Judgment rendered November 18, 2026.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 56,966-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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JOHN MARK ALVORD, ET AL — Plaintiffs-Appellants

versus

TOTAL E&P USA, INC. — Defendants-Appellees

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Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 634,005

Honorable Michael A. Pitman, Judge

* * * * *

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Before STONE, STEPHENS, THOMPSON,
ROBINSON, and MARCOTTE, JJ.

THOMPSON, J., dissents with written reasons.

MARCOTTE, J., dissents for reasons expressed by J. Thompson.

STONE, J.

This appeal arises from the First Judicial District Court, the Honorable Michael A. Pitman presiding. The appellants ("the Alvords"), as the grandchildren of H.H. Alvord Jr., seek enforcement of their overriding royalty interest from an oil and gas lease (the "Frost Lease") executed in 1946. In 1989, defendant-appellee, TotalEnergies Petrochemical & Refining, Inc. ("TEPRI"), acquired from TOC-Gulf Coast Inc.—by a recorded partial assignment—nonproducing zones for the lease. TEPRI later assigned the lease to defendant-appellee, TotalEnergies E&P USA, Inc. ("TEEP").

For over 75 years, the Alvords have received overriding royalty payments ("Alvord ORI") from other owners with partial lease rights to the producing Travis Peak formation of the Frost Lease. Those payments of the Alvord ORI by the owner of the Travis Peak production continue to the present. Since the recent development of the Haynesville Shale zone, appellees have refused to pay the Alvords.

Both the Alvords and TEPRI and TEEP filed cross-motions for summary judgment. The trial court granted summary judgment in favor of TEPRI and TEEP (noting the Public Records Doctrine procedural claims), and dismissed all claims against them with prejudice. The Alvords have appealed. We reverse the trial court's rulings and remand for further proceedings.

FACTS AND PROCEDURAL HISTORY

On June 28, 1946, Frost Lumber Industries, Inc. granted a lease on 79.1 acres of land it owned in Caddo Parish, Louisiana, to Midstates Oil

Corp. (“Midstates”), providing for a 1/8 royalty to the lessor and 7/8 interest for Midstates. The lease was witnessed by Midstates’ landman, H.H. Alvord, Jr. and filed in the conveyance records of Caddo Parish—and covered all rights below the base of the Fredericksburg formation under 79.1 acres in Section 18, Township 17, Range 16 West of Caddo Parish, Louisiana.

In 1959, Midstates’ ownership of the lease devolved to Middle States Petroleum and then to Tennessee Gas Transmission Co. (“Tennessee Gas”). Next, there were two Tenneco-related assignments of the Frost Lease: first, in 1961 from Tennessee Gas to Tenneco Corporation, and then in 1964, from Tenneco Corporation to Tenneco Oil Company (collectively the “Tenneco Assignments”). Both assignments had provisions that described the Frost Lease as “being subject to. . . an overriding royalty interest of 1/8 of 7/8 on all oil . . . and on gas . . . reserved by H.H. Alvord, Jr.” In addition to lease rights assigned to the producing zone by the Tenneco Assignments, this recorded Alvord ORI obligation applied to the deeper undeveloped Haynesville Shale rights in the lease.

In 1987, Tenneco Oil Company partially assigned the Frost Lease rights in the producing Travis Peak formation to Marshall Exploration, which rights are owned now by Brookston Energy (“Brookston”).[1] In 1988, Tenneco Oil company placed title to the Frost Lease into their specially created subsidiary, TOC-Gulf Coast Inc., for the execution of a 1989 stock

[1] Brookston is still producing the Travis Peak Formation and has continuously paid the Alvord ORI to the Alvords for that production. Therefore, the Brookston ownership of the producing rights limited TEPRI’s lease rights acquired in 1989 to the non-productive deeper zones and formations covered by the Frost Lease, including the rights to the Haynesville Shale.

purchase agreement between TOC-Gulf Coast Inc. and Fina Oil and Chemical Co., which by corporate name change is now TEPRI. In TEPRI's 1989 acquisition of the Haynesville Shale rights (the "Fina Assignment"), the Frost Lease is described as a "Subject Property," to which TEPRI obligated itself, as follows:

> ASSIGNEE, for itself, its successors and assigns, by acceptance and recordation of this Assignment, hereby undertakes and obligates itself to be bound by and to fulfill, from and after the effective time, all obligation, claims, and liabilities relating to the Subject Property, as well as the terms and conditions of this assignment.

