Judgment rendered August 26, 2026.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 56,802-CW

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

MARK A. FURLOW, CANDEE C. FURLOW, MCELWEE FAMILY PARTNERSHIP, L.P., MARY LANGFORD FRANKLIN, BRIC L. LANGFORD, BARBARA E. LANGFORD, INDIVIDUALLY AND AS CLASS REPRESENTATIVES	Respondents

versus

PETRO-CHEM OPERATING COMPANY, INC.	Applicant

* * * * *

On Application for Writs from the
Second Judicial District Court for the
Parish of Claiborne, Louisiana
Trial Court No. 42,589

Honorable Charles Glenn Fallin, Judge

* * * * *

COOK, YANCEY, KING & GALLOWAY By: John Tucker Kalmbach James Bert Babington William Drew Burnham	Counsel for Applicant
COLVIN, SMITH, MCKAY & BAYS By: James Henry Colvin, Jr. Daniel N. Bays, Jr.	Counsel for Respondents

* * * * *

Before PITMAN, THOMPSON, and ELLENDER, JJ.

PITMAN, C. J.

Defendant-Applicant Petro-Chem Operating Company, Inc. ("PC"), seeks a writ from the denial of summary judgment in this suit brought against it for conversion of gas condensate, which was filed by Plaintiffs-Respondents Mark A. Furlow, Candee C. Furlow, McElwee Family Partnership, L.P., Mary Langford Franklin, Bric L. Langford and Barbara E. Langford, individually and as class representatives. The writ was granted to docket. For the following reasons, we reverse the judgment of the trial court, render judgment in favor of PC and dismiss the suit against it.

FACTS

The following facts are undisputed by the parties. Plaintiffs own royalties to oil, natural gas and minerals in contiguous tracts of land in Claiborne Parish that are subject to oil, gas, and mineral leases executed in 2012 ("the 2012 Leases") in favor of AIX Energy, Inc. ("AIX"). Plaintiffs, as lessors, granted the following rights to AIX:

> Lessor hereby grants, leases, and *lets unto Lessee the exclusive right to enter upon and use the land* hereinafter described for the exploration for and production of oil, gas, sulfur, and all other minerals, together with the use of the surface of the land *for all purposes incident to the exploration for and production, ownership, possession and transportation of said minerals*. (Emphasis added.)

AIX spudded 11 wells, 8 on Plaintiffs' tracts and 3 on tracts in the surrounding area. One of the 3 nearby wells was named the "Garrett Well." AIX gathered natural gas from all 11 wells into its pipeline for transport, sale and delivery to a third party. It extracted and transferred suspended liquids (condensate, oil and water a/k/a "wet" gas and "drip") from the gas stream through a separate line into a tank (a/k/a the "drip tank") attached to the Garrett Well. When a sufficient amount of condensate accumulated in the tank, AIX sold it and allocated the sale proceeds to the owners of the contributing wells based on the amount of gas contributed by each well.

Following a 2015 bankruptcy filing, AIX sold its leases, the 11 wells and gathering pipeline. The 8 wells on Plaintiffs' tracts, the gathering pipeline and the interest in the 2012 Leases were sold to Contango Resources, Inc. ("Contango" or "Lessee"). The remaining 3 wells, including the Garrett Well with the attached condensate tank, were sold to a different owner, who hired PC to operate its wells.

In July 2016, with Contango's consent, PC began selling the accumulated condensate in the same manner. It held the sales proceeds until December 2021 when Contango provided, and PC received, the monthly production volume and ownership information for the eight contributing wells. PC paid $56,298.93 to Contango. The condensate sales and the distribution of the sales proceeds continued on a regular basis. In May 2022, the eight wells and pipeline were sold to another company, and the new well owner chose to collect the condensate in a collecting tank attached to its own wells instead of those operated by PC.

In February 2022, prior to the sale, Plaintiffs filed a class action suit in the Second Judicial District Court, Claiborne Parish, against PC alleging that despite having no mineral leases from Plaintiffs, PC collected the condensate from their tracts. Plaintiffs also alleged PC unlawfully diverted and gathered the condensate without their knowledge or consent and sold it for PC's exclusive benefit and financial gain to Plaintiffs' detriment and loss. Although Contango claimed it distributed the amount of the sales proceeds owed to Plaintiffs as royalties under the 2012 Leases, Plaintiffs alleged that they were not compensated in any amount for their portion of the proceeds from the sale of the condensate. Plaintiffs sought judgment for damages sustained as a result of PC's "conversion of their minerals."

