IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CIVIL CAUSE NO.: NO. 2010-CA-00369

CONNIE MACK DOUGLAS AND WIFE CHARLENE DOUGLAS
APPELLANTS

VS.

DENBURY ONSHORE, LLC
APPELLEE

APPELLANTS' REPLY BRIEF IN SUPPORT OF APPEAL

ORAL ARGUMENT REQUESTED

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I. RESTATEMENT OF ISSUES

Each case reviewed by this Court has its own unique features and as in this case a few reaching the Court require an original decision on a first impression issue. That issue before the Court is the ownership of an abandoned well having a depth of 9,000 feet and being improved with steel casing and tubing having a value in the range of $700,000 as stated by expert witnesses. The well bore and improvements remained abandoned in the possession of the surface owner, the Appellants herein, for a period of 34 years.

Possession of the well bore and improvements was taken by Denbury around 2002 without any written authority or approval or ratification by the Appellants and used as an injection well in the East Mallalieu Field which has been extremely remunitive to Denbury.

The Chancery Court ruled that it did not have authority to award damages for personal injuries arising from the location and operation of the well and for surface damages connected therewith.

Denbury's Brief uses rather vague and illusionary theories to obtain approval of the lower court's decision. These theories include: (1) the well bore and improvements are owned by the mineral estate because it is dominant; (2) the unitization order of the oil and gas board conveyed the ownership and use of the well bore and improvements to Denbury; and (3) public policy supports the lower court's decision.

II. MINERAL OWNERS ARE DOMINANT OVER SURFACE OWNERS

We are answering the argument presented by Denbury that the mineral owners own the well bore and improvements even after 34 years of abandonment. Facts related to the mineral owners

including those that owned surface rights, and those that did not own surface rights reveals that the leases granted to Chevron expired for a period of 34 years reverting all and 100% of the mineral ownership back to each owner whether severed minerals or retained with the land. The stretch and illusion made by Denbury is that once a lease is signed that all improvements connected with that lease remain in the ownership of the mineral estate, thereby depriving and removing any property rights protected by the State and Federal Constitutions and in effect confiscating a valuable asset not for the benefit of the mineral owner but for the benefit of the oil and gas operator. The Court should keep in mind that a Standard Form Oil and Gas Lease is a percentage lease or transfer of the minerals with the lessor, the owner, retaining the royalty interest of usually 18.75% up to 25%. That retained royalty interest is free and clear of any cost of drilling, completing and operating the well. By operation of Denbury's high handed tactics in taking over control and possession of the well and the road access, they gained a substantial benefit and saved the cost of drilling and improving a new well. No mineral owner severed or unified received one cent in benefit because Denbury was obligated to pay 100% of the cost of the production of oil with the mineral owner being paid on the gross recovery. In other words, the ownership of the well bore and improvements benefitted only Denbury for no compensation violating any number of rules of law including unjust enrichment, unlawful conversion, trespass and quantum merit. Strikingly, and somewhat shockingly, is the fact that Denbury put in its proposed Lease tendered to the Douglases a provision that included the oil well bore and improvments. Secondly, they tendered to the Douglases a Damages Release and Easement, with a paragraph in the Easement providing that it would have the free use of the well bore. Of course, consideration was offered for both the Lease and the Easement which the Douglases refused. These two documents were skillfully prepared by Denbury as shown by Record Excerpts

41 and 45. Several of Denbury's promotional arguments are rebutted by these documents: The Lease (R.E. 45) has the following language "...together with the right to re-enter and use plugged and abandoned well bores, casing, tubing, and other facilities on or under said land..." Since this is a huge and well managed company the ownership of the well by the Douglases was acknowledged in advance of the trespass but now Denbury is saying the mineral estate owns the well bore. Looking at the Damage Release and Easement (R.E. 41), the survey attached and marked R.E. 44 shows a five-acre conversion of the Douglas' land including a road and pipeline easement as well as acreage fenced off at the well head. This document contains the same language as that included in the Oil and Gas Lease. One final rebuttal fact is that Denbury has attempted to persuade the Court that the Douglases owned no minerals in Section 11 where the subject well is located and that these minerals had been severed years earlier by prior title owners, however, the two documents referred to clearly show that they do own minerals in Section 11 which was verified by Douglas' testimony.

