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Supreme Court of the United States

OCTOBER TERM, 1965.

No. 14—ORIGINAL.

STATE OF LOUISIANA,

Plaintiff,

versus

STATE OF MISSISSIPPI, ET AL.,

Defendants.

BRIEF OF HUMBLE OIL & REFINING COMPANY IN
SUPPORT OF ITS EXCEPTIONS TO THE REPORT
OF SPECIAL MASTER.

M. M. ROBERTS,

Attorney at Law,

Hattiesburg, Mississippi,

L. V. RUSSELL,

Attorney at Law,

Humble Oil & Refining Company,

Hattiesburg, Mississippi,

BERNARD J. CAILLOUET,

Attorney at Law,

Humble Oil & Refining Company,

New Orleans, Louisiana,

E. L. BRUNINI,

Attorney at Law,

Jackson, Mississippi,

RICHARD W. DORTCH,

Attorney at Law,

Jackson, Mississippi.

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INTRODUCTORY STATEMENT.

Humble Oil & Refining Company has filed herein its Exceptions to the Report of the Special Master, and such Exceptions coincide with those of the State of Louisiana. Humble is in complete accord with the State of Louisiana's Brief, filed in support of the Exceptions, adopts the same in full and specially concurs therein.

To avoid repetition, Humble will address itself in this supporting Brief to the one proposition that in the event the Supreme Court holds that the boundary did not

become permanent as urged by Louisiana and Humble, then the Special Master should be instructed to make his findings, conclusions and recommendations on all of the remaining issues.

STATEMENT OF FACTS.

The essential facts relative to all issues other than the location of the boundary between Mississippi and Louisiana can be briefly summarized.

Louisiana, as owner of the bed of the Mississippi River within its boundaries, executed to Carter Oil Company an oil and gas lease to the bed or bottom of the river in the area here involved, expressly describing lands out to the boundary with Mississippi. Subsequently, a well drilled under this lease, known as Louisiana Well No. 1, resulted in the production of oil on April 27, 1954, and production has continued since that date (SMR 3; R. 90, 162, 163). From 1954 until 1963 Humble (as successor to Carter Oil Company) paid Louisiana over \$89,000 in royalties and over \$64,000 in severance taxes (SMR 35). This producing well was directionally drilled from the Louisiana bank to a point under the bed of the river.

Since the commencement of production, Louisiana has continued to regulate production, supervise allowables, require the filing of various reports and has issued the usual certificates of compliance for the transportation of the oil (R. 94). The total oil taken from the well until November 1, 1962, amounted to 243,956 barrels (R. 94, 193).

Mississippi imposes severance taxes on oil produced from lands within its boundaries, ad valorem taxes on drilling equipment and production facilities, contractors' drilling taxes and documentary taxes. Through its Oil and Gas Board, Mississippi is empowered to regulate production practices within the state, establish allowables and issue certificates of compliance to oil purchasers. Mississippi at no time has undertaken to exercise its taxing or regulatory authority over the subject well (R. 94, 95, 193).

As riparian landowners under the law of Mississippi, the Zuccaro family owns the bed of the river in the disputed area out to the state boundary (SMR 3), and Humble obtained a lease from them first in 1941. By successive renewals and timely payment of delay rentals, these leasehold rights were in full force when Louisiana Well No. 1 was drilled and thereafter at least through the end of the last primary term on November 11, 1960, (La. Ex. No. 1, part of Item 12, R. 89).

In the same year Carter drilled the subject well, Humble drilled a well on the Zuccaro lease bottomed under the river intended to offset Louisiana Well No. 1 directly opposite (R. 568). The sum of \$166,640.00 was expended by Humble in this drilling operation, which resulted in a dry hole (R. 569).

In 1954, Humble, Carter and the Zuccaros all believed the Carter well was in Louisiana and the Humble dry hole was in Mississippi. This fact is evidenced by a letter dated October 9, 1961, from Joseph S. Zuccaro

representing his family, directed to Carter Oil Company in which he stated, "It appears that the Carter Oil Company's State of Louisiana No. 1, which was drilled from the Louisiana side on the Mississippi River, opposite the lands described above, was at the time of drilling bottomed within Louisiana" (R. 567). A subsequent letter repeated the same belief (R. 568).

On November 25, 1953, Carter and Humble, owning leases on either side of the state boundary, entered into an agreement and cross-assignment and subsequent amendments thereto, all of which continued in force until Carter Oil Company merged with Humble Oil & Refining Company on December 1, 1959 (La. Ex. No. 1, part of Item 12, R. 89; SMR 3).

