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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

CHARLENE W. CORRIN, as Trustee, etc., et al., Plaintiffs and Appellants, v. SIGNAL HILL WEST LIMITED PARTNERSHIP et al., Defendants and Respondents.	B232223 (Los Angeles County Super. Ct. No. BC417083)

APPEAL from a judgment of the Superior Court of Los Angeles County. Terry A. Green, Judge. Affirmed.

Hanna and Morton and Edward S. Renwick for Plaintiffs and Appellants.

Songstad Randall Coffee & Humphrey, William D. Coffee and Garrett R. Rogers for Defendants and Respondents.

Plaintiffs Charlene W. Corrin, as Trustee of the Corrin Family Trust dated August 3, 1992, and William R. Corrin and Barbara B. Corrin, as Trustees of the William R. and Barbara B. Corrin Living Trust dated December 19, 1991, appeal from the judgment entered after a bench trial in which the trial court found in favor of defendants Signal Hill West Limited Partnership and Signal Hill Petroleum, Inc. Plaintiffs contend that, in rejecting their causes of action against defendants for specific performance and termination of surface and subsurface rights under an oil and gas lease pursuant to Code of Civil Procedure section 772.010 et seq.,[1] the trial court applied an incorrect burden and standard of proof and thus that the judgment should be reversed for a new trial. We disagree with plaintiffs' contentions and, therefore, affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Operative Complaint and Answer*

On November 6, 2009, plaintiffs filed the operative first amended complaint alleging that they are owners of a fee interest in a parcel of real property in Signal Hill, which is subject to the community Cherry Hill Community Oil and Gas Lease, originally entered on or about July 9, 1921, and, as of April 18, 1974, part of the Signal Hill West Unit Agreement (Unit Agreement). The Unit Agreement joins the Cherry Hill lease with numerous other oil and gas leases in the area to combine operations. Plaintiffs are the successors of the lessor's interest in the property, and defendants are the successors of the lessee's interest. According to plaintiffs, under the lease, defendants " have the exclusive right to drill and produce oil and gas from beneath said property and to make the following uses of the surface thereof: [¶] 'operating and treating thereon and removing therefrom said oil, gas, hydrocarbons and similar substances, and of constructing, operating and repairing pipe lines, tanks, power stations, reservations, roads, telephone and telegraph lines, power lines and structures thereon for producing, extracting, storing, dehydrating and/or disposing of said products, and of using oil, gas and water therefrom for said purposes, and of performing any and all acts, and of enjoying all rights and

[1] Statutory references are to the Code of Civil Procedure except as otherwise noted.

privileges necessary or convenient in connection therewith.'" Plaintiffs allege that defendants nonetheless "have no rights in the property other than those associated with the production of oil and gas and [plaintiffs] have the right to make such use of the property as does not unreasonably interfere with [defendants'] rights in the property."

According to plaintiffs, defendants, as operators under the Unit Agreement, are to determine each year the portion of the surface and subsurface to a depth of 500 feet of the unit parcels necessary for oil and gas production. Under the Unit Agreement, "[a]ll of the unneeded surface and subsurface to a depth of 500' of a Committed Tract will be released to the Working Interest Owner of such Committed Tract (subject to necessary easements and rights-of-way for pipelines, power lines, well bores and roads) and Unit Operator shall be empowered to and shall execute and record in the Official Records of Los Angeles County a quitclaim and surrender evidencing the fact of such relief on behalf of all parties hereto relinquishing all rights . . . to use and occupy the surface and subsurface of such lands to a depth of 500', subject to such easements and rights-of-way as may be necessary for Unit Operations and also subject to the existing rights under the apposite leases." (Italics omitted.)

Plaintiffs allege that before 2005, under the Unit Agreement, the surface and subsurface area of the parcel were excluded from the portion of committed tracts necessary for unit operations. Plaintiffs claim that, based on this exclusion, they were entitled to a quitclaim and release of the surface and subsurface area of the parcel, but never received such rights. According to plaintiffs, defendants, in 2005, negotiated with Allan Corrin (Charlene Corrin's husband), now deceased, and William Corrin to purchase the parcel to develop it, with neighboring lands, for residential purposes, but defendants did not complete the purchase of the parcel, or quitclaim and release its surface and subsurface area. Plaintiffs allege this failure of defendants constituted a breach of the Unit Agreement and denied plaintiffs their rights of use to the parcel.

