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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

C.R. BARNETT, INC. et al.,

Plaintiffs and Respondents,

v.

ANDREW S. BRODY et al.,

Defendants and Appellants.

2d Civil No. B261700
(Super. Ct. No. 56-2014-00454778-CU-OR-VTA)
(Ventura County)

C.R. Barnett, Inc., and its predecessors in interest under an oil and gas lease, operated oil wells on property in Simi Valley beginning in 1959. Andrew and Kerry Brody purchased the property in 2005 with knowledge of C.R. Barnett's activity. Several years later, the Brodys denied C.R. Barnett access to the property. C.R. Barnett sought and the trial court issued a preliminary injunction directing the Brodys to stop interfering with C.R. Barnett's operations. The Brodys contend that the trial court erred because (1) the owner of the oil and gas rights was a dissolved corporation and lacked legal authority to lease the rights; and (2) monetary damages would sufficiently compensate C.R. Barnett for any injury. We affirm.

FACTS AND PROCEDURAL HISTORY

In 1919, the Patterson Ranch Company (Patterson) sold 18 acres of land in present-day Simi Valley to the Tapo Mutual Water Company. The deed excluded from

the conveyance and reserved forever for Patterson and its successors and assigns "all oil, gas, petroleum, asphaltum and other hydrocarbon substances, and all coal, metals and minerals in, on, under and within said land" and a perpetual but non-exclusive "right of way for road purposes." In addition, the deed contained a covenant that Tapo Mutual Water Company and its successors and assigns would not extract these natural resources from the soil. Breach of this covenant would result in the land's forfeiture to Patterson.

Subsequently, Patterson was dissolved.[1] Pursuant to a 1959 court order, a trustee of the dissolved corporation executed an oil and gas lease with Federal Oil Company (Federal). The lease assigned Patterson's oil and gas rights on the property to Federal and its successors and assigns "so long . . . as . . . hydrocarbon substances . . . [are] produced."[2] In exchange, Federal agreed to pay royalties for the oil and gas production. After a series of intermediate assignments, C.R. Barnett acquired Federal's interest in the lease in 1983. It operates three oil wells on the property that have been in continuous production since 1959.

In 2005, the Brodys purchased a subdivision of the property where two of C.R. Barnett's wells and all three of its tank facilities are located. The Brodys' grant deed excludes "all oil, gas, minerals, and other hydrocarbon substances lying below the surface of [the] land." The original oil and gas lease and its subsequent assignments were recorded before the Brodys purchased their property.

The Brodys, who reside on their property, believed that the oil production was releasing noxious chemicals into the air. In response to their concerns, the Ventura County Air Pollution Control District conducted a compliance inspection in 2013. The

[1] The Brodys submitted evidence to the trial court that the dissolution occurred in 1948. They now assert that their evidence concerned the wrong "Patterson Ranch Company" and that the "Patterson Ranch Company" at issue here was dissolved in 1922. We need not resolve whether Patterson was dissolved in 1922 or 1948.

[2] The obligation to produce oil and gas is "suspended" at any time when factors beyond the lessee's control prevent compliance.

inspector found only "minor" deficiencies, which were corrected within two weeks. He "did not smell any appreciable odors" at the wells.

In 2013, Andrew Brody told C.R. Barnett's "pumper"—the agent who regularly visits the wells, arranges for the shipment of the oil, and maintains the wells and lease premises—that he was not allowing anyone related to the wells onto the property. He changed C.R. Barnett's locks and replaced them with his own. He threatened truckers who came to pick up oil. Brody's actions prevented C.R. Barnett from shipping oil, requiring it to cease production.

C.R. Barnett sued the Brodys to regain access to the wells and for damages.[3] The trial court granted C.R. Barnett's application for preliminary injunction. It restrained the Brodys from "interfering with, obstructing, or harassing plaintiff C.R. Barnett, Inc. and its agents in exercising its rights to enter the Brody[s'] property . . . to produce and sell and dispose of oil . . . and to repair, maintain, and service its oil wells and facilities." The Brodys appeal this injunction.