For purposes of argument, we assume that someone, counsel or judge, may explore the theory that a good faith offer was made to the Douglases for both the pipeline right-of-way, the road, and a standard form oil and gas lease and when refused that forced Denbury to take the law into its own hands and confiscate the property rights belonging to the Douglases. Comments have been made including those of the trial judge, that the well improvements cannot be removed and they are worthless to the Douglases. The East Mallalieu field encompasses 5,280 acres and ranks very high in production and value. This makes both the mineral and the well bore extremely attractive and valuable. Who could dispute the probability of another oil company utilizing this well since the field was so prolific and paying a reasonable sum of money. The Mississippi Legislature has been very liberal with the oil and gas industry and has given it virtually the same eminent domain rights as a

utility or public entity. Miss. Code Ann. §11-27-47 gives the right of an oil company to file suit to obtain a right-of-way or easement and quoting from the body of that statute: "...for the purpose of building or constructing pipelines and appliances for conveying and distribution of oil or gas including carbon dioxide or other gaseous substance for use in connection with a secondary or tertiary recovery projects located in the State of Mississippi for the enhanced recovery of liquids or gasoline hydrocarbons..." The above language in that statute granted jurisdiction to the Chancery Court the oil operation such authority as needed. The law is written to protect both the landowner and the oil company and as will be mentioned in the public policy section of our Brief, the oil companies rarely ever take into account the welfare of the landowner, particularly the small ones who are not skilled in negotiating contracts. The pipeline across the Douglas' property carries CO2 as set out in the statute and is for the purpose of tertiary recovery of oil.

At the expense of repetition, the Douglases urge the Court to be aware that there is absolutely no authority cited in Appellee's lengthy Brief, giving precedent, directly or indirectly, for the Court to rule (1) that the well bore and improvements are owned by the mineral owners and not the surface owners; (2) that the unitization order of the Oil and Gas Board conveyed the property rights in the oil well and improvements; and (3) that public policy supports the decision of the lower court. Even if the Court should abandon ll but one of these theories, then it has to realize that there is no case law, treatises, law journal articles, encyclopedia discussions, or any authority whatsoever on any one of the three theories.

The lower court and Denbury rely upon a certain Mississippi court decision for a definition of the dominant rights of mineral owners. In *Reynolds v. Amerada Hess Corp.*, 778 So.2d 759, 763 (Miss. 2000) sets out the "dominant rule" as follows:

> Long established law in Mississippi provides that the severed mineral owner or lessee has the right to use the surface of the lands for all reasonable purposes to explore and drill for oil and gas and may use as much of the surface as is reasonably necessary to exercise its rights, but it cannot intentionally or negligently damage or use more of the land surface than is reasonably necessary in its mining operation.

Nowhere in any case has any court construed the dominant right of mineral owners over surface owners to include anything but the use of a reasonable amount of the land's surface and as stated in the *Reynolds* case "but it cannot intentionally or negligently damage or use more of the land surface than is reasonably necessary in its mining operation." In this case, we claim negligent damage.

The East Mallalieu Field comprises 5,280 acres and has been extremely productive and beneficial to Denbury. More than $300,000,000 in oil has been produced from the unitized field. They arbitrarily and high handedly chose the well in question when there were numerous other wells in the unitized field including a second well on the opposite side of the Douglas's dwelling house that could have been used. Douglas testified that Denbury chose the one at the back door of his residence as a convenience to them because it was the closest location to a public road and allowed them to build an access road and a pipeline a shorter distance than what would have been required had they chosen another well. Here, again, we find Denbury working independently for its own selfish benefit and to the detriment of the surface owners whenever and however they can get away with it.

To summarize this phase of our rebuttal, there are essentially three groups or separate entities involved in this lawsuit. The minerals owners who signed leases to Denbury in 2002. The mineral owners including the Douglases who did not sign leases to Denbury and still retained 100% of the

minerals which they owned and which are not under lease. The third party of this lawsuit is an out-of-state, huge, multi-national oil company that comes in, decides to obtain leases on some of the minerals, and using predatory tactics, decides to re-enter an abandoned field, and to take over a well bore that is 34 years old to the exclusion of the surface owner, the Appellants herein, and to gain a financial advantage violating numerous rules of law including (1) unjust enrichment; (2) conversion of real property; (3) trespass de bonis asportatis continuously over a period of years with an indefinite time to go in the future; (4) convenient, inexpensive location of an injection well at a location of their own choosing; (5) a wind fall of profit with no cost; (6) an unconstitutional financial gain to Denbury and a financial loss to the Douglases. The often quoted maxim applies here: "where there is a wrong there is a remedy."