Plaintiffs also claim that, although defendants have the right to use the parcel for oil and gas production, the parcel "is not presently occupied by a producing oil and gas well, a well or well bore being used for the injection of water or the disposal injection of

waste or by-products, or a well or well bore being used for the production of water for oil field purposes." In addition, plaintiffs allege that defendants are not using the surface and subsurface of the parcel to a depth of 500 feet. As a result, plaintiffs maintain that termination of defendants' rights to the surface and subsurface area of the parcel "would not significantly interfere with defendants' rights under the lease or under the Signal Hill West Unit to continue production of oil or gas from beneath the surface of said property or any other property in the Unit Area in a practical and economic manner and to gather, transport and market said oil and gas." "Plaintiffs are willing to relocate any pipelines on the property in a manner that will effectively free the land for surface use, while safeguarding continued oil and gas operations in a practical and economic manner."

Based on the alleged failure of defendants to quitclaim and release the surface and subsurface area of the parcel, plaintiffs prayed for a judgment ordering specific performance of the Unit Agreement, specifically that defendants "quitclaim and surrender relinquishing to the working interest owner . . . all rights . . . to use and occupy the surface and subsurface of the said lands to a depth of 500 feet, subject to such easements and rights-of-way as may be necessary for Unit Operations" and awarding plaintiffs "an amount for loss of market value and any other losses caused by the delay of [defendants] in recording the quitclaim and surrender . . . ." Plaintiffs also prayed for a judgment, pursuant to section 772.010 et seq., terminating defendants' right of entry and occupation of the surface and subsurface area of the parcel.

Defendants answered the first amended complaint and asserted numerous affirmative defenses, including the defense that the operative complaint "is barred because [p]laintiffs' property, and the mineral interests in [p]laintiffs' property, including any and all oil and gas leases encumbering the property, are part of the Signal Hill West Unit and Signal Hill West Unit Agreement, which amends and supersedes all prior leases on the property and authorizes use of [p]laintiffs' property by answering [d]efendants, and further precludes any relief under . . . section 772.010."

2. *The Bench Trial*

At trial, which commenced on November 1, 2010, plaintiffs argued that defendants, and their predecessor, had failed under the Unit Agreement to determine on a yearly basis that rights to the surface and subsurface to a depth of 500 feet of the parcel were necessary for oil and gas operations and in fact had demonstrated that such rights were not necessary.[2] Plaintiffs maintained that, as a result, they were entitled, through specific performance of the Unit Agreement and by virtue of section 772.010 et seq., to a quitclaim giving them use of the surface and subsurface to a depth of 500 feet. To support their argument, plaintiffs presented evidence that a real estate broker had listed the parcel in January 2002 but was unable to sell it because of defendants' encumbrance on the property. Defendants then, from 2003 to 2005, negotiated to purchase the property, which defendants planned to use for a residential development. Defendants agreed on a price for the parcel and entered a purchase and sale agreement. The purchase, however, never was completed, as defendants decided not to buy the property. Plaintiffs claimed that, although the purchase did not go through, the negotiations by defendants and their plan to develop the property for residential use demonstrated that they had determined that their rights to the surface and subsurface to a depth of 500 feet were not necessary for oil and gas operations. In addition, plaintiffs presented evidence that the same real estate broker who had tried to sell the parcel had worked with defendants to purchase another property in the area, which defendants then resold to a developer. According to plaintiffs, defendants' act in buying and reselling the other property for development further supported plaintiffs' theory that defendants did not need the rights to the parcel for oil and gas operations, but simply were holding on to them.

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[2] Plaintiffs relied on the provision in the Unit Agreement stating, "As soon as possible, following the effective date of this agreement, and in June of each year thereafter, Unit Operator shall determine that portion of the surface of the Committed Tracts then necessary for Unit Operations."

