IN THE

Supreme Court of the United States

OCTOBER TERM, ~~1955~~ 1958

No. [redacted] Original

UNITED STATES OF AMERICA, PLAINTIFF

versus

STATE OF LOUISIANA

Brief in Support of Application by Anderson - Prichard Oil Corporation, Lessee of Both Parties, For Extraordinary Relief and For Amendment or Interpretation of Decree

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MEMORANDUM BRIEF IN SUPPORT OF APPLICATION FOR EXTRAORDINARY RELIEF AND AMENDMENT OR INTERPRETATION OF DECREE

MAY IT PLEASE THE COURT:

This application is filed by reason of the effects upon Applicant of the Court's interlocutory decree entered in this cause on June 11, 1956 which are set out in some detail in the application. As grounds for the application we submit: (a) the Court's decree was not designed to affect Applicant, particularly since Applicant had no opportunity to be heard prior to its issuance, and neither of the contesting parties brought the dual lease situation to the Court's attention, (b) nevertheless, Applicant is suffering continuous and irreparable damage as a result thereof, and (c) it lies within the power of the Court in such circumstances to promptly grant the relief sought by Applicant.

STATEMENT OF THE CASE

The background of this application is substantially as follows. The controversy between the United States of America and the State of Louisiana relates to the ownership of said certain submerged lands situated off the coast of Louisiana. During pendency of this proceeding the United States offered for lease various tracts of land situated in the disputed tidelands area and in attempt to halt the said proposed leasing by the United States the State of Louisiana brought an action in its own courts enjoining such leasing and prohibiting operations on the area in dispute in instances where leases were held from the United States only, unless such operations were consented to by the State of Louisiana. Thereafter, the United States of America appeared in this proceeding and moved for an injunction to restrain the State of Louisiana from proceeding with the action in its State Court. In response to the motion of the United States this Honorable Court entered a decree on June 11, 1956 restraining the State from proceeding with its action and further enjoined the parties to the action from leasing or beginning the drilling of new wells in the disputed tidelands area pending orders of this Court unless by agreement of the parties filed with the Court.

In view of the fact that Applicant at the time the injunction was issued by the State Court was a lessee in good standing insofar as the State of Louisiana was concerned, Applicant was of the opinion that it had the consent of the State of Louisiana to commence operations on leases issued by the State embracing areas which are the subject of the dispute between the State of Louisiana and the United States here. As set forth in detail in the application and ex-

hibits attached Applicant's State leases have been validated by the United States under the provisions of the Outer Continental Shelf Lands Act (43 U.S.C.A. 1331 et seq.) and therefore Applicant is also a lessee of the United States.

It follows that since Applicant's operations under such leases were not the subject matter of the State Court proceedings, the motion of the United States which resulted in this Court's decree of June 11, 1956, was not directed at such leases. Applicant is not a party to this litigation, was not apprised of the fact that its leasehold rights were in jeopardy and hence, made no attempt to appear in this proceeding prior to the entry of said decree. We conclude, therefore, that this Court's decree was not intended to affect operations by Applicant under these leases. Nevertheless, Applicant has been effectively restrained thereby.

Both the State of Louisiana and the United States require that operators seeking to commence the drilling of wells on lands owned by or situated within their respective jurisdictions obtain permits and/or approval before drilling and as a result of their interpretation of the Court's order of June 11, 1956, declined to grant Applicant permits or approval for the beginning of any new wells in the disputed tidelands area. Applicant believes it was not intended to be bound by the provisions of the said order because of its dual lease position. However, it was nonetheless prevented from exercising the rights granted to it by its respective lessors by virtue of their refusal to issue the necessary drilling permits or grant the requisite approval on the grounds that issuance was prohibited by the order of June 11, 1956.

