Real Property--Oil and Gas Leases--Right of Lessor Against Sublessee

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free him of his obligation to the donee, who may have relied heavily upon the gift. The minority view should become the majority view in the foreseeable future.

D. V. W.

**REAL PROPERTY—OIL AND GAS LEASES—RIGHTS OF LESSOR AGAINST SUBLESSEE.**—Plaintiffs leased certain oil and gas lands to X. By mesne assignments, B acquired X's rights under these leases, all of which were recorded. In 1932, in compromise of a forfeiture suit then being prosecuted by the plaintiff, the plaintiff and B entered into a written modification agreement providing for an increase in the amount of the royalties due the plaintiff. The modification agreement was never recorded. In 1936 B subleased to the defendant and the defendant agreed to pay B such rents and royalties as B might be chargeable with under the leases and agreements through which B derived title. The terms of this sublease were substantially reiterated in a new lease between B and the defendant in 1946. The defendant was sued by the plaintiff for the excess in royalties provided for in the unrecorded agreement over the royalties provided for in the recorded leases. Held, where a sublessee agrees with the lessee to assume the obligations of the parent lease, the lessor has a right of action as a creditor beneficiary on that contract regardless of the recording statutes. *Shearer v. United Carbon Co.*, 103 S.E.2d 883 (W. Va. 1958).

There is one matter that has led to considerable difficulty in an analysis of this case as reported. The majority opinion mentions at one point in their decision the fact that the defendant had actual notice of the unrecorded modification agreement prior to the signing of the 1946 lease, under which recovery for the excess royalties was sought. The dissenting opinion states most emphatically that "the defendant was not a party to such agreement, had no notice thereof, or of any fact putting it on inquiry." The conflict thus presented by the majority and minority opinions cannot be reconciled under the limited facts of this case. In spite of the conflict of factual statements, the issue with which this comment is most concerned is squarely raised. It is: is a modification agreement with respect to mineral royalties within the coverage of the West Virginia recording statutes?

The dissenting opinion was based on the contention that the modification agreement was one necessarily covered by the record-
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ing statutes. W. Va. Code ch. 40, art. 1, §§ 8, 9 (Michie 1955). The dissent, quoting section 8 states it thus: "... any contract in writing made in respect to real estate or goods ... or any contract in writing made for the conveyance or sale of real estate, or an interest or term therein of more than five years, or any other interest or term ... under which the whole or any part of the corpus of the estate may be taken, destroyed ... shall from the time it is duly admitted to record, be, as against creditors and purchasers, as valid as if the contract were a deed...." If, as contended by the dissent, the modification agreement was a "contract in respect to real estate" it clearly should have been recorded to have been enforceable against the defendant as a subsequent purchaser for value without notice. The first part of section 8 in its full context, however, provides: "Any contract in writing made in respect to real estate or goods and chattels in consideration of marriage...." (Emphasis added.) The dissent has, by omitting the qualifying phrase of this first part of the section, interpreted that section in so broad and comprehensive a manner as to exceed the true purpose of that section. A primary rule of statutory construction is that a statute should be interpreted so as to give effect to all of its words. Herald v. Surber, 83 W. Va. 785, 99 S.E. 187 (1919). Clearly then, it is not any or every "contract in respect to real estate" that is covered by the recording statutes.

The dissent also stated that it was clear that the modification agreement would fall within the provision governing contracts under which the whole or any part of the corpus of the estate might be taken. W. Va. Code ch. 40, art. 1, § 8 (Michie 1955). The second part of that section provides, however, that: "... or any contract in writing made for the conveyance or sale of real estate, or any interest or term therein of more than five years, or any interest or term therein, of any duration, under which the whole or any part of the corpus of the estate may be taken ... shall from the time it is duly admitted to record, be, as against creditors and purchasers, as valid as if the contract were a deed...."