Defendants, in response, presented evidence through David Slater, a petroleum engineer and expert in the field of oil and gas serving as their vice president, that the Unit Agreement permits defendants to use the surface of land within the unit, including the subject parcel. Operations on the surface of one parcel of land in the unit constitute operations on all surfaces. The Unit Agreement was established pursuant to Public Resources Code section 3301 to prevent the waste of oil and gas resources and was approved by the State at its inception in 1972.[3] According to Slater, more than 1,000 individual royalty owners are part of the unit, and, as of November 2010, the unit contained approximately 165 active wells. In 2009, the unit produced about 450,000 barrels of oil.

Twenty-eight years after the subject parcel became part of the Unit Agreement, Allan Corrin, in 2002, began inquiring about release of the surface and subsurface rights of the parcel. Although defendants negotiated to purchase the property and entered into a purchase and sale agreement, defendants opted not to purchase the property. Defendants purchased another area parcel, as indicated by the real estate broker, but the property was not developed. By virtue of the lease and Unit Agreement, plaintiffs, and their predecessors, for decades received royalty payments from oil production under the lease and in the unit.

With respect to plaintiffs' allegation that the surface and subsurface rights of the subject property were not necessary for oil and gas operations, defendants demonstrated

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[3] Public Resources Code section 3301 provides, "Whenever the supervisor finds that it is in the interest of the protection of oil or gas from unreasonable waste, the lessors, lessees, operators or other persons owning or controlling royalty or other interests in the separate properties of the same producing or prospective oil or gas field, may, with the approval of the supervisor, enter into agreements for the purpose of bringing about the cooperative development and operation of all or a part or parts of the field, or for the purpose of bringing about the development or operation of all or a part or parts of such field as a unit, or for the purpose of fixing the time, location, and manner of drilling and operating of wells for the production of oil or gas, or providing for the return of gas into the sub-surface of the earth for the purpose of storage or the repressuring of an oil or gas field. Any such agreement shall bind the successors and assigns of the parties thereto in the land affected thereby and shall be enforceable in an action for specific performance."

that their predecessor in 1974 had qualified all tracts essential for "optimum development and operation" of the unit. In addition, although defendants' predecessor had released surface rights of certain parcels in 1975, 1976 and 1977, the subject parcel was not one of them. According to Slater, since defendants took over operations under the Unit Agreement in 1994 they had determined that the surface and subsurface rights to the parcel are necessary for oil and gas operations. Slater testified that the primary reason for the determination of continued necessity is "for future drilling access either by redrill or drilling new wells." During a site visit with the trial court, Slater explained that defendants for six years had been studying the subsurface of the property, as well as others in the surrounding area, to identify potential oil reservoirs for future production and that defendants believed a potential reservoir was located under the parcel and surrounding area. In addition, use of the parcel could be necessary for redrilling on a well bore located nearby. Although a future drill site would require application to the City of Signal Hill for a zoning change from residential to industrial or commercial use, and a conditional use permit, Slater believed "the City would be amenable to changing the zoning . . . ." Slater also believed defendants could obtain necessary approval for redrilling operations. Defendants invested more than $15 million since 2005 to investigate the possibility of using the parcel and surrounding area for future drilling, or redrilling.

After presentation of the evidence, plaintiffs moved to amend the operative complaint to conform to proof by adding the allegation that "[p]laintiffs are informed and believe and thereon allege that defendant[s'] . . . purpose [in refusing to purchase the parcel or to quitclaim and release the surface and subsurface to a depth of 500 feet of the property] was to use the right of entry for oil development purposes contained in the . . . [l]ease as a lever to acquire the property for real estate development purposes at a lower price than the price it had contracted to pay." (Emphasis omitted.) Plaintiffs maintained proof of this allegation entitled them, in addition to property rights, to damages based on the difference in the value of the property at the time plaintiffs expected defendants to

purchase the property in 2005 or 2006 and its decreased value as of November 2009.[4] The trial court permitted the amendment.