III. CASE LAW CITATIONS

The thirty-two page Brief filed by the Denbury fails utterly to cite any cases or learned authority anywhere in the nation that sets up the rule that the mineral owners own the well bore and all improvements to the exclusion of the surface owner, however, they failed to recognize that they do not hold leases on all of the minerals in Section 11 and if they gained the right to use the well by a mineral lease then they must prove that each acre of minerals in the unitized field had been leased to Denbury. Basically, 1 acre or more of unleased minerals in any part of Section 11, NE 1/4 or SE 1/4 or NW 1/4 or SW 1/4 brings up the question does a leased mineral owner dominate unleased mineral owners. We will assume that the mineral owner is dominant over the surface owner. So what that means the surface owner has to allow the use (easement) on so much of the surface as needed to explore and produce the underlying minerals whether or not severed.

On page 2 of the Argument section of the Appellants' Brief, a clear and concise statement

of the rule of law affirming that fixtures attached to the surface and subsurface of the land become a part of the land. Another illusionary argument promoted by Denbury is that it is not on the surface, it is under the surface. The mere fact that Chevron capped the well and removed the part of the well bore and tubing that protruded the surface does not make it a subsurface fixture per se, no more than a water well, a cellar or a cistern. The cases cited by Denbury include the 1891 coal mine case of *Lillibridge v. Lackawanna Coal Co.*, 22 A. 1035 (Pa. 1891) had to do with extending a coal mine 200 feet below the surface and the Pennsylvania Court ruled that the company could continue using the tunnel. The question of abandonment is not there and nor were other facts such as a 9,000 foot well bore with improvements.

A nationwide search revealed that Oklahoma law gives abandoned wells to the surface owner as discussed in the case of *Garr-Woolley v. Martin*, 579 P.2d 206 (Ok. App. 1978). That rule applied to Oklahoma wells as set out on page 2 of the argument in Appellant's Brief. The theory used to avoid using this rule of law as precedent was that in Mississippi the mineral estate is more dominant than Oklahoma's. Bologna. That simply means that after a lease had been signed and permit granted (unitization order or not) the lessee of the minerals has a dominant right over the surface owner to place roads, pipelines, well locations as needed to explore the minerals, but it is in effect an order of eminent domain and does give the mineral owners the dominant advantage over the surface owners for reasonable use of the surface. Nothing about this rule deals with fixtures, improvements, and items on and in the land when the new leases are signed. Dominant mineral interest may be an inviolate rule of law and the Appellants are not arguing otherwise, however, how does the dominant right of a mineral owner to use the surface to explore his minerals transfer or confiscate parts of real property whether a barn, a fence, a water well, or an abandoned oil well bore and improvements.

In essence, the argument of Denbury so as to say that Oklahoma mineral owners are less dominant than they are in Mississippi but there is no authority, case law or other authorities, to support that nebulous conclusion.

The surface owners rights or rules including the ownership and control of abandoned wells is completely different when a standard form oil and gas lease is signed and in effect at the time the question of the use of the abandoned well arises. Contrarily speaking, if the surface owner has not signed a lease and the well bore on his land is confiscated by an oil company, then he is due reasonable and fair consideration for the value of the well. In order to convey an interest in real estate, it must be in writing to avoid the statute of frauds and it must contain a reasonable consideration. All oil and gas lessors are paid a cash bonus plus a royalty interest in the production of the minerals making it a valuable business transaction. One unique feature of the facts in this case is that a part of the Douglas' minerals have been retained by his ancestors, parents and grandparents, when they sold him the land. It is shown by the testimony that his mother, as well as other mineral owners, did not sign leases. Therefore, Denbury was the lessee of a fraction of the minerals in Section 11. The Court then is called upon to rule that some of the mineral owners that leased gave Denbury the right to use the well, yet Denbury does not claim and the facts support that the surface area around the subject well was not included in any lease since the Douglases owned a fee simple title, not only to the well head, but to a large tract of land surrounding the well head. Denbury attempts to use Texas authority to affirm the lower court decision. For example, Denbury cites *Guffey v. Stroud*, 16 S.W.2d 527 (Tex.Comm'n.App. 1929) holding that "grant of oil lease carried with it grant of way, soil, water, gas, and like necessary to enjoy oil grant." No abandoned well was involved. The case of *Sun Oil v. Whitaker*, 483 S.W.2d 808 (Tex. 1972) is a suit between the land