In 2000, there was an assignment of the Frost Lease rights from TEPRI to TEEP. In that assignment, there was an assumption provision in the contract that states:

> Assignee agrees to assume and to indemnify and hold harmless Assignor from and against (a) any cost, expense or obligation relating to the Subject Property which accrued prior to the Effective Time, (b) any litigation or claim related to the Subject Property which is based upon alleged acts, omissions, events or occurrences prior to the Effective Time, and (c) all contractual obligations of Assignor related to the Subject Property.

Later, in 2003, TEEP assigned all its rights to the Frost Lease to T.C. Craighead & Company. The Joy Partners, LLC ("Joy") and Redbird Royalties, LLC ("Redbird") are the current owners of the Haynesville Shale rights of the Frost Lease and are refusing to pay the Alvord ORI.

The right to be paid from production originates in different forms, including but not limited to ownership of the land, ownership of the minerals, or an overriding royalty interest in the minerals granted by either of the above. H.H. Alvord, Jr., as the landman for Midstates, was compensated by Midstates, at least partially, with a fractional interest (commonly referred to as an "overriding royalty interest" or "ORI") in the

production originating from the Frost Lease he secured on behalf of Midstates.

The Alvords assert that their rights originate from their ancestor, H.H. Alvord, Jr., who obtained an overriding royalty interest from the interest Midstates had obtained from the landowner, Frost Lumber Industries, Inc. The Alvords assert their ancestor was entitled, and now, therefore, they are entitled to be paid an overriding royalty interest of one-eighth (1/8) from that seven-eighths (7/8) of the production from the Frost Lease. The Frost Lease has been maintained by active production since its inception—namely, from the Miller Mays unit from the Travis Peak formation (since 1949) and the Haynesville Shale unit (since 2018). Payment to H.H. Alvord, Jr. and then his successors for production from the original formation have been consistently made.

The Alvords filed suit on December 1, 2021, against TEPRI,[2] for failure to pay the overriding royalty interest from the Alvord ORI from production originating in the Fredericksburg Lime formation. What followed were opposing motions for summary judgment and partial summary judgment filed by the parties. The trial court granted TEPRI and TEEP's motions for summary judgment, finding that (1) TEPRI and TEEP were not the corporate successors to Midstates or Tenneco, (2) there was no writing or recorded act signed by the parties evidencing the Alvord ORI, and (3) the two Tenneco Assignments did not convey a benefit to a third party pursuant to La. C.C. art. 1978. The trial court denied the Alvords' motions

[2] TotalEnergies Petrochemicals & Refining USA, Inc. was added as a defendant by the Alvords' first amended petition dated November 2, 2022.

for summary judgment against TERPI and TEEP. All claims against TEPRI and TEEP were dismissed with prejudice. This appeal by the Alvords followed.

ISSUES

On appeal, the Alvords argue:

(1) there exists a real obligation under La. C.C. art. 1763 from the recorded stipulation *pour autrui*;

(2) TEPRI and TEEP are liable for payment under the public records law and the law of assumption of obligations under La. C.C. art. 1821;

(3) the evidence they presented supports the following and should not have been excluded:

- (a) proof of the existence of the—now lost—1948 agreement creating the Alvord ORI,
- (b) proof of the payment history by Appellees' assignor(s) of the Frost Lease, and
- (c) Ray Madden's testimony regarding leasehold title examination

and,

(4) that TEPRI and TEEP are the corporate successors of Tenneco and Midstates Oil Corp.—and therefore, they have a claim for successor liability for the Alvord ORI.

ANALYSIS

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. Cook*, 54,788 (La. App. 2 Cir. 11/16/22), 351 So. 3d 850, *writ denied*, 22-01832 (La. 4/14/23), 355 So. 3d 614. 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. *Schultz v. Guoth*, 10-0343 (La. 1/19/11), 57 So. 3d 1002.

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. 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. *Maggio v. Parker*, 17-1112 (La. 6/27/18), 250 So. 3d 874; *Jackson v. City of New Orleans*, 12-2742 (La. 1/28/14), 144 So. 3d 876, *cert. denied*, 574 U.S. 869, 135 S. Ct. 197, 190 L. Ed. 2d 130 (2014); *Springbok*, *supra*. In determining whether an issue is genuine, a court should not consider the merits, make credibility determinations, evaluate testimony, or weigh evidence. *Springbok*, *supra*.