PC filed a peremptory exception of no right of action, which the trial court overruled after finding that PC's arguments addressed an exception of no cause of action instead of a no right of action. On the showing made, on November 1, 2022, this court denied PC's writ seeking supervisory review, and the supreme court denied PC's writ on February 7, 2023.

PC's answer to the petition asserted that Plaintiffs did not have a right of action to claim conversion because according to the terms of the 2012 Leases, Plaintiffs did not own the mineral condensate at the time it was gathered and sold. PC referenced the language in the 2012 Leases wherein Plaintiffs granted the Lessee the right of possession and ownership of the minerals produced. PC further argued it had no obligation, contractual or otherwise, to pay Plaintiffs for the sale of the condensate; and PC was not liable for any damages that Plaintiffs may have sustained. PC stated that payments from the sale of the condensate were made to Plaintiffs' Lessee, Contango, which owned the minerals it produced under the 2012 Leases and was responsible for making any payments owed to Plaintiffs as royalites. PC contended that Contango, as Lessee, was the proper party to sue if Plaintiffs believed that they were not properly compensated pursuant to the contractual obligation to pay royalties.

PC filed a motion for summary judgment and asserted that it was entitled to judgment as a matter of law because Plaintiffs could not meet their burden of proof at trial establishing that PC's actions in gathering and selling the condensate were inconsistent with their right of possession and ownership in the minerals and condensate, which was an essential element of their conversion claim. Because of the 2012 Leases, Plaintiffs had no right of possession or ownership of the minerals and condensate extracted by Contango and the condensate later sold by PC.

In support of its motion, PC provided copies of the 2012 Leases; Contango's corporate deposition, through its corporate representative, Jason Thomas; an affidavit by Bryon Trust, PC's chief operating officer ("COO"); an affidavit by John D. Collinsworth, who examined the ownership interests of the mineral rights to the subject tracts and confirmed that Plaintiffs' mineral rights regarding those tracts were subject to the recorded mineral leases; and an affidavit by J. Bert Babinton, with documentation of the AIX bankruptcy, the sale and conveyance of the wells and 2012 Lease interests to Contango and a certificate of merger.

PC argued that Plaintiffs' ownership rights did not include ownership of the natural gas and condensate not yet produced. PC contended that pursuant to the lease, the lessor gave the lessee the exclusive right to explore and develop the property for the production of the natural gas and to reduce it to possession and ownership. PC argued that in the 2012 Leases, Plaintiffs leased these rights to AIX, and its successor, Contango. PC also argued that because natural gas is reduced to possession when it is under physical control that permits delivery to another, vesting of title to natural gas occurs when it is reduced to possession at the wellhead. PC asserted that under the terms of the 2012 Leases, AIX/Contango became owner of the natural gas produced once AIX/Contango reduced it to possession at the wellhead. Absent the right to possession and ownership of the extracted and severed minerals at the time of the claimed conversion, Plaintiffs could not show that it acted inconsistently with Plaintiffs' rights and so could not prove the conversion claim against it.

In opposition, Plaintiffs maintained that PC had no right to gather and sell the condensate without their approval and without compensating them and that execution of the mineral lease could not benefit PC, who was not affiliated with Contango by law or contract. In support of their argument, Plaintiffs provided excerpts from depositions by Larry Hock, owner of PC; Bryon Trust, COO of PC; Jason Russell, manager of PC's revenue distribution; and Bric Langford, one of the Plaintiffs; and an expert witness affidavit of Clay Kimbrell, an expert in petroleum engineering.

Kimbrell is a registered professional engineer in 15 states, a registered professional geoscientist in Texas and a professional geologist certified by the American Institute of Professional Geologists. He has Bachelor of Science degrees in Petroleum Engineering and Geology, as well as a Master of Science in Petroleum Engineering. He has testified as an expert in petroleum engineering, remediation/restoration and oilfield operations in state and federal courts. His affidavit states that the condensate taken by PC was obtained from "the scrubbing of the 'wet' natural gas generated downstream from the wellhead and as such had been captured and was owned by the mineral owners of each well." He did not offer any further information or documentation in support of this declaration and did not offer any identification as to the "mineral owners of each well."