owner and the oil company over the use of freshwater needed to water flood the well located on Whitaker's land. The court ruled that since the freshwater was the only water available that Sun had a right to use the water. *Gutierrez v. Davis,* 618 F.2d 700 (10th Cir. 1980) is a case involving an abandoned dry hole. The second lessee drilled through the plug and replugged the abandoned well as a dry hole. Plaintiffs sued to recovery the value of the casing on the theory of conversion. The surface owner lost because the second lease gave the right to use and to plug the abandoned well without additional compensation to the surface owner. Those cases are completely different from the case at bar. We can recognize that a solemn sophisticated document known as an oil and gas lease with lines upon lines of fine print carries with it certain rights granted by the surface owner but such does not apply in this case since there is no lease on the surface in which the well bore and improvements are located.

IV. THE UNITIZATION ORDER

Denbury has stretched to the limit of one's imagination attempting to disillusion the Court on the authority of the Oil and Gas Board. Putting that argument bluntly, Denbury is saying to this Court that a unitization order transfers the abandoned oil well from Douglases, the surface owners, directly over to Denbury. Upon reading and re-reading the words in the series of statutes authorizing action by Oil and Gas Board. It is clear that this administrative agency is nothing but a regulatory authority controlling waste primarily and granting permits to drill and approving in connection with the permits the number of acres to be included in a producing unit. We find no language, direct or by innuendo, that gives the Oil and Gas Board the authority over land improvements to transfer title or use free of considerations without regard to the rights of the property owner. There is no authority cited by Denbury to support this specious argument. The Douglases do not question the right of the

Oil and Gas Board to unitize the field. As a matter of fact, the unitization benefitted them significantly. Appellants have not made a collateral attack on the order.

In a rather complex decision to be made by the Court, there may be consideration given for a definition of an abandoned well bore and the improvements. The several cases cited in the Appellants' Brief including the 2007 case of *Check Cashers v. Crowell*, 950 So.2d 1035 (Miss. App. 2007) summarized trade fixture law in Mississippi, holding that improvements placed in a rented office building became the property of the owner of the building and not the tenant. Chevron was the "tenant" and the surface owner was the "owner". The ownership of the well reverted to the land owner.

V. PUBLIC POLICY

Denbury argues that the decision of the lower court should be upheld on the basis of public policy. That is definitely another stretch to the wall on the legal theory that a major oil company can use land owner real property assets free of charge at its own discretion and election as a matter of public policy. Public policy demands that the ancient rules regarding real property be preserved. Exploration of minerals is controlled by the basic common law principle that contract involving real property must be in writing. This requirement is accomplished by negotiating contracts which prevents public policy from usurping the right of private property owners.

We do not believe the Court will disturb the ancient rule that fixtures in the land become part of the land and owned by the surface owner over a veil argument presented by this oil company attempting to gain unjust enrichment and to use predatory tactics including disregarding the substantive law of our state which protects the individuals rights of property owners.

Speaking further of public policy, that bears some reflection because of the lack of control

of oil and gas company operations in the State. For example, the forced integration statute permits an oil company with a fraction of the leases in hand to obtain an order force integrating all mineral owners into a drilling unit and requiring them to pay 300% penalty if they do not agree to the arbitrary rules and consideration offered by the oil companies or pay their proportionate share of costs. When oil was discovered in Mississippi around 1935 up to date, a lapse of 75 years, there have been no statutes enacted protecting the mineral owner from the predatory tactics of oil companies. That was demonstrated by Denbury as shown by the acts of Denbury in this case. Public policy would demand that this Court determine the private property rights of the surface owner having unrestricted possession and control over the subject well and improvements for a period of 34 years before it was confiscated by Denbury. At the same time, the Court will be aware that the Douglases owned a part of the minerals in Section 11 which makes them joint owners of the surface and minerals where the well is located. Another example of lack of landowner protection is the tax free severed minerals rule allowing the third generation, and beyond, owner of severed minerals to have a free ride. A large number of several mineral owners with thousands of acres of minerals have never lived in Mississippi whose predecessors usually paid pennies per acre years ago. Most states have a reversion law. In Louisiana, severed minerals automatically revert to the ownership of the surface at the end of 10 years unless they are producing.