The burden of proof rests with the mover. 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. 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. La. C.C.P. art. 966(D)(1).

I. Creation of a Stipulation Pour Autrui

The Alvords argue that the Tenneco Assignments, which described the interest in the Frost Lease conveyed as "subject to" the "overriding royalty interest reserved by H.H. Alvord, Jr.," required TEPRI and TEEP to make the payments consistent with the Alvord ORI. Specifically, the Alvords contend that this language created a stipulation *pour autrui*.

A. Third-Party Beneficiary. A contracting party may stipulate a benefit for a third person called a third-party beneficiary. La. C.C. art. 1978. Under Louisiana law, such a contract for the benefit of a third party is referred to as a stipulation *pour autrui*. *Hudson v. Progressive Sec. Ins. Co.*, 43,857 (La. App. 2 Cir. 12/10/08), 1 So. 3d 627. A stipulation *pour autrui* is never presumed. Rather, the intent of the contracting parties to stipulate a benefit in favor of a third party must be made manifestly clear. Additionally, to establish a stipulation *pour autrui*, the third-party relationship must form the consideration for a condition of the contract, and the benefit may not be merely incidental to the contract. *Id.*

The party demanding performance of an obligation pursuant to a stipulation *pour autrui* bears the burden of proving the existence of this obligation. *Id.* Therefore, the Alvords were required 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. *See* La. C.C.P. art. 966(D)(1).

The language in the Tenneco Assignments that establishes that the Frost Lease is "subject to" the "overriding royalty interest reserved by H.H. Alvord, Jr.," opens the genuine issue as to whether a stipulation *pour autrui* was created. The language asserting that the rights would be reserved by H.H. Alvord, Jr. is arguably more than a simple reference to the unrecorded Midstates/Alvord Conveyance. In 1961, Tenneco Corporation's assignor, Tennessee Gas, had been producing the Frost Lease and consequently paying the override previously to H.H. Alvord, Jr. Tennessee Gas may reasonably have intended the provision to protect itself from liability for payment of the Alvord ORI by making Tenneco Corporation personally obligated for that payment and "subject to" a stipulation *pour autrui* obligation and real right in favor of H.H. Alvord, Jr. The same logic would follow for the assignment in 1964 from Tenneco Corporation to Tenneco Oil Company.

Under La. C.C. art. 1978 the stipulator in this case is Tennessee Gas; the promisor is Tenneco Corporation; and the third-party beneficiary is H.H. Alvord, Jr. The assignment of a mineral lease was a conveyance of a real right, and in this assignment the "promisor" became obligated to pay the real right obligation of the overriding royalty to H.H. Alvord, Jr., as the third-party beneficiary. Then in 1964 the stipulator would be Tenneco Corporation, and the promisor would be Tenneco Oil Company. H.H. Alvord, Jr. would continue as the third-party beneficiary.

B. "No Signed" Contract. In its reasons for judgment, the trial court found that Tenneco never owed any override obligation to H.H. Alvord, Jr. because no signed contract between H.H. Alvord, Jr. and Midstates has been determined to exist. A stipulation *pour autrui* would only need Tennessee

Gas, the stipulator, contracting with Tenneco, the promisor, to pay the 1/8 of 7/8 override to the third-party beneficiary, H.H. Alvord, Jr. By the very meaning of the stipulation *pour autrui* agreement, H.H. Alvord, Jr. was a third party to the Tenneco Assignments and a signed contract between H.H. Alvord, Jr. and Tenneco was not required. Accordingly, we find that the Alvords produced sufficient factual support to establish the existence of a genuine issue of material fact. Moreover, a *no signed contract* ruling disregards why Tenneco Oil Company continued to pay the Alvords an overriding royalty interest for over 25 years following the assignment.

C. Intention of the Contracting Parties. Whether the contracting parties intended to confer a manifestly clear and deliberate benefit rather than an incidental one presents yet another genuine issue of material fact. Louisiana Courts have recognized that summary judgment "is rarely appropriate for a determination based on subjective facts such as intent, motive, malice, knowledge or good faith." *Penalber v. Blount*, 550 So. 2d 577 (La. 1989).

Considering the fact-intensive nature of the inquiry for determining third-party beneficiary status, we find the lower court reached the incorrect result in granting a motion for summary judgment insofar as the claim that the language in the Tenneco Assignments could not manifest a clear intention to benefit the Alvords as third-party beneficiaries.