In his treatise, Mr. Summers states that, "in all jurisdictions where the question has been raised, it has been held that oil and gas leases are conveyances affecting title to land within the provisions of the recording acts ... ." Summers, Oil and Gas § 281 (2d ed. 1927). The problem in this case is not concerned with the lease itself, but solely with the modification agreement providing for increased royalties. It is noted that not every contract "under which
the whole or any part of the corpus of the estate may be taken” is within the scope of the recording statute, but that the second part of section 8 states that contracts “for the conveyance or sale of real estate” shall be so covered. W. Va. Code ch. 40, art. 1, § 8 (Michie 1955). Unless the modification agreement were a sale or conveyance, it would then not fall within this section as read in its entirety.

The purpose of the agreement was to increase remuneration under the existing leases. A conveyance is a written instrument by which the title to land is transferred from one person to another. American Net & Twine Co. v. Mayo, 97 Va. 182, 33 S.E. 528 (1899). A sale is an agreement between parties to transfer the rights of property for a consideration. Tuggle v. Belcher, 104 W. Va. 178, 139 S.E. 653 (1927). To come within the recording statutes, the modification agreement would have to have been a transfer from B to the plaintiff of the right or title to a real property interest.

It is difficult to ascertain whether the lessee’s interest under an oil and gas lease is regarded as real or personal property in West Virginia. In Haskell v. Sutton, 53 W. Va. 206, 44 S.E. 533 (1903), it was held that the lease of oil and gas lands had the effect of a grant of that part of the corpus of the land. In the case of Headley v. Hoopengarner, 60 W. Va. 626, 55 S.E. 744 (1906), the court said that the ordinary oil and gas lease for a definite term was not a sale of the oil and gas in place, and in effect was not a sale of any estate in real property. In Harvey Coal & Coke Co. v. Dillon, 59 W. Va. 605, 53 S.E. 928 (1905), a taxation case, it was held that even where the lease was to extend beyond its definite term for an additional period until all the minerals should be removed, the lessee’s interest under the lease was but a chattel real, which is personal property.

In referring to the variances in these decisions, Summers, op. cit. supra § 157, states that, “The West Virginia court seems to have been more indefinite . . . respecting the nature of the oil and gas lessee’s interest than the courts of most states.” In view of this fact, it would be only on most insecure and tenuous grounds that the modification agreement could be considered a conveyance or sale of a real property interest.

One instance wherein the modification agreement would be within the coverage of the recording statutes, would be if the defendant had not had actual or inquiry notice of the modification agreement. There is no question but that the purchaser of an inter-
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est in oil and gas leases is a purchaser for value within the meaning of the recording statutes. *Carter Oil Co. v. McQuigg*, 112 F.2d 275 (7th Cir. 1940). The courts are in accord that purchasers of real property interests under oil and gas leases are entitled to rely on the record title, and are not subject to the secret equities of third persons. *Angichiodo v. Cerami*, 28 F. Supp. 720 (W.D. La. 1939). Though subsequent purchasers are clearly bound by the record title, it would seem that they would not be bound by alterations in respect to the property where the record title was not changed to conform with such a modification.

With the above possible exception, a consideration of the recording statutes in their full context makes it manifest that there would be great doubt that the modification agreement would be covered thereunder. This result could be reached only if the West Virginia court should regard the lessee’s interest as a real property interest. There is clearly some doubt that they would so hold. The dissent’s deficient quotation of the recording statute leads not only to an erroneous oversimplification of the law, but also to a most confusing analysis of the position of this case in regard to the recording statutes. The conflict in factual statements in the two opinions renders a firm resolution of this case in the mind of the reader extremely difficult and speculative.

L. B. S.

**Workmen’s Compensation—Mental and Emotional Attitude of Employee Considered Factor in Recovery.—** Appeal from a workmen’s compensation award to *D* who suffered a heart attack which, according to expert medical testimony, could have been caused by the mental and emotional strain of her job, coupled with her pre-existing hypertension. She later died. *Held*, that where an employee’s disability or illness is aggravated by mental and emotional strain on the job leading to resulting injury or death, the injury is compensable even in the absence of direct physical activity as a factor contributing to the disability. *Ins. Dep’t of Mississippi v. Dinsmore*, 102 So. 2d 691 (Miss. 1958).

The principal case represents a departure from the prevailing line of authority in compensation cases for two reasons: it considers the worker’s mental and emotional attitude toward, and the emotional demands of his job, then allows recovery in the absence of direct physical activity as a factor in the injury.