A renewal lease executed by the Zuccaros in favor of Humble in 1950 called for a primary term of 5 years. Prior to its expiration, the Zuccaros advised Humble of their belief that the boundary between the two states was rapidly shifting and in the future the subject well might be located on the Mississippi side of the river. The Zuccaros urged Humble to protect itself by acquiring a renewal lease for \$10,000.00 cash bonus and substantial delay rentals (R. 565). Humble acquired the lease for that sum, for a term of 5 years, and paid the stipulated rentals (R. 569). Not until 1961 did the Zuccaros assert that the well was located in Mississippi (R. 566-67).

In the period from December 12, 1950, to January 7, 1957, a series of three conveyances were executed by Marie K. Zuccaro to members of the Zuccaro family, in

each of which the existence of a valid oil and gas lease in favor of Humble was acknowledged (R. 564, 569).

In the suit by the Zuccaros against Humble in the United States District Court at Vicksburg, Mississippi, (SMR 3), and in this original action, the Zuccaros and Mississippi, through counsel have disclaimed repeatedly and at every opportunity any right of action against the State of Louisiana and its title to the area in question.

ARGUMENT.

POINT I.

The Nature Of The Issues Apart From The Boundary Location.

It is the purpose here to state briefly and concisely the ancillary and alternative issues among the parties presented in this original action.

A. If it is held that Louisiana Well No. 1 became located in Mississippi at any time, then the leasehold estate of Humble Oil & Refining Company was and continued in full force and effect by virtue of delay rental payments and production of oil. Therefore, any recovery against Humble must be limited to the one-eighth royalty called for in the Zuccaro leases.

B. Carter Oil Company and Humble Oil & Refining Company bottomed their wells in good faith on lands believed to be owned, respectively, by Louisiana and the

Zuccaros, with full acquiescence by both the Zuccaro family and the State of Mississippi.

C. Any recovery against Humble must be subject to full consideration for the amount of sums expended for the acquisition of leases, exploration, costs of drilling and operating, surface location and equipment costs, taxes, administrative expenses, and all other costs and expenses connected with the well in issue.

D. The Zuccaros and Mississippi are barred from recovering against Humble and Louisiana by virtue of recognition and long-standing acquiescence in the boundary.

E. Estoppel in pais, estoppel by deed, judicial estoppel, disclaimer, waiver and laches constitute a bar.

F. The six-year statute of limitations in Mississippi applies to any claim of the Zuccaros, and no recovery can be had for any losses incurred prior to six years from November 27, 1962, (the date suit was filed in the United States District Court).

POINT II.

Jurisdiction Of The Court Over Ancillary Issues.

The original and exclusive jurisdiction of this Court to adjudicate the present controversy between Louisiana and Mississippi is beyond question (SMR 4-6). It is equally clear that "The Supreme Court shall have original but not exclusive jurisdiction of . . . all actions or pro-

ceedings by a state against the citizens of another state or against aliens." 28 U.S.C. Section 1251(b).

In addition thereto, this Court has ancillary jurisdiction to dispose of the entire controversy in a suit between states and thus may adjudicate the rights of private parties there involved. Such was the holding in *Oklahoma v. Texas*, 258 U.S. 574 (1922), where the Court held at p. 581:

"It long has been settled that claims to property or funds of which a court has taken possession and control through a receiver or like officer may be dealt with as ancillary to the suit wherein the possession is taken and the control exercised,—and this although independent suits to enforce the claims could not be entertained in that court."

To like effect, this Court held in *Texas v. Florida*, 306 U.S. 398 (1939) at p. 405, "The present suit is between states, and the other jurisdictional requirements being satisfied, the individual parties whose presence is necessary or proper for the determination of the case or controversy between the states are properly made parties defendant." See also *Kentucky v. Indiana*, 281 U.S. 163 (1930).

Humble has no quarrel with the statement of the Special Master on page 35 of his report that such ancillary jurisdiction is a matter wholly within the discretion of the Court. Subsequently in this brief, Humble will present compelling reasons why the entire controversy should be adjudicated in the present action.

POINT III.

The Record Is Complete On All Ancillary Issues.

At hearings in this cause, the testimony of the parties on all the issues was adduced and is incorporated fully in the record. No restrictions were placed upon the introduction of such evidence, with the Special Master reserving his ultimate ruling as to whether his Report should cover all the issues.

Thus the record before this Court is complete, and there are no impediments to a supplemental report by the Master on all remaining issues.

POINT IV.

The Entire Controversy Should Be Adjudicated In This Forum.

It has been recently held in similar litigation that the decision of a United States District Court or State Court as to the location of a state boundary is not binding upon either state in its sovereign capacities. *Durfee v. Duke*, 375 U.S. 106 (1963). Similarly, Louisiana cannot be sued in a court having Mississippi as its territorial jurisdiction, and will not be bound by any judgment rendered therein. *Pennoyer v. Neff*, 95 U.S. 714 (1878).