II. Assumption of Obligation

The Alvords assert that TEPRI assumed the Alvord ORI obligation via the 1989 Fina Assignment. In 1989, TEPRI acquired the Haynesville Shale ownership of the Frost Lease and is stated in that contract, as "ASSIGNEE"

that "by acceptance and recordation of this Assignment, hereby undertakes and obligates itself to be bound by and to fulfill all obligation, claims, and liabilities relating to the" Frost Lease.

Under La. C.C. art. 1821 an obligor and a third person may agree to an assumption by the latter of an obligation of the former. To be enforceable by the obligee against the third person, the agreement must be made in writing. The obligee's consent to the agreement does not affect a release of the obligor.

For TEPRI to be found to have assumed the Alvord ORI via the 1989 Fina Assignment, the Alvord ORI will have to be found to be valid through the stipulation *pour autrui*. TEPRI may have assumed some obligations, claims, and liabilities in the 1989 Fina Assignment, but to have assumed the Alvord ORI as one of those obligations the Alvord ORI must be determined to be valid.

In the case that the Alvord ORI is established through the stipulation *pour autrui*, there are genuine issues of material fact as to whether TEPRI assumed the obligation. The language in the written contract, for the Haynesville Shale ownership of the Frost Lease, that states that TEPRI is bound by and to fulfill all obligations, claims, and liabilities relating to the Frost Lease, at the very least creates a genuine issue of material fact as to whether TEPRI assumed the obligation to pay the Alvord ORI. Similarly, the language in the assignment of the Frost Lease from TEPRI to TEEP, stating that TEEP "agrees to assume and to indemnify and hold harmless Assignor" the assignor, also creates a genuine issue of material fact as to whether TEEP assumed the obligations of TEPRI. The use of the terms

"bound," "assume," and "indemnify" in reference to obligations, supports the Alvords' contentions that there was an agreement between the parties that the obligation of the original obligor would be assumed by the third party.

The intention of the parties is of paramount importance and must be determined in accordance with plain, ordinary, and popular sense of the language used in the agreement and by giving consideration on a practical, reasonable, and fair basis to the instrument in its entirety. *Texaco, Inc. v. Vermilion Parish School Board*, 244 La. 408, 152 So. 2d 541 (1963). The language used in the contracts matters and when TEPRI and TEEP agreed to terms that included "assume" and "bound by," they opened themselves up to the possibility of liability. For these reasons we find that there are genuine issues of material fact as to whether TEPRI and then TEEP assumed the obligations to pay the Alvord ORI.

CONCLUSION

For the above reasons, the trial court's ruling is **REVERSED** and this matter **REMANDED** for further proceedings. Costs of this appeal are assessed equally to TEPRI and TEEP.

REVERSED and REMANDED

THOMPSON, J., dissents.

I respectfully dissent from the majority panel's decision to reverse the well-reasoned judgment of the trial court. The trial court correctly granted summary judgment in favor of the defendants, and properly dismissed plaintiffs' claims with prejudice. In reversing that ruling, the majority disregards more than a century of consistent jurisprudence under Louisiana's Public Records Doctrine. An unsigned and unrecorded overriding royalty interest is null and void as to third persons, and because Plaintiffs failed to produce evidence establishing corporate successorship or an express contractual assumption of an unrecorded real right, the trial court's judgment should be affirmed in its entirety.

The foundation of Louisiana property and mineral law is the Public Records Doctrine, codified in La. C.C. art. 3338 and anchored by over a century of landmark jurisprudence which has instilled confidence and consistency in land and mineral titles in our state. There has been much speculation about whether there actually was an overriding royalty interest created in favor of the ancestor of the plaintiffs, but there clearly were payments made and received consistent with such an intent by those parties. The undisputed fact, however, is if there was such a document it was *not* recorded in the public conveyance records. Accordingly, it is null and void as to third parties. The Public Records Doctrine is a negative doctrine designed to protect third persons against unrecorded interests and assure the absolute stability of land titles. Third persons are not only allowed to rely on what *is* contained in the public records but are also entitled to rely on the absence from the public records, *i.e.* what *is not* included and is *required* to be recorded. The majority's opinion creates a new inquiry requirement

beyond the public records, which I suggest will threaten the very purpose of the Public Records Doctrine and will disrupt and cast doubt and uncertainty on title to land and minerals across our state.