In the disputed tidelands area many leases were originally granted by the State of Louisiana, subsequently validated by the United States and thereafter were maintained in force and effect with respect to the United States alone; other leases were originally granted by the United States and there were no corresponding leases obtained from the State of Louisiana; Applicant's leases, however, were originally granted by the State, subsequently validated by the United States and thereafter maintained in effect with respect to both governments. In view of the fact that Applicant held a lease from both contestants, no difficulty in drilling and development was anticipated. In order to develop the leases, Applicant entered into a drilling contract with Deep Water Exploration Co. on April 13, 1956, which said contract requires Applicant to furnish a drill site on or before July 15, 1956 and provides for penalties in the sum of $4,400.00 per day. Deep Water Exploration Co. is and has been on the site of the intended drilling location since mid-July; however, Applicant has been unable to obtain the necessary permit or approval and has incurred and will continue to incur the penalties provided for in said contract, unless relief is granted.

After the entry of the court's decree two proposed stipulations were presented by representatives of various oil companies to the State of Louisiana and the United States of America, one covering the situation wherein leases were in force and effect insofar as the United States was concerned and one covering the dual lease situation. At the time these stipulations were presented in the middle of June, 1956, Applicant's representative was informed by the Department of the Interior that an overall agreement was desired by the Secretary but that, in the event such agreement could not

be effected within a reasonable time, consideration would be given to entering into a stipulation covering the dual lease position alone. Thereafter, a conference was held between representatives of the State of Louisiana and representatives of the United States in the beginning of July.

No agreement, however, was reached in that conference. When Applicant learned that no agreement had been reached between the State and the United States and that additional negotiations, possibly of protracted duration, would be required, Applicant determined that in order to protect its leasehold rights and mitigate the penalties about to accrue, under the provisions of its contract, with Deep Water Exploration Co., some independent action would be required. With this in mind Applicant requested the State of Louisiana to execute an agreement which would permit Applicant, insofar as the State was concerned, to drill. The State recognized its obligation to place Applicant in possession of the leased premises, and executed such agreement as is reflected by Exhibit B. Thereafter, Applicant contacted representatives of the Secretary of the Interior and informed them of the fact that an agreement had been executed by the State of Louisiana and requested an appointment for the purpose of submitting the agreement to the United States. Applicant was then informed that a meeting had been scheduled between the State and the United States on August 2, 1956 and it was suggested that such meeting might result in an overall agreement which would not require execution by the United States of the agreement reflected by Exhibit B. The meeting held between the State of Louisiana and the United States on August 2nd and 3rd resulted in an adjournment of the meeting without an agreement being concluded. On August 6, 1956, Applicant submitted the

agreement reflected by Exhibit B to representatives of the Department of Interior and, as set forth in the application, on August 13, 1956 was informed that the Secretary of the Interior would not execute the agreement.

Representatives of the Attorney General informed Applicant that the Attorney General's position was basically the same as that of the Secretary of the Interior and that the Attorney General was entitled to exercise independent judgment with respect to the agreement sought by Applicant and in the exercise thereof, declined to execute the agreement.

Applicant then sought relief from two of the Justices of this Court, requesting a stay or interpretation of the decree with respect to leases which had been maintained in force and effect as to both sovereigns; however, this relief was denied.

Thereafter, Applicant attempted to obtain a mandatory injunction from the United States District Court for the District of Columbia, seeking to compel the Secretary of Interior and the Attorney General to approve and consent to drilling on said leases or to state upon what grounds such consent and approval would be given to lessees holding a dual lease position. This relief was denied by the District Court and on appeal, the Circuit Court of Appeals affirmed the judgment of the District Court, Judge Wilbur K. Miller dissenting. (Anderson-Prichard Oil Corporation v. Fred A. Seaton, Secretary of the Interior and Herbert Brownell, Jr., Attorney General of the United States, No. 13,526, Court of Appeals, District of Columbia).

The views of Judge Miller expressing his reasons for dissent may be of interest to the Court and are hereinbelow set forth in part, as follows:

"The parties agreed on oral argument that Anderson - Prichard's unique position as a dual lessee, whose right to the lease does not depend on the outcome of the litigation between its two lessors, was not drawn to the Supreme Court's attention at the hearing which was followed by the injunctive order. I think it reasonable to conclude that the Court was dealing with a situation in which, unless enjoined, either government might execute new leases or might authorize or permit its own existing lessees, each dependent for title on the title of its lessor, to begin drilling. Obviously unnecessary confusion and complications would result from the commencement and completion of wells by contending lessees, so the Court prohibited such drilling pending its decision as to title, unless it were done by agreement between the State and the United States.