3. *The Statement of Decision and Judgment*

On January 6, 2011, the trial court entered judgment for defendants. The judgment provides:

"Contrary to the contention of Plaintiffs, Plaintiffs have the burden of proof in this case to show that the Defendants or their predecessor, Texaco, in their capacities as the operator of the Signal Hill West Unit, ever made a determination that the surface of Plaintiffs' property was not necessary for operations in the Signal Hill West Unit ('Unit Operations');

"That the Plaintiffs and their predecessors agreed to join the Subject Property into the Signal Hill West Unit, pursuant to which they relinquished their surface rights in the Subject Property and that Plaintiffs and their predecessors have been receiving royalty payments for more than thirty-five (35) years;

"That there is a strong public policy in favor of unit agreements to maximize the production of oil and gas and minimize waste of these resources;

"That there was no evidence presented at trial that the original Unit Operator, Texaco, ever made a determination that the surface of the Plaintiffs' property was not necessary for Unit Operations;

"That there is no direct evidence of what determinations Texaco made but that the circumstantial evidence is clear that any determinations that were made were to leave Plaintiffs' property open for oil production;

"That in weighing the evidence, the fact that the Defendants entered into a Purchase and Sale Agreement with the Plaintiffs did not establish that the Defendants made a determination the surface of the property was no longer necessary for Unit

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[4] Plaintiffs based their claim to damages on Civil Code section 1930, which provides, "When a thing is let for a particular purpose the hirer must not use it for any other purpose; and if he does, he is liable to the letter for all damages resulting from such use, or the letter may treat the contract as thereby rescinded."

Operations because the Defendants never went through with the contract, there was nothing in the contract that required the Defendants to build residences on the property and the Defendants made no further effort to try and purchase the Plaintiffs' property after the Purchase and Sale Agreement did not go through;

"That while there may be zoning issues with regard to future use of the surface of Plaintiffs' property for oil and gas operations, there is not a legal impossibility to conduct oil and gas operations on the surface of Plaintiffs' property either now or in the future;

"That Defendants presented uncontradicted evidence that the Defendants have been engaged in a serious, good faith attempt at oil exploration with regard to the Subject Property and have invested approximately $15 Million since approximately 2006 in connection with those efforts; and,

"That therefore the court finds in favor of the Defendants and against the Plaintiffs in this action."

After the trial court denied plaintiffs' motion for a new trial, plaintiffs timely appealed from the judgment.

DISCUSSION

Plaintiffs initially contend that the trial court improperly placed the burden of proof on them to demonstrate that defendants, or their predecessor, had determined that the rights to the surface and subsurface to a depth of 500 feet on the Signal Hill parcel were not necessary for oil and gas operations, rather than requiring defendants to establish that a necessity determination had been made each year in accordance with the terms of the Unit Agreement.[5] The court did not err. Plaintiffs alleged in the operative

[5] Plaintiffs frame the issue as that the trial court erred by putting the burden on them to establish that defendants, or their predecessor, had made a "no necessity" determination regarding the parcel instead of requiring defendants to prove their affirmative defense that plaintiffs' right to relief failed under section 772.010 et seq. But the court made no such ruling addressing defendants' affirmative defense. Rather, the court decided that plaintiffs had the burden of proof on the elements of their causes of action and that the circumstances of this case did not warrant the rare decision to shift the burden to defendants. In any case, defendants' affirmative defense under section 772.010 did not relate to the necessity determination relevant to plaintiffs' claim for specific

complaint that before 2005 defendants or their predecessor had determined under the Unit Agreement that the surface and subsurface rights of the property were no longer necessary for oil and gas operations. Based on plaintiffs' allegation that a "no necessity" determination had been made, they sought specific performance of the quitclaim provision of the Unit Agreement. Given plaintiffs sought specific performance of the Unit Agreement on the condition of a "no necessity" determination, it was their burden to prove the "no necessity" determination had occurred. (*Consolidated World Investments, Inc. v. Lido Preferred Ltd.* (1992) 9 Cal.App.4th 373, 380 ["where defendant's duty to perform under the contract is conditioned on the happening of some event, the plaintiff must prove the event transpired"].)[6]

This case was not, as plaintiffs suggest, one of the rare occasions to shift the burden of proof to defendants. "'[E]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.' (Evid. Code, § 500.) 'The party claiming that a person is guilty of crime or wrongdoing has the burden of proof on that issue.' (Evid. Code, § 520.) In sum, the plaintiff generally bears the burden of proof to establish

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performance, but simply asserted that plaintiffs were not entitled to judgment under section 772.010 et seq.