VI. JURISDICTION ON TORT CLAIMS

In regard to the authority of the Chancery Court to award damages for personal injuries arising from a nuisance or trespass or simple negligence or otherwise is confirmed by numerous cases and we submit that the Court was in error in ruling that part of the lawsuit should be tried by a Circuit Court. Counsel for the Appellant announced in the lower court that the value of the surface

used by Denbury was not large enough to justify complex litigation but that the injuries including the loss of quality of life and mental anguish and stress disorder arising from the back door activities of Denbury created a cause of action substantial in nature to recover actual damages for their invasion of privacy and negligent operation of a well whose location was arbitrarily chosen. Appellee devotes pages 28 and 29 to support the Court's ruling that it had no jurisdiction. The cases cited on page 29 deal with different factual situations but do not rule that the Chancery Court lacks jurisdiction to try such issues. As stated on page 9 of that section of Appellants' Brief entitled "Argument" cases are cited reflecting the rule of "pendent jurisdiction". This is a true and complete example of a set of facts for which pendent jurisdiction is useful and necessary. Since the Chancery Court has exclusive jurisdiction of the title, ownership and any damages arising from the wrongful confiscation of the property all to the exclusion of the Circuit Court then those issues should not be partited and the litigants forced into a second lawsuit involving the same circumstances. The recent case of *Remax v. Lindsley*, 840 So.2d 709 (Miss. 2003) the Court ruled "because the chancery court has original jurisdiction of the accounting it has pendent jurisdiction to hear Lindsley's remaining claims. A claim invokes the court's pendent jurisdiction if it arises out of the same transaction or occurrence as a principal claim or, as others put it, out of a common nucleus of operating facts." The rule is also affirmed and recognized in *McDonald Corp. v. Robinson*, 590 So.2d 727 (Miss. 1991) and in *Hall v. Corbin*, 478 So.2d 253 (Miss. 1985). Finally, it is noted that the issue was not even raised by the Appellee and the lower court so ruled *sua sponte*.

VII. QUANTUM MERUIT

As a lead into a discussion is the maxim "for every wrong there is a remedy" Appellants again point out that the mineral estate did not lease the subject well to Denbury. It, along with road

and pipeline access, were commandeered high handedly by Denbury for its own benefit.

Using accounting principles 101 the mineral owners received no value or benefit from these assets. Why? Because Denbury was required as operator of the field to:

(1) Acquire oil and gas leases;

(2) Pay 100% of drilling, completion and transportation of CO2 and petroleum products;

(3) Pay royalty to mineral owners on gross production with no deduction for any of the production expense.

Denbury was the sole beneficiary, therefore, the mineral owners received exactly the same compensation as they would have received if Denbury had paid the Douglases $700,000 for these assets.

Denbury is unjustly enriched by taking possession of valuable improvements which are currently being used for a substantial day by day profit. After about 8 years of "use" it is obvious that these fixtures were in perfect condition 37 years later and they will continue to be material factors for Denbury's big profit yield for many years to come.

A classic example of unjust enrichment.

Although Appellants believe the Court will rule that those fixed well improvements are owned by the Douglases, nevertheless, if ownership is ruled out then unjust enrichment is invoked. The law favors equity and fairness in business transactions including the right to recover value under the theory of quantum merit. The right to recover under quantum merit has been recognized by our courts for many years and criteria for recovering under quantum merit has been given detailed guidelines.

The 2007 case of *Tupelo Redevelopment Agency v. Gray Corp., Inc.*, 972 So.2d 495 (Miss.

2007) sets up that criteria holding: "The essential elements of recovery under a quantum merit claim are: (1) valuable services rendered or material furnished; (2) for the person sought to be charged; (3) where services and material were accepted by the person sought to be charged and used and enjoyed by him; and (4) under such circumstances as reasonably notified persons sought to be charged that plaintiff, in performing such services was expected to be paid by persons sought to be charged."

Those elements are significantly compatible here and the fact that Denbury intended to pay the valuable consideration (1) in the form of a lease bonus; (2) a percentage royalty in the form of 18.75% to 25% of production; and (3) consideration for the roadway and pipeline easement onto and around the well head location is not disputed. The Douglases rejected the tendered offer but were not given the right to negotiate or a request from Denbury as to the consideration they would accept.

There is an implied contract arising from all of the transactions bearing in mind that there is no possible way for an oil company to usurp the total value of the land owner's minerals and once that land is included in the producing unit, whether a one well field or two wells, there is an implied contract that all requirements of all consideration have been paid.