"I think we are free to construe the Supreme Court's decree in the light of the situation with which it dealt, and I see no reason to suppose the Court intended to cover a factual situation which was not presented to it. Since this dual lessee's title to a valid lease and its right to drill thereunder do not depend, as I have pointed out, on the ultimate decision in the Original Action as to which of its lessors have title, I cannot believe the injunctive decree was intended to prohibit it from

drilling pending that decision. If the Supreme Court did not so intend, then its decree does not have that effect.

"But, if the Supreme Court's second paragraph should be construed as prohibiting drilling by this dual lessee 'unless by agreement of the parties (Louisiana and the United States) filed here,' I suggest that those parties have in legal effect already agreed. Both governments agreed that Anderson-Prichard might drill on the area involved when they executed leases to it. An oil lease is fundamental authority to drill. The federal drilling permit is concededly a mere formality, as I have said. So I think the parties have basically consented that this dual lessee may commence a well. The words 'filed here' in the order do not trouble me, for the appellant's two leases may be quickly tendered for filing in the Original Action if they are not already there.

"Either because, as I think, the Supreme Court did not enjoin drilling by a dual lessee such as this appellant, or, if I am wrong in that, because the lessors have consented to such drilling within the meaning of the injunctive order, I would reverse and direct the District Court to order the defendant officials to perform their admittedly ministerial duty of issuing a drilling permit."

For the convenience of the Court, the report of this case is reproduced in its entirety as Appendix A.

It thus appears that applicant has exhausted all possible means of administrative relief before turning to this Court to request the relief sought in the application.

Neither the United States nor the State of Louisiana can in any manner be prejudiced by the Court granting Applicant the relief sought, and as evidence thereof, the State of Louisiana has executed an agreement indicating its consent (Exhibit B). It may be reasonably concluded that this agreement would not have been signed by the State of Louisiana if it felt that its rights would be in any manner prejudiced by doing what it could to permit Applicant to drill.

No representatives of the United States have at any time indicated that the United States will be prejudiced in any manner by becoming a party to the agreement reflected by Exhibit B, the only reason given being that the United States preferred an overall settlement and that it might be a discrimination against other lessees of the United States. It follows that if these be the only objections (and Applicant's above statement is supported by weeks of negotiations and conferences as well as the stated position of the United States in the action against the Secretary of Interior and the Attorney General) to the agreement and taking into consideration the admission by the United States in the Court of Appeals that dual lease situation was not brought to the attention of the Court, there can be no sound reason for the United States objecting to the Court granting, in any of the suggested forms, the relief sought by Applicant.

AUTHORITY OF THE COURT TO GRANT THE RELIEF SOUGHT

There can be no question of the right of this Court to amend, modify or interpret decrees relating to injunctive or interlocutory relief as between the parties or upon the application of one affected thereby, though not a party to the action. *Regal Knitwear Co.* v. *National Labor Relations Board,* 324, U. S. 9, 89 Law Ed. 661; *State of New Jersey* v. *City of New York,* 296 U. S. 259, 80 Law Ed. 214.

In the case of *Regal Knitwear Co.* v. *National Labor Relations Board,* we find the Court saying:

> "If defendants enter upon transactions which raise doubts as to the applicability of the injunction, they may petition the court granting it for a modification or construction of the order. Cf. New Jersey v. New York, 296, U. S. 259, 80 L ed 214, 56 S Ct 188. While such relief would be in the sound discretion of the court, we think courts would not be apt to withhold a clarification in the light of a concrete situation that left parties or 'successors and assigns' in the dark as to their duty toward the court."