DISCUSSION

We review an order granting or denying a preliminary injunction for abuse of discretion. (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1109.) We consider whether the trial court abused its discretion in evaluating two interrelated factors: the likelihood that the plaintiff will prevail on the merits at trial; and the balance of harm to each party if the preliminary injunction is granted or denied. (*Ibid.*)

Likelihood of Success on the Merits

The Brodys contend that C.R. Barnett will not prevail on the merits because its oil and gas lease is invalid. First, they argue that Patterson abandoned its oil and gas rights by failing to use them for 40 years. An abandonment of oil and gas rights, however, requires both a nonuser and the holder's unequivocal and decisive acts clearly showing an intention to abandon. (*Gerhard v. Stephens* (1968) 68 Cal.2d 864, 890.) The

[3] Sarah Barnett, C.R. Barnett's sole shareholder at the time the complaint was filed, was also a plaintiff but died five months later. Another defendant, the Brodys' neighbor, was dismissed.

Brodys made neither showing. The oil and gas rights have been utilized for more than half a century. Even during the 40-year period in which Patterson (or its post-dissolution successors in interest) apparently did not exploit its rights, nothing in the record other than the nonuse suggests it intended to abandon them. That is insufficient to establish abandonment. (*See id.*, at pp. 893-895 [corporation that purchased land in 1905, subsequently was dissolved, and failed to use its oil and gas rights for 47 years did not involuntarily abandon them].)

Second, the Brodys assert that it was illegal for Patterson to lease—as opposed to sell—its oil and gas rights because a dissolved corporation may not "continu[e] business except so far as necessary for the winding up thereof." (Former Corp. Code, § 5400 (1947).)[4] They rely on *Boyle v. Lakeview Creamery Co.* (1937) 9 Cal.2d 16 (*Boyle*). The statutory provision that "deals with a corporation which is dissolved . . . and permits it to continue in existence for the purpose of winding up its affairs," however, "has nothing to do with corporations which are penalized for failure to pay taxes," the issue in *Boyle*. (*Id.*, at p. 20.) As *Boyle* involved "other statutes" (*ibid.*), it is inapposite. Moreover, to the extent it discusses the statute at issue here, *Boyle* merely states the obvious: that the statute's "only purpose . . . is to stop further doing of business as a going concern, and limit corporate activities to winding up." (*Ibid.*)

The only other authority cited by the Brodys, *Fleming v. Charles L. Harney Const. Co.* (D.C. Cir. 1949) 177 F.2d 65 (*Fleming*), is readily distinguishable. *Fleming* involved a Palm Springs hotel that the federal government acquired through eminent domain during World War II and afterwards put up for sale. In the interim, the hotel's former corporate owner was dissolved. Federal law allowed former owners of property condemned in wartime to repurchase their property at an adjusted price below market value. The California Secretary of State opined that "the repurchase right . . . constitutes a valuable asset of the dissolved corporation," and two superior court decisions

[4] We cite the version of the Corporations Code in force at the time of the 1959 lease. The quoted provision is currently codified in subdivision (a) of section 2010. Prior to 1947, it was codified in section 399 of the Civil Code.

authorized the dissolved corporation to "collect" the asset. (*Id.*, at p. 68.) The federal court disagreed, but only because the corporation "was already dissolved long before this 'asset,' if such it was, came into being." (*Id.*, at p. 71.) Here, in contrast, there is no dispute that Patterson's oil and gas rights constituted a corporate asset that "came into being" and was acquired by the corporation prior to its dissolution.

Even if, for the sake of argument, the Brodys are correct that in 1959 the trial court erred by allowing Patterson's trustee to lease its oil and gas rights, their cause is not advanced. They lack standing to challenge the 1959 order.[5] They were not a party to the transaction and their property is equally burdened whether the oil and gas rights were leased by Patterson's trustee or sold to someone else. (Cf. *Yvanova v. New Century Mortg. Corp.* (Feb. 18, 2016, S218973) __ Cal.4th __ [2016 WL 639526, 10] ["In general, California law does not give a party personal standing to assert rights or interests belonging solely to others. [Citations.] When an assignment is merely voidable, the power to ratify or avoid the transaction lies solely with the parties to the assignment; the transaction is not void unless and until one of the parties takes steps to make it so"].)