Plaintiffs admit the purported 1948 Midstates/Alvord agreement creating the overriding royalty interest was never recorded in the conveyance records of Caddo Parish. Equally concerning is their inability to provide a signed, executed original copy of the instrument to confirm that it was ever validly executed. Our longstanding jurisprudence establishes that an unrecorded instrument is null and void as to third parties, including TEEP and TEPRI in this matter.

Plaintiffs also attempt to navigate around the Public Records Doctrine by arguing that subsequent recorded assignments, specifically the 1961 Assignment from Tennessee Gas Transmission Company to Tenneco Corporation and a 1964 Assignment, which described the Frost Lease as "subject to … an overriding royalty interest reserved by H.H. Alvord, Jr." created a real obligation under La C.C. art. 1763 or a binding *stipulation pour autrui* in favor of H.H. Alvord, Jr. I disagree and further suggest such an argument is unsupportable.

Under our law, a *stipulation pour autrui* is never presumed and the party demanding performance bears the burden of proving that the contracting parties possessed a manifestly clear intent to benefit the third party. The "subject to" language relied upon by plaintiffs appears in an exhibit to an assignment of a sublease interest, *not* in the original Frost Lease. The language constitutes a mere restatement of potential title exceptions and historical considerations rather than the express, affirmative creation of a new real right or contractual obligation. Furthermore, a mere

reference to an unrecorded mineral interest in a subsequent recorded instrument does not satisfy the Public Records Doctrine, nor does it create a new overriding royalty interest binding on third parties. An assignee's constructive or actual knowledge of "subject to" references in prior title chains does not evidence an intent to accept the property subject to an unrecorded encumbrance.[3] The public records demand that the creating instrument itself be recorded; vague references in extraneous documents cannot substitute for recordation of the actual grant.

Plaintiffs further contend that TEPRI assumed Tenneco's alleged liability for the Alvord ORI through the 1989 Fina Assignment, which states that the assignee obligated itself to fulfill "obligations, claims, and liabilities relating to" the Frost Lease. This argument fails as a matter of law. A general contractual assumption of lease obligations binds the assignee to fulfill valid, existing obligations affecting the subject property. Here, however, because the Alvord ORI was never recorded, it was null, void, and did not exist as to third persons under the Public Records Doctrine. Fina and TEPRI could not assume an unrecorded real obligation that was legally unenforceable against third parties. Unrecorded real burdens that would otherwise be void under public records law could only be assumed if the assignment instrument contained explicit language extending the assumption to unrecorded agreements, effectively extending obligation relating to the lease whether recorded or not. There is no such express provision in any of the conveyances in Defendants' chain of title. I cannot agree with the

[3] *Knowles v. Wholesale Elec. Supply of Shreveport, Inc.,* 388 So. 2d 426 (La. App. 2 Cir. 1980); *Hill v. Doctors Park of Minden, Inc*., 501 So. 2d 987 (La. App. 2 Cir. 1987).

majority's opinion which expands a standard lease assumption clause to encompass unrecorded real obligations and constitutes legal error.

Finally, Plaintiffs attempt to bypass the Public Records Doctrine by asserting that TEEP and TEPRI are corporate successors of Midstates Oil Corporation and Tenneco Oil Company and assert they should be allowed to stand in the shoes of the original contracting parties against whom unrecorded acts remain effective. Corporate successorship, however, cannot be presumed. To establish successor liability, Plaintiffs were required to present competent summary judgment evidence demonstrating a merger, consolidation, or general corporate assumption of liabilities. The record before us contains no admissible evidence demonstrating TEEP or TEPRI are the corporate continuations or legal successors of Midstates or Tenneco. Instead, the undisputed facts establish that TEEP and TEPRI acquired their working interests in the Frost Lease as third-party assignees. As third-party purchasers, Defendants are fully protected by what is absent from the public records.

Because the Alvord ORI was never recorded in the conveyance records of Caddo Parish, it is null and void as to the Defendants under the Public Records Doctrine. The recorded "subject to" references and general assumption clauses in subsequent lease assignments were legally insufficient to create a *stipulation pour autrui*, establish a real obligation, or satisfy the law of registry. TEEP and TEPRI are not successors of Tenneco. There is no evidence that TEEP and TEPRI merged with Tenneco, as Tenneco did not cease to exist. Tenneco maintained its existence after the sale and did not transfer the entirety of its assets to Fina. Accordingly, the trial court correctly granted summary judgment dismissing Plaintiffs' suit. I would

affirm the trial court's judgment in all respects and must respectfully dissent from the majority's opinion to the contrary.