Upon remand, and in the event the Court is unable to give a final ruling on the ownership of the well bore and improvements, then, at least, the Court is compelled to give the Douglases the reasonable fair market value of the services and material and products received by Denbury to run with the use of the land and the well.

Another 2007 case *Johnson v. Palmer*, 963 So.2d 586 (Miss. 2007) provides recovery under quantum merit may be premised either on express or implied contract, and a prerequisite to establish the ground is the claimant's reasonable expectation of compensation. This means that there was no gratuitous relationship between the parties and that the value of the real property taken over by

Denbury was not a gift with no hope of collecting the value. The lawsuit filed in this cause evidences the intent of the Douglases to charge Denbury a reasonable sum for the use or sale of the subject property.

VIII. CONCLUSION

Since the Court is confronted with issues of original impression we would like to conclude our Brief by setting out a colloquy of possible decisions by the Court.

The strongest and most forceful argument of Denbury is that the ownership of the abandoned well was retained by the mineral owners throughout the 34 years of abandonment and since Denbury acquired new leases from some, not all, of the mineral owners in Section 11, it thereby acquired the right to use the well bore and improvements free of charge or payment to anyone.

A second position taken by Denbury is that the unitization order unifying 5,280 acres into a producing unit known as the East Mallalieu Field conveyed by order of the Oil and Gas Board the right of Denbury to use based upon the fact that it was the operator and the company that brought the petition to force integrate the field.

That public policy would place persuasion on the Court to affirm the decision by the trial court ruling that the mineral owners owned the well.

Neither one of these three theories are supported by the facts or law.

Neither one of these three theories have any precedent in the United States by court decisions, law journal articles, learned treatises, oil and gas encyclopedias, or any other direct or indirect authority for so ruling.

The facts when applied to the non existing law on these issues leaves the Court with unrestricted authority to make justiciable rulings.

Equity intervenes and says that something is drastically wrong when a land owner can keep and hold exclusive possession of improvements, whether trade fixtures or otherwise, situated on his land for 34 years and have those assets taken away with absolutely no consideration.

The basic law on real property is involved here to the extent that if the Court decides that surface improvements can be severed coextensively with the minerals then the future holds many cans of worms involving the leasing and development of oil and gas resources in our State. This Court is bound to be extremely careful in overruling a number of cases going back scores of years regarding the ownership of improvements added to the land.

In writing a final decision, a finite interpretation or description or definition of minerals and the mineral estate must be given. By nature the Court is aware that minerals is a deposit other than dirt at some depth below the surface of the land, but in no case have minerals ever involved, or at least oil and gas production, has never involved a claim that a mineral owner owns improvements on the land.

When writing an opinion in this case we believe the Court will engage in a discussion of the rules of law adopted in other states regarding abandoned oil wells.

One group of cases will cover existing leases, leases that have not expired and an oil and gas operator, the original one or a new one, will enter onto the field with a theory that it needs to re-enter some of the old wells in the field. The courts have uniformly held that so long as a lease by the surface owner is in force the use of the improvements, active or inactive wells are covered by the lease contract, that is an agreement between the landowner and the present or past operator.

Another group of cases will cover leases by surface owners of abandoned wells. The gist of the decision rendered in those cases is that when the landowner signed a new lease he conveyed all

rights regarding the production of the minerals and that included any old abandoned wells located on the lease.

Mixed in with these legal conclusions is whether or not the fixtures were abandoned.

Since Chevron drilled the 9,000 foot hole and placed metal casing and metal tubing into the hole and used it to produce oil, it was the sole owner of this fixture. Upon abandonment it had a right to have transferred these fixtures to another owner. It chose not to do so, so the ownership of the fixtures reverted or escheated to the surface owners and became the sole property of the surface owners.

It is impossible to fathom that 34 years later the fixture did not belong to the landowner but was a part of the mineral estate, whether minerals were severed from the land or not. However, there is no lease by the surface owner and there are no leases by some of the other mineral owners in Section 11, therefore, ruling case law concludes that a written contract by the landowner in the form of an oil and gas lease is the sole medium by which the operator such as Denbury gains the right to use old well bores.

"Abandonment" is defined by *Black's Law Dictionary*, 5th Ed. as "voluntary relinquishment of all right, title, claim and possession with the intention of not reclaiming it." This definition perfectly fits the facts here and confirms ownership in the Douglases.