The ancillary issues here involved center around one oil well and the value of production therefrom. Louisiana has already received one-eighth of the oil in value and substantial sums as severance taxes from this pro-

duction. Humble ought not be exposed to double liability for the same production.

This type of harsh and inequitable result has been held to deprive a defendant of due process of law. In *Texas v. Florida*, *supra*, multiple tax claims to a single fund, insufficient to pay all the demands, was a valid basis for this Court's exercise of its jurisdiction. The principle was further applied in *Western Union Telegraph Co. v. Pennsylvania*, 368 U.S. 71 (1961). There a Pennsylvania judgment against a fund in the hands of Western Union was reversed because the judgment could not be binding upon other states claiming the same fund. This Court observed in 368 U.S. at p. 77, "Our Constitution has wisely provided a way in which controversies between states can be settled without subjecting individuals and companies affected by those controversies to a deprivation of their right to due process of law."

The Zuccaros and Humble are parties to this suit in every respect. They have been sued, called upon to present evidence and testimony and to assert their claims and defenses. There is a single fund in the hands of Humble, of which Louisiana has already received a substantial portion. Humble emphatically asserts its right and duty to pay only one royalty and one severance tax.

As the Special Master aptly stated, "The State of Louisiana is also directly involved in these ownership questions since it is the lessor of the oil rights on the west side of the bed of the river." (SMR 35.) There is no other tribunal competent to adjudicate the rights of all parties deeply involved in this litigation.

CONCLUSION.

Humble Oil & Refining Company respectfully adopts the position of its mineral lessor, the State of Louisiana, as to the location of the boundary in the area here involved, and further submits that all remaining issues among the parties to this suit should be resolved by this Honorable Court after receiving recommendations from the Special Master.

Respectfully submitted,


M. M. ROBERTS,
Attorney at Law,
Hattiesburg, Mississippi,

L. V. RUSSELL,
Attorney at Law,
Humble Oil & Refining Company,
Hattiesburg, Mississippi,

BERNARD J. CAILLOUET,
Attorney at Law,
Humble Oil & Refining Company,
New Orleans, Louisiana,

E. L. BRUNINI,
Attorney at Law,
Jackson, Mississippi,

RICHARD W. DORTCH,
Attorney at Law,
Jackson, Mississippi,

By 
Of Counsel for Humble Oil &
Refining Company.

August 25, 1965.

PROOF OF SERVICE.

The undersigned, of counsel for Humble Oil & Refining Company, one of the Defendants herein, and a member of the Bar of the Supreme Court of the United States, hereby certifies that on the day of August, 1965, I served copies of the foregoing Brief of Humble Oil & Refining Company in Support of its Exceptions to the Special Master's Report in this original action, by depositing same in a United States Post Office, with sufficient first class postage prepaid, addressed to:

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana,
Baton Rouge, Louisiana,

CARROLL BUCK,
First Assistant Attorney General,
State of Louisiana,
Baton Rouge, Louisiana,

EDWARD M. CARMOUCHE,
Assistant Attorney General,
State of Louisiana,
P. O. Box LL,

Lake Charles, Louisiana,

JOHN A. BIVINS,
Special Counsel to the Attorney General,
P. O. Box LL,

Lake Charles, Louisiana,

JOHN L. MADDEN,
Assistant Attorney General,
State of Louisiana,

Baton Rouge, Louisiana,

Attorneys for the State of Louisiana,

MR. LANDMAN TELLER,
Special Assistant Attorney General,
State of Mississippi,
1205 Monroe Street,
Vicksburg, Mississippi,

HONORABLE MARTIN R. McCLENDON,
Assistant Attorney General,
State of Mississippi,
State Capitol,
Jackson, Mississippi,

MR. GEORGE W. ROGERS, Jr.,
Associate to Special Assistant
Attorney General,
State of Mississippi,
1205 Monroe Street,
Vicksburg, Mississippi,
Attorneys for the State of Mississippi,

MR. LANDMAN TELLER,
1205 Monroe Street,
Vicksburg, Mississippi,

MR. JOSEPH S. ZUCCARO,
Berger, Callon, Zuccaro and Wood,
Attorneys at Law,
Natchez, Mississippi,
Attorneys for the Zuccaro Family,

such being their mailing addresses.

HATTIESBURG, MISSISSIPPI, August 20., 1965.

M. M. Roberts

M. M. ROBERTS,
Of Counsel for Humble Oil &
Refining Company.

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E. S. Upton Printing Co., New Orleans — 61326