

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

TELLUS OPERATING GROUP, LLC,  
BAXTERVILLE OIL ACQUISITIONS, LLC,  
MISSISSIPPI OIL ACQUISITIONS, LLC,  
NOMS, LLC, SNIP, LLC, BAX, LLC,  
VICKERY PROPERTIES, LLC, AND  
SUTHERLAND ENERGY CORP.

APPELLANTS

v.

NO. 2009-CA-01040

TEXAS PETROLEUM INVESTMENT CO., ET AL.

APPELLEES

Consolidated with

TEXAS PETROLEUM INVESTMENT CO.

CROSS-APPELLANT

V.

NO. 2009-CA-01174

TELLUS OPERATING GROUP, LLC, et al.

CROSS-APPELLEES

Appeal from the Circuit Court of Lamar County, Mississippi

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**REPLY BRIEF OF CROSS-APPELLANT  
TEXAS PETROLEUM INVESTMENT COMPANY**

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## INTRODUCTION

These consolidated appeals arise from separate judgments entered by the Circuit Court of Lamar County, the Honorable Prentiss Harrell presiding. The appeal of Texas Petroleum Investment Company is taken from a declaratory judgment entered in favor of Tellus Operating Group, LLC, and related plaintiffs (hereinafter “Tellus”), purporting to establish Tellus’s ownership of certain gas interests in the Bilbo A Lease in Baxterville Field, notwithstanding the jury’s verdict that Texas Petroleum had taken none of that gas. Because this brief is limited by M.R.A.P. 28(c) “to the issues presented by the cross-appeal,” Texas Petroleum has neither the occasion nor the opportunity to address the issues raised by Tellus in its attack on the jury’s verdict.<sup>1</sup>

## ARGUMENT

Because the jury rejected all of Tellus’s common law claims, the Circuit Court erred in granting an unnecessary declaratory judgment.

Tellus finds it more convenient to rebut arguments that Texas Petroleum never made than to address the controlling question of whether the Circuit Court abused its discretion by rendering a declaratory judgment concerning the ownership of property that the jury found not to have been stolen. Because Mississippi law presumes that real estate titles are more properly resolved by the Chancery Court having experience in such matters, the declaratory judgment should be reversed.

Tellus does not dispute that the Legislature has granted jurisdiction to the Chancery Court to resolve title disputes under MISS. CODE ANN. § 11-17-29 and -31 (Rev. 2004) or that such disputes are ordinarily resolved there. V. Griffith, *Mississippi Chancery Practice* § 210 (2d ed. 1950). For its part, Texas Petroleum has never disputed that the Circuit Court may address title

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<sup>1</sup> In this brief, the original brief filed by Texas Petroleum is cited as “Tex.Br. [page].” The reply brief filed by Tellus is cited as “Repl.Br. [page].”

matters in an appropriate case. This Court must determine whether this was an appropriate case when the Circuit Court rendered its declaratory judgment declaring title on February 25, 2009, long after the jury had rejected Tellus's claims for relief.

Tellus relies on *McDonald's Corp. v. Robinson Indus., Inc.*, 592 So.2d 927 (Miss. 1991), in which a special court of eminent domain resolved title to property being condemned. Before the jury could award damages, that Court had to identify the property interests in question and who owned them. *Id.*, at 928-29. Approving that practice, the Supreme Court reviewed earlier cases in which law courts had needed to adjudicate title:

When an action for replevin which is brought to determine who has the right to immediate possession of a particular piece of property is tried in circuit court and "when the right to possession is dependent upon title or ownership, and title or ownership is the issue upon which the decision as the right of possession actually turns, then a judgment in replevin is as fully conclusive upon the said issue of title or ownership as would be the same determination in any other form or action or in any other court of competent jurisdiction." *Fair v. Dickerson*, 164 Miss. 432, 441, 144 So. 238, 239 (1932). In an action for ejectment, a court of law may determine the question of title "if the parties are already in a court of law, and can fairly present their respective titles in that court, which are of such character as will there be recognized, and no special reason is presented for equitable interference ...." *Huntington v. Allen*, 44 Miss. 654, 663 (1870).

592 So.2d at 933. In those cases, as in *McDonald's*, the Court needed to determine title so that it could grant legal relief. In light of the defense verdict in this case, no such necessity presents itself here.

Earlier this month, this Court emphasized the limited scope of the pendent jurisdiction authorized by *McDonald's*. *Delta MK, LLC v. Mississippi Transp. Comm'n*, \_\_\_ So.3d \_\_\_, No. 2009-CA-02021-SCT (Miss. Apr. 7, 2011). There, this Court reversed the dismissal of an inverse condemnation action by a special court of eminent domain, but affirmed the dismissal of claims for violation of civil rights and due process of law. Stating that Delta was reading *McDonald's* "too broadly," the Court noted that *McDonald's* held only that, when such a court "has subject matter jurisdiction of a condemnation proceeding, it may exercise pendent

jurisdiction over any questions *of title*,” *id.*, at ¶19 (emphasis in original), but other claims need not be addressed. “And because *McDonald’s* is the only case Delta cites as support, we find that this argument is without merit.” *Id.* Likewise, *McDonald’s* is the only case Tellus cites in support of its position. It cites no case in which a Circuit Court has adjudicated title where, as here, the jury’s verdict rendered that adjudication unnecessary.