As defined in *Black's Law Dictionary*, 5th Ed. "dominant estate" or "tenement" means "that to which a servitude or easement is due, or for the benefit for which it exists. A term used in the civil and Scott law and later in ours, relating to servitudes, meaning the tenement or subject in favor of which the service is constituted; as the tenement over which the servitude extends is called the servient tenement. That particular parcel of land that is benefitted as a result of an easement or a

servient estate." Therefore, the word "dominant" is an easement to use and occupy reasonable amount of the surface.

The word "dominant" has been used on many pages of all the Briefs filed in this case and it seems to be used by Denbury to disillusion the Court that it includes everything on or under the land that might in any way be connected with production of the minerals. Reported cases refer to "dominant" as defined by *Black's Law Dictionary* that it is the right of the mineral lessee, the operator, to have an easement and to use the surface to place drilling and production equipment that goes to and becomes essential tools on the production of the minerals. Dominant and title and the right to use are all different and there is no precedent whatsoever in any oil producing state that says the word "dominant" means the right to use fixed improvements. None of the case law used by Denbury applies here because the surface owner as well as other mineral owners in Section 11 did not sign oil and gas leases to anyone, including Denbury. The unleased mineral owners was the primary reason for the forced integration which means that they were included in the unitized field whether they wanted to be or not, but in no case did the oil and gas board order mandate that they would convey their property rights to Denbury. Statutory law gives the mineral owner the right not to lease and still receive their share of production, as well as the right to lease.

If all else fails, and the Court is unwilling to award ownership of the well and improvements, as well as compensation for the road and pipeline to the Douglases then the Court should approve recovery of the value of the improvements under quantum merit since no other entity including all other land owners, all other mineral owners had any claim or right to the subject assets. As pointed out this is a permanent conversion by Denbury that has been and will continue to be a very, very valuable tool in producing one or more prolific oil fields for tertiary recovery written about or known

by man, the East Mallalieu Field in Lincoln County, Mississippi.

These facts have destroyed completely the trial court's innuendo that these improvements are worthless and cannot be used by the Douglases.

We urge the Court to enter an Order reversing and remanding the trial court's granting of three summary judgments for Denbury and that the Order clearly state that the well and improvements are the property of the landowners, the Douglases. The question of jurisdiction over all claims seems to be too simple to argue, but the Court's Order should rule that the Chancery Court does have pendent jurisdiction on all claims connected with this matter including personal injuries, if any, sustained by the Douglases.

The quantum merit argument is given as an alternative in the event the Court is unable to give an opinion regarding the ownership of the well. But if the Court rules that Denbury has a right to use the well then a ruling should be made on which court has jurisdiction to try the other claims set forth in the Complaint.

In the end we trust that the Court will not overlook the law of implied contracts which was set up by Denbury when it offered to pay consideration including a cash bonus and royalty arrangement on an oil and gas lease, and money damages to be paid on the release and easement. The implication being that Denbury intended to pay and the record reflects that the Douglases intended to collect, before this lawsuit was filed and afterwards, reasonable compensation for the improvements.

If the decision of the lower court is affirmed *nunc pro tunc* then the Court has granted a license to heavy-handed oil operators to abuse and trespass on private property. For example, in a given situation where there is no improved well head in existence, an oil operator can say even

though land owner John Doe did not sign a lease, we would like to put a well on his land in his back yard at his back door steps as being convenient to us. We do not have to get permission through eminent domain proceedings or otherwise on unleased surface land since we have some of the minerals in the unit to be drilled, some of the minerals gives us the dominant right to use what we chose to use.

The mandate of this Court should reverse the trial court's decision granting summary judgment in favor of Denbury and denying Douglas' motion for summary judgment on liability and order a trial on the merits of all claims.

Respectfully submitted this 22nd day of September, 2010.

CONNIE MACK DOUGLAS AND WIFE
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CERTIFICATE OF SERVICE

I, Bill Waller, Sr., the undersigned counsel of record for the Appellants, do hereby certify that I have this day mailed a true and correct copy of the above and foregoing document via United States mail, postage prepaid, to the following:

Honorable Edward E. Patten, Jr.
Chancery Court of Lincoln County
Post Office Drawer 707
Hazelhurst, Mississippi 39083

William F. Blair, Esq.
Troy Farrell Odom, Esq.
Blair & Bondurant, P.A.
Post Office Box 321423
Jackson, Mississippi 39232

So Certified this 22nd day of September, 2010.

BILL WALLER, SR.