It is equally clear, that in situations such as the one presented by Applicant, there being no specific provision in Rule 9 covering this situation and that rule being subject to a broad interpretation, the Court is free to mold its procedure and process to fit the specific case, and if it sees fit to grant the relief sought to grant it promptly in any form

which will afford Applicant relief. As was said in the case of *Ex parte Kentucky* v. *Dennison,* 65 U. S. 726:

> "The cases referred to leave no question open to controversy, as to the jurisdiction of the Court. They show that it has been the established doctrine upon this subject ever since the Act of 1789, that in all cases where original jurisdiction is given by the Constitution, this court has authority to exercise it without any further Act of Congress to regulate its process or confer jurisdiction; *and that the court may regulate and mold the process it uses in such manner as in its judgment will best promote the purposes of justice.*" (Emphasis supplied.)

CONCLUSION

We submit, therefore, that there is ample authority for the Court to grant relief on any of the grounds sought and that if the Court should conclude that relief should be granted, then it is clearly within the power and authority of the Court to provide a prompt process and procedure for granting such relief. Considering both the legal and equitable rights of Applicant with respect to each of the parties to this litigation, it is submitted that the relief sought by Applicant should be granted. It may be that the relief of the nature sought by Applicant is without precedent in Original Actions; however, and as may be clearly seen from the foregoing, Applicant finds itself in a position without precedent, that is, a non-litigating party whose rights have become involved in a dispute between a State and the United States. It may be said that the relief sought by Applicant is un-

usual; however, as the Court well knows, extraordinary cases call for extraordinary remedies and relief.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify copies of the above and foregoing brief have been served upon the parties hereto as follows:

A. On the United States by this day mailing a copy thereof to the office of the Solicitor General, Department of Justice, Washington 25, D. C.

B. On the State of Louisiana by this day mailing a copy thereof addressed to the Office of Bailey Walsh, Esq., special counsel to the State of Louisiana, 1025 Connecticut Avenue, N.W., Washington, D. C.

Joseph V. Ferguson II

September 26, 1956.

APPENDIX A

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 13,526 April Term, 1956

Anderson-Prichard Oil Corporation,
a corporation,
Appellant,

v.

Fred A. Seaton, Secretary of the Interior

Herbert Brownell, Jr., Attorney General
of the United States,
Appellees.

Before: Edgerton, Chief Judge,
Wilbur K. Miller and Bazelon,
Circuit Judges.

ORDER

This case came on for consideration on appellant's motion for an immediate hearing on its appeal from an order denying the preliminary injunction and for a decree setting aside said order and remanding the case to the District Court with directions to issue the injunction as prayed for in the complaint, and said motion was argued by counsel.

II.

Upon consideration whereof, it is ORDERED by the Court that the aforesaid appellant's motion be, and it is hereby, denied. *United States* v. *Louisiana,* 351 U. S. 978.

Per Curiam.

Dated: September 4, 1956.

Dissenting opinion by Circuit Judge Miller attached.

No. 13,526, *Anderson-Prichard Oil Corp.* v. *Seaton, et al.*

WILBUR K. MILLER, Circuit Judge dissenting: Louisiana claims title to the submerged lands off her coast between the three-mile and three-league limits, and has executed oil leases to a number of lessees covering various portions of the area. The United States also claims ownership and has also executed many oil leases to other lessees. Out of more than 150 leased areas, there are only two or three on which a single lessee holds leases from both Louisiana and the United States. The appellant is one of these very few, and is said to be the only one of them who has kept both leases alive by paying delay rentals to both lessors.

The United States filed an Original Action in the Supreme Court against Louisiana to quiet its title to the entire submerged area. The State filed suit in its own court to enjoin the federal lessees from drilling. In the Original Action, the Government sought an injunction against the prosecution of the state court suit or any similar action, pending the Supreme Court's disposition of the basic title question. This

relief was granted by the Court (351 U. S. 978), which added this paragraph to its order:

> "IT IS FURTHER ORDERED that the State of Louisiana and the United States of America are enjoined from leasing or beginning the drilling of new wells in the disputed tidelands area pending further order of this Court unless by agreement of the parties filed here."

In the spring of 1956 Anderson-Prichard contracted with a marine drilling company to commence a well in the area on which it held subsisting leases from both governments. The State and the United States were then in dispute over ownership, but the appellant felt secure. Since it held leases from both contenders, apparently it had a valid lease no matter how the question of title to the submerged lands might finally be determined. To be sure, a federal drilling permit had to be obtained, but no trouble on that score was anticipated as the issuance of a permit to a lessee is, the Government admits a formality which occurs practically automatically.