Whether or not the pendent jurisdiction of the Circuit Court over equitable and statutory claims is limited to cases of absolute necessity, our law ought to presume that title issues are best resolved by the Chancery Court. The people of Mississippi, in creating separate courts of law and equity, have expressed a preference for the resolution of disputes by courts having appropriate expertise in the area. Here, where the jury completely rejected all of Tellus’s common law claims, there was no good reason for the Circuit Court to enter a declaratory judgment in an area of Chancery Court expertise.<sup>2</sup>

Our law recognizes that it is never necessary to enter a declaratory judgment. As the official comment M.R.C.P. 57 reads, “The granting of a declaratory judgment rests in the sound discretion of the trial court exercised in the public interest.” Here, Tellus cannot be heard to contend that the public interest requires the resolution of an issue that it never even pled. The four issues actually pled in Count I of the amended complaint all bore some relation to the original claims presented to the jury: (1) that the 1949 JOA validly applied; (2) that the Bilbo A Lease was subject to the terms of the 1949 JOA; (3) that a co-tenancy relationship existed between Tellus and Texas Petroleum; and (4) that Texas Petroleum owed certain fiduciary duties

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<sup>2</sup> Contrary to Tellus’s representation, Texas Petroleum has never asserted that the declaratory judgment is “inconsistent with the general verdict.” Repl.Br. 26. To the contrary, Texas Petroleum conceded that a Circuit Court might have jurisdiction to render a declaratory judgment “consistent with and essential to a verdict properly rendered by a jury.” Tex.Br. 48. The problem with this declaratory judgment is not that it is inconsistent with the verdict, but that it is utterly unnecessary in light of that verdict.

arising out of the 1949 JOA. R. 1236-37, C.R.E. 23-24. The co-tenancy issue pertained directly to Tellus's original claims for breach of contract and breach of fiduciary duty, but it had no bearing on the negligence and the conversion claims that Tellus actually sent to the jury.

Tellus does not dispute that the declaratory judgment grants none of the four declarations actually requested. Instead, Tellus asserts that a request to declare Tellus and Texas Petroleum "legal co-tenants of the leasehold estate in the Bilbo A Lease," R. 1236 ¶28(c), C.R.E. 23, essentially asked the Circuit Court to "define[] the parties' ownership interests." Repl.Br. 26. In fact, such a definition was neither requested nor necessary. The Court did not need to define the precise ownership of each party in order to determine whether a co-tenancy existed. When Tellus abandoned its claims for breach of contract and breach of fiduciary duty, Tr. 5459, C.R.E. 64, it abandoned any need for a co-tenancy determination to support the claims presented to the jury.<sup>3</sup>

Texas Petroleum has already acknowledged that the traditional rule binding a litigant to its pleadings "may have been relaxed somewhat by the adoption of the Rules of Civil Procedure." Tex.Br. 47. However, the cases cited by Tellus do not relax the rule as far as it suggests. In *Pilgrim Rest Missionary Baptist Church v. Wallace*, 835 So.2d 67 (Miss. 2003), this Court acknowledged the flexibility provided by M.R.C.P. 54(c), but found the relief granted to have been well within the scope of the pleadings:

They filed their complaint alleging that there was in the by-laws a specific method for removing a pastor and that the Board of Trustees and members were in violation of those by-laws. All the chancellor did was prescribe a method of election, since it was clear the congregation's intentions could not be carried out under the by-laws.

*Id.*, at 75. More recently, in *Bluewater Logistics, LLC v. Williford*, 55 So.3d 148 (Miss. 2011),

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<sup>3</sup> The Circuit Court did need to determine ownership in order to send a conversion claim to the jury, even though Count I requested no such declaratory judgment. That is why Texas Petroleum agreed to permit the Court to make that determination, although it never agreed to the entry of such a declaratory judgment. When the jury rejected Tellus's claims, the need for such a determination evaporated.

defendants complained that the Chancery Court had awarded damages when only injunctive relief had been requested. Once again, this Court acknowledged the flexibility supplied by Rule 54(c), but found the allegations to be adequate to support a damage judgment:

The complaint is titled “Complaint for Preliminary and Permanent Injunction and Damages.” The opening paragraph stated that Williford was seeking damages. Paragraph 5 alleged the ouster was unlawful, “warranting equitable and monetary relief.”

*Id.*, at 158. By contrast, there can be no dispute that Tellus’s amended complaint did not seek the declaration of ownership it actually received. That declaration of ownership was not a necessary part of any of the declarations it actually sought. Because the jury rejected the common law claims for conversion and negligence, it makes no difference whatsoever in this litigation whether Tellus owned anything at all.

Tellus asserts that its ownership dispute with Texas Petroleum is not moot, Repl.Br. 29, but that is precisely the point. Although the jury resolved their disputes in the Circuit Court, if there remains a need to determine ownership, the question is what Court should make that determination. The resolution of disputed titles is not an area in which our Circuit Courts have experience. Our Chancery Courts examine those disputes regularly under our judicial system, and there is no reason this dispute, if it still requires resolution, cannot be quickly resolved by the Chancery Court.

This Court should not encourage the litigation of questionable titles in the Circuit Courts. Baxterville Field, like many Mississippi oil fields, has produced oil and gas since before World War II. The chains of title on which production rests go back many generations. As those fields increase production under current economic circumstances, there is every incentive for unhappy heirs and other questionable claimants to come forward to seek a share of the cash. This Court should not encourage their lawyers to think that they can file claims for conversion and punitive damages before Mississippi juries and rely on Circuit Judges to untangle the title. The security



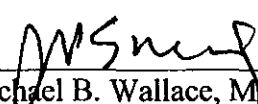
of title undergirding our system depends on the application of the expertise of the Chancery Courts. Except in the most compelling circumstances, this Court should not allow the resolution of titles in the Circuit Courts. Because those compelling circumstances do not exist here, the declaratory judgment should be reversed.

### CONCLUSION

For the reasons stated herein and in Texas Petroleum's original brief, this Court should reverse the declaratory judgment and dismiss Tellus's claim for declaratory relief.

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I, John P. Sneed, do hereby certify that I have this date caused to be mailed, via U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing to the following:

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\_\_\_\_\_  
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