Furthermore, C.R. Barnett likely would prevail on a laches defense should the Brodys seek to quiet title. The Brodys and their predecessors in interest had notice of the lease—both from its recordation and by virtue of the ongoing oil production on their property—but waited more than 50 years to challenge it. Judicial consideration of such a stale claim would be inequitable. (See *Stafford v. Ballinger* (1962) 199 Cal.App.2d 289, 296 [delay of 17 years, subsequent sales of the property, and deaths of key witnesses was equitable bar to quiet title suit]; *Morrow v. Coast Land Co.* (1938) 29 Cal.App.2d 92, 107 [affirming laches defense where "plaintiffs and their predecessors in interest stood idly by while [defendant] expended over $1,700,000 in developing oil, and by such expenditure changed the negligible value of barren hills into the fabulous value of a rich oil field"].)

The evidence supports the trial court's finding that "C.R. Barnett appears to have lawful title to the oil interest" and that the Brodys are "physically interfering with

[5] We thus need not address the Brodys' unsupported allegations of "chicanery" in the 1959 proceedings.

[C.R. Barnett's] operation of the oil wells." The trial court properly exercised its discretion in finding that C.R. Barnett likely will succeed on the merits.

Balance of Harm to Each Party

The trial court found that "[t]he Brodys have not offered anything of a medical nature to say how the production is harming them." The Brodys do not challenge this finding. Rather, they dispute that C.R. Barnett will suffer harm without an injunction, asserting that monetary damages would adequately compensate it for any loss during the pendency of this lawsuit. Even if that were true, in the absence of harm to either party, C.R. Barnett's strong likelihood of success on the merits supports an injunction to preserve the status quo. (See *King v. Meese* (1987) 43 Cal.3d 1217, 1227 ["[T]he more likely it is that plaintiffs will ultimately prevail, the less severe must be the harm that they allege will occur if the injunction does not issue. This is especially true when the requested injunction maintains, rather than alters, the status quo"].) We reject the Brodys' contention that the status quo is their blockage of the wells during the months preceding the lawsuit rather than the unimpeded access of C.R. Barnett and its predecessors during the previous 54 years.

The record contains evidence that the wells are C.R. Barnett's only income-producing assets and their prolonged closure is placing a serious financial strain on the company. The trial court recognized at the hearing that "death of the corporation" was a possibility. The trial court's implicit finding that C.R. Barnett will suffer irreparable injury without an injunction was not an abuse of discretion. (See *Bullock v. City and County of San Francisco* (1990) 221 Cal.App.3d 1072, 1102 [destruction of plaintiff's business and prospect of insolvency "qualify as irreparable injuries"].)

The Brodys' Request for Judicial Notice

The Brodys ask us to take judicial notice of various documents of public record. These documents purportedly show that Patterson was dissolved in 1922 and not, as the trial court stated, in 1948. The Brodys invited the alleged mistake by repeatedly representing to the trial court that the dissolution occurred in 1948. Regardless, any mistake by the trial court about the year of dissolution was inconsequential because it did

not affect the sequence of events. Since the information the Brodys ask us to consider "was not before the trial court and is not germane to the dispositive issue we address," their request and supplemental request for judicial notice are denied. (*Acosta v. Brown* (2013) 213 Cal.App.4th 234, 245-246 & fn. 6.)

DISPOSITION

The order granting the preliminary injunction is affirmed. Costs on appeal to respondents.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Rebecca S. Riley, Judge

Superior Court County of Ventura

DK Law Group, David M. Karen, Deborah Meyer Morris; Fidelity National Law Group and Howard P. Brody for Defendants and Appellants.

Snow Law Corp. and Stephen L. Snow for Plaintiffs and Respondents.