Solely because of the second paragraph of the Supreme Court's order in the Original Action quoted above, the Secretary of the Interior and the Attorney General of the United States refuse to issue a drilling permit to Anderson-Prichard. Their counsel conceded on oral argument that, but for what they regard as the Supreme Court's prohibition against doing so, a drilling permit would be promptly issued; they said its issuance is a mere ministerial act.

In the meantime, the drilling contractor had moved or was about to move on location. I am not sure which, as I necessarily write hurriedly; but it is certain that the contractor is in a position where Anderson-Prichard is obliged to pay him standby charges in the sum of $4,400.00 per day. Moreover, the appellant's lease from Louisiana will expire by its terms December 27, 1956, if a well is not commenced by that time; in that event, Anderson-Prichard will lose its present favorable position as a "dual lessee," and will have no lease if title should be won by the State.

In these circumstances the dual lessee asked an associate justice of the Supreme Court (the Court being in recess) to modify or clarify the second paragraph of the Court's order. This was denied without opinion, but probably because the justice did not feel justified in modifying an order entered by the whole Court. A similar motion was presented to a second justice, who declined to disturb the action of his senior.

Anderson-Prichard then filed the present suit in the United States District Court for the District of Columbia, asking that the defendant officials be required to issue a drilling permit. That court thought itself bound by the Supreme Court's second paragraph and denied a motion for preliminary injunctive relief. Its order is here for review. My brothers think, as did the district judge, that the second paragraph governs the question here, and so affirm his holding. I dissent.

The parties agreed on oral argument that Anderson-Prichard's unique position as a dual lessee, whose right to the lease does not depend on the outcome of the litigation

between its two lessors, was not drawn to the Supreme Court's attention at the hearing which was followed by the injunctive order. I think it reasonable to conclude that the Court was dealing with a situation in which, unless enjoined, either government might execute new leases or might authorize or permit its own existing lessees, each dependent for title on the title of its lessor, to begin drilling. Obviously unnecessary confusion and complications would result from the commencement and completion of wells by contending lessees, so the Court prohibited such drilling pending its decision as to title, unless it were done by agreement between the State and the United States.

I think we are free to construe the Supreme Court's decree in the light of the situation with which it dealt, and I see no reason to suppose the Court intended to cover a factual situation which was not presented to it. Since this dual lessee's title to a valid lease and its right to drill thereunder do not depend, as I have pointed out, on the ultimate decision in the Original Action as to which of its lessors have title, I cannot believe the injunctive decree was intended to prohibit it from drilling pending that decision. If the Supreme Court did not so intend, then its decree does not have that effect.

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Either because, as I think, the Supreme Court did not enjoin drilling by a dual lessee such as this appellant, or, if I am wrong in that, because the lessors have consented to such drilling within the meaning of the injunctive order, I would reverse and direct the District Court to order the defendant officials to perform their admittedly ministerial duty of issuing a drilling permit. The order could require that the maximum royalty accruing from oil produced be deposited in the registry of the District Court pending the Supreme Court's decision as to which lessor is entitled to collect it. This would adequately safeguard the only possible interest that Louisiana and the United States have in the matter, and I do not see why either should object to such a provision in the order. Upon objection, however, I think it should be omitted, in which event the lessee would be required to pay royalties under both leases with the hope of ultimately recovering from the payee which loses the title contest in the Supreme Court. The lessee might prefer to make burdensome double royalty payments in order to avoid losing a lease said to be worth $4,500,000. The relief I suggest is not that expressly prayed for in the complaint, but I think it is within the prayer for general relief.

One more thing. The appellees say this is a suit against the United States to which it has not consented. This argument is not the "last refuge" of a Government lawyer; it is

usually his first. But in my view it is not valid here. We are considering a lessee's right to drill under a lease which the United States has already granted. The defendant officials simply refuse to implement that lease by performing a confessedly ministerial act. And they refuse only on the basis of what I think is the mistaken notion that the Supreme Court has told them not to perform it.