin’s attorney discovered an abstract of title that Griffin’s uncle had previously commissioned in connection

with potential oil company operation on the family property. Griffin then spoke with his uncle and another family member as to the royalty payments that they received from the property. He also gathered documents from an attorney that formerly represented the Griffin family, including check stubs for royalty payments related to the property and numerous letters between the attorney and ExxonMobil's corporate predecessors regarding payments made and owed from the oil operations at issue.

Ultimately, in 2008, over twenty years later, Plaintiffs submitted the documents they had previously gathered to ExxonMobil, requesting information related to the royalty payments allegedly due to their father. Plaintiffs subsequently received a telephone call and written letter from an ExxonMobil representative explaining that the Griffin family property was never under lease to ExxonMobil. Nonetheless, ExxonMobil searched its records and found no outstanding royalty payments for the name provided by Plaintiffs.

The doctrine of *contra non valentem* prevents the running of liberative prescription where the cause of action is not known or reasonably knowable by the plaintiff. In light of the facts set forth above, the Court finds that Plaintiffs had constructive knowledge sufficient to commence prescription over three (3) years before they filed this lawsuit. By *at least* 2008, Plaintiffs had received the

assistance of an attorney and had collected information, both documentary and oral, sufficient to “excite attention and prompt further inquiry” as to the unpaid royalties allegedly owed to their father, Morel Griffin. Plaintiffs’ action of filing this lawsuit in 2014, thirty years after they were advised of the potential claim at issue, was not reasonable.

Plaintiffs’ contention that the alleged currently producing oil wells on the property are potentially material to their claims, is irrelevant as to Plaintiffs’ claims in this lawsuit against Defendants, ExxonMobil and Hess. Defendants have demonstrated by undisputed facts that they have had no relationship to any production from the wells under the Lease for over 3 years. Those facts establish the only parties, besides the lessors, who ever owned an interest in the 1935 Lease was H.H. Lawson and Amerada Petroleum Corporation, Hess’ corporate predecessor, and Amerada Petroleum Corporation released its interest in the Lease on March 4, 1954. Hess, its predecessors and subsidiaries, no longer held any ownership interest or conducted any operations in Avoyelles Parish as of April 1, 2006. As to Exxon Mobil Corporation: (1) neither Exxon Mobil Corporation nor any of its predecessors or subsidiaries held an ownership interest or conducted operations in Avoyelles Parish since at least December 1, 1999; (2) neither Exxon Corporation nor any of its predecessors or subsidiaries held an ownership interest

or conducted operations in Avoyelles Parish since at least 1980; and, (3) neither Mobil Corporation nor any of its predecessors or subsidiaries held an ownership interest or conducted operations in Avoyelles Parish since at least December 1, 1999. Plaintiffs have not and cannot assert any claim against Defendants for the alleged currently producing oil wells.

IV. Conclusion

Based on the foregoing undisputed facts and the applicable jurisprudence, the Court finds that Plaintiffs' claims under La. C.C. art. 3494(5) are prescribed. As there are no genuine issues of material fact supporting Plaintiffs' claims related to the applicability of *contra non valentem*, Defendants' Motion For Summary Judgment will be granted.

Signed February 17, 2017, at Lafayette, Louisiana.



CAROL B. WHITEHURST
UNITED STATES MAGISTRATE JUDGE