Plaintiffs further asserted that Contango lacked the authority to give consent for PC to gather and sell the condensate, but they did not address the terms of the 2012 Leases granting the Lessee the rights incident to ownership of the minerals the Lessee produced. Instead, Plaintiffs contended that the law did not allow for any lease to grant a real right such as ownership of minerals to the Lessee.

On September 29, 2025, a hearing on the motion for summary judgment was held, at which time PC argued that summary judgment was appropriate in this case because Plaintiffs could not prove an essential element of their conversion claim, which was that they possessed or owned the drip or natural gas condensate when it was allegedly converted by PC. PC objected to Kimbrell's affidavit as noncompliant with La. C.C.P. art. 966(D)(2) and argued that Kimbrell is a geologist, not an attorney, and is unqualified to assert legal conclusions regarding ownership of minerals; but, nonetheless, he stated in an unsupported and conclusory manner that Plaintiffs owned the minerals. PC pointed out that it is the province of the trial court to make legal conclusions; and, thus, it asserted that the entire affidavit should be stricken or disregarded and could not be relied upon to prove Plaintiffs owned the minerals at the time of the alleged conversion.

In opposition, Plaintiffs argued that the 2012 Leases did not convey ownership of the minerals extracted from their tracts. They acknowledged that Contango produced the minerals and that, once produced, they were severed and became susceptible to ownership under the Louisiana Mineral Code. However, Plaintiffs still insisted that they retained both the right of ownership and control of the natural gas and condensate produced by Contango, the lessee, as well as the right to grant or oppose the sale of the natural gas condensate by PC. Plaintiffs contended that the nature and extent of PC's conversion was a genuine issue of material fact that precluded summary judgment.

On October 8, 2025, the trial court signed a judgment stating that genuine issues of material facts remained that should be determined by the trier of fact after a full trial on the merits. PC sought supervisory review, and this matter was granted to the appellate docket.

DISCUSSION

PC argues that the trial court erred in failing to rule on its objection to the affidavit and legal opinion of Kimbrell, Plaintiffs' geologist, because he is not an attorney and is unqualified to render an opinion on who owned the extracted minerals at the time of the alleged conversion. It contends that the trial court erred in denying summary judgment where Plaintiffs presented no evidence establishing that they could prove their possession and ownership of the extracted minerals at the time of the alleged conversion and, for that reason, were unable to establish that PC acted inconsistently with Plaintiffs' rights. It further argues that Plaintiffs failed to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law.

Plaintiffs argue that PC had no right to gather and sell the condensate without their approval and without compensating them and that execution of the mineral lease could not benefit PC, who was not affiliated with Contango by law or contract. They assert that they were the owners of the condensate and supported this assertion with Kimbrell's affidavit. They contend that Contango lacked a right or the authority to give consent for PC to gather and sell the condensate and that the Louisiana Mineral Code does not expressly or impliedly provide affirmative guidance regarding whether a mineral lease conveys ownership of the minerals leased. Therefore, they argue, the general laws of leases applied; and under general lease laws, a lease does not convey any real right such as ownership. Plaintiffs further contend the mineral leases convey to the lessee only the right to explore for and produce the minerals. They argue that the minerals were owned by them once brought to the surface for gathering and subsequent sale.

Appellate courts review motions for summary judgment de novo, using the same criteria that govern the district court's consideration of whether summary judgment is appropriate. *Peironnet v. Matador Res. Co*., 12-2292 (La. 6/28/13), 144 So. 3d 791; *Springbok Royalty Partners, LLC v. Woolley*, 55,953 (La. App. 2 Cir. 11/20/24), 401 So. 3d 952, *writ denied*, 24-01540 (La. 2/28/25), 402 So. 3d 487. A motion for summary judgment is a procedural device used when there is no genuine issue of material fact for all or part of the relief prayed for by a litigant. La. C.C.P. art. 966(A)(1); *Springbok Royalty Partners, LLC*, *supra*. The procedure is favored and shall be construed to secure the just, speedy and inexpensive determination of actions. La. C.C.P. art. 966(A)(2).

A motion for summary judgment shall be granted if the motion, memorandum and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3). A fact is material if it potentially ensures or precludes recovery, affects a litigant's ultimate success or determines the outcome of the legal dispute. *Springbok Royalty Partners, LLC*, *supra*. A genuine issue of material fact is one as to which reasonable persons could disagree; if reasonable persons could reach only one conclusion, there is no need for trial on that issue and summary judgment is appropriate. *Id*. In determining whether an issue is genuine, a court should not consider the merits, make credibility determinations, evaluate testimony or weigh evidence. *Id*.

The burden of proof rests with the mover. La. C.C.P. art. 966(D)(1). Nevertheless, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action or defense but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action or defense. *Id*. The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. *Id*.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. La. C.C.P. art. 967(A).

When a motion for summary judgment is made and supported as provided above, an adverse party may not rest on the mere allegations or denials of his pleading; but his response, by affidavits or as otherwise provided above, must set forth specific facts showing that there is a genuine issue for trial. La. C.C.P. art. 967(B). If he does not so respond, summary judgment, if appropriate, shall be rendered against him. *Id*.

Any objection to a document attached to the summary judgment motion or opposition shall be raised in a timely filed opposition or reply memorandum. La. C.C.P. art. 966(D)(2). The court shall consider all objections prior to rendering judgment. The court shall specifically state on the record or in writing whether the court sustains or overrules the objections raised. *Id*.

A party challenging an expert witness's qualifications shall file a motion for a pretrial hearing and the court shall hold a contradictory hearing. La. C.C.P. art. 1425(F). If a timely objection is made to an expert's qualifications or methodologies in support of or in opposition to a motion for summary judgment, any motion in accordance with Article 1425(F) to determine whether the expert is qualified or the expert's methodologies are reliable shall be filed, heard and decided prior to the hearing on the motion for summary judgment. La. C.C.P. art. 966(D)(3).

To defeat a properly supported motion for summary judgment, an expert's opinion must be more than a conclusory assertion about ultimate legal issues. *Nelson v. Shelat*, 54,099 (La. App. 2 Cir. 8/18/21), 325 So. 3d 1170, *writ denied*, 21-01354 (La. 11/17/21), 327 So. 3d 997, *citing Independent Fire Ins. Co. v. Sunbeam Corp*., 99-2181 (La. 2/29/00), 755 So. 2d 226.

Conversion is an intentional tort and consists of an act in derogation of the plaintiff's possessory rights. *Capers v. NorthPro Props. Mgmt., LLC*, 53,919 (La. App. 2 Cir. 5/5/21), 321 So. 3d 502, *writ denied*, 21-00768 (La. 10/1/21), 324 So. 3d 1055. To constitute a conversion, an intentional dispossession and/or exercise of dominion or control over the property of another in denial of, or inconsistent with, the owner's rights must be established. *Id*. Any wrongful exercise or assumption of authority over another's goods, depriving him of the possession, permanently or for an indefinite time, is a conversion. *Fuller v. XTO Energy, Inc*., 43,454 (La. App. 2 Cir. 8/13/08), 989 So. 2d 298, *writ denied*, 08-2227 (La. 11/21/08), 996 So. 2d 1107. As in trespass, the lack of consent by the owner or possessor is a prerequisite. *Id*.

In *Dual Drilling Co. v. Mills Equip. Invs., Inc.,* 98-0343 (La. 12/1/98), 721 So.2d 853, the Louisiana Supreme Court, speaking of the action for conversion, stated:

> [I]t is available to an owner dispossessed as a result of an offense or quasi-offense or, in other words, a "tort." This action is grounded on the unlawful interference with the ownership or possession of a movable and is frequently termed an action for "conversion" in Louisiana. A conversion is committed when any of the following occurs: 1) possession is acquired in an unauthorized manner; 2) the chattel is removed from one place to another with the intent to exercise control over it; 3) possession of the chattel is transferred without authority; 4) possession is withheld from the owner or possessor; 5) the chattel is altered or destroyed; 6) the chattel is used improperly; or 7) ownership is asserted over the chattel. Frank L. Maraist & Thomas C. Galligan, Louisiana Tort Law § 1-2, at 3 (1996 & Supp. 1998)

The provisions of the Louisiana Mineral Code are supplementary to those of the Louisiana Civil Code and are applicable specifically to the subject matter of mineral law. La. R.S. 31:2 ("Article 2").[1] In the event of conflict between the provisions of this Code and those of the Civil Code or other laws, the provisions of the Mineral Code shall prevail. *Id*. If the Mineral Code does not expressly or impliedly provide for a particular situation, the Civil Code or other laws are applicable. *Id*.

Ownership of land includes all minerals occurring naturally in a solid state. Article 5. Solid minerals are insusceptible of ownership apart from the land until reduced to possession. *Id.* Ownership of land does not include

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[1] The provisions of this title may be referred to or cited either as Articles of the Mineral Code or as Sections of the Revised Statutes. Thus, Article 30 of the Mineral Code may also be referred to or cited as La. R.S. 31:30. Whenever reference is made herein to an Article of the Mineral Code, the same shall also relate to the corresponding Section of the Revised Statutes. La. R.S. 31:1. Pursuant to this comment, throughout this opinion, as an example, the pertinent articles will be referred to as "Article 1," etc.

ownership of oil, gas and other minerals occurring naturally in liquid or gaseous form or of any elements or compounds in solution, emulsion or association with such minerals. Article 6. The landowner has the exclusive right to explore and develop his property for the production of such minerals and to reduce them to possession and ownership. *Id*. Minerals are reduced to possession when they are under physical control that permits delivery to another. Article 7. A landowner may convey, reserve or lease his right to explore and develop his land for production of minerals and to reduce them to possession. Article 15. A mineral lease is a contract by which the lessee is granted the right to explore for and produce minerals. Article 114.

The vesting of title to fugitive minerals, such as oil or gas, occurs when the minerals are reduced to possession at the wellhead. *Frey v. Amoco Prod. Co*., 603 So. 2d 166 (La. 1992). Thus, with respect to oil and gas, possession marks both the vesting of title and mobilization. *Id*. A mineral lease, one of the manners in which mineral rights are segregated from ownership, is a contract by which the lessee is granted the right to explore for and produce minerals. *Id*. Mineral leases are construed as leases generally; and, wherever pertinent, codal provisions applicable to ordinary leases are applied to mineral leases. *Id*.

From the foregoing, we conclude that PC met its burden of proof under La. C.C.P. art. 966(D)(1) by pointing out to the court the absence of factual support for one or more elements essential to Plaintiffs' claim, i.e., ownership of the condensate, which resulted in the shift of the burden of proof to Plaintiffs to produce factual support sufficient to establish the existence of a genuine issue of material fact or that PC is not entitled to judgment as a matter of law. The 2012 Leases granted to Plaintiffs' lessee, AIX/Contango, the exclusive right to enter and use the land for all purposes incident to the exploration for and production, ownership, possession and transportation of minerals. They severed their right of ownership to all minerals in exchange for a royalty to be paid to them by their lessee. Under the Louisiana Mineral Code, the right of ownership of the condensate is determined at the time of capture at the wellhead; thus, in this case, ownership vested in Contango, not Plaintiffs. The burden shifted to Plaintiffs to show there remained some genuine issue of material fact that precluded the judgment.

Plaintiffs' reliance on the Kimbrell affidavit to establish ownership of the condensate is not well founded. Kimbrell's statement that the minerals belonged to the landowner, unsupported by any further documentation, made a conclusory legal statement he is unqualified to assert. None of his qualifications or expert witness experience involved the knowledge or application of Louisiana law in general, or property law or mineral law, specifically. The affiant made a general statement that the well owner owned the minerals but failed to identify the owners or establish how Plaintiffs were the owners of the condensate once the minerals were extracted or severed from the land by Contango. Plaintiffs have failed to provide proof that a genuine issue remains or that PC is not entitled to judgment in its favor as a matter of law. For these reasons, the assignments of error have merit.

CONCLUSION

For the reasons stated above, the judgment of the trial court denying summary judgment is reversed, and judgment is entered granting summary judgment in favor of Defendant-Applicant Petro-Chem Operating Company, Inc. and against Plaintiffs-Respondents Mark A. Furlow, Candee C. Furlow, McElwee Family Partnership, L.P., Mary Langford Franklin, Bric L. Langford and Barbara E. Langford, Individually and as Class Representatives. The suit is dismissed. Costs of this appeal are assessed against Plaintiffs-Respondents.

REVERSED AND RENDERED.