[6] Plaintiffs also sought termination of defendants' surface and subsurface rights pursuant to section 772.010 et seq. For termination under the statutory scheme plaintiff must show that "[t]ermination of the right of entry or occupation within the subject land in the manner requested by the plaintiff, or subject to such conditions as the court may impose pursuant to this section, will not significantly interfere with the right of the lessee, under the lease, to continue to conduct operations for the continued production of oil from leasehold strata beneath the surface zone in a practical and economic manner, utilizing such production techniques as will be appropriate to the leasehold area, consistent with good oilfield practice, and to gather, transport, and market the oil." (§ 772.040, subd. (c).) In addition, "[n]o judgment rendered pursuant to [section 772.010 et seq.] shall change or affect the terms or operation of any valid unit agreement or valid operating agreement which comes within the provisions of Section 3301 or 3321 of the Public Resources Code." (§ 772.030, subd. (b).) Thus, plaintiffs' statutory cause of action also required them to demonstrate a lack of interference with continued operations under the undisputed terms of the Unit Agreement.

its prima facie case." (*Sargent Fletcher, Inc. v. Able Corp.* (2003) 110 Cal.App.4th 1658, 1668.) "'On rare occasions, the courts have altered the normal allocation of the burden of proof.' [Citation.] In evaluating whether to shift the normal allocation of the burden of proof, '"the courts consider a number of factors: the knowledge of the parties concerning the particular fact, the availability of the evidence to the parties, the most desirable result in terms of public policy in the absence of proof of the particular fact, and the probability of the existence or nonexistence of the fact."' [Citations.] But the exceptions are few, and narrow." (*Id*. at p. 1670.) Given plaintiffs' agreement with the trial court's observation that they could have brought this action "any number of times over the past 30-some years," and their continued receipt of royalties under the Unit Agreement and lease during that time, public policy considerations do not favor shifting to defendants the burden to prove a necessity determination had been made each year since 1974 when the subject parcel became part of the Unit Agreement. In addition, defendants were the operators under the Unit Agreement from only 1994 forward and thus not necessarily in possession of evidence from their predecessor such that shifting the burden of proof based on the availability of evidence would be appropriate. Indeed, plaintiffs, or members of their family, were subject to the Unit Agreement, and thus privy to its terms and requirements, long before defendants became involved with the operations. Although plaintiffs suggested that defendants must produce a written determination of necessity, the Unit Agreement contains no such written requirement.[7]

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[7] Plaintiffs presented circumstantial evidence relating to defendants' attempt to purchase the parcel and other real estate involvement in the area to establish defendants had determined the parcel was not necessary for oil and gas operations. Defendants used evidence of their predecessor's actions and expert testimony to show the parcel was necessary for continued oil and gas operations. Plaintiffs did not present an expert in rebuttal. Regardless of the burden of proof, the evidence is more than substantial to support the trial court's determination that neither specific performance of the Unit Agreement nor a judgment for plaintiffs under section 772.010 et seq. was warranted. (See *Butcher v. Okmar Oil Co.* (1977) 65 Cal.App.3d 972, 975-976 [summary judgment under predecessor statute to § 772.010 et seq. proper for lessee on oil and gas lease when

Plaintiffs also contend that, in light of evidence that defendants would need a zoning change from the City of Signal Hill for future oil operations on the subject parcel, the trial court erred by requiring plaintiffs to demonstrate by a heightened standard of proof that defendants' ability to acquire such a variance was a legal impossibility. Plaintiffs have not demonstrated error. In reviewing plaintiffs' evidence, the court suggested that, regardless of the pleaded causes of action, it potentially could find for plaintiffs on a theory of breach of the implied covenant of good faith and fair dealing in the Unit Agreement if it determined that defendants were asserting the surface and subsurface rights of the property were necessary for oil and gas operations but doing so in bad faith. The court opined that plaintiffs could demonstrate bad faith in a number of ways, one of them perhaps by evidence that the placement of oil and gas operations on the property was a legal impossibility because of zoning issues. As the court stated, "Now, a violation of the covenant of good faith and fair dealing would occur if you had a legal or factual impossibility and, in the face of that legal or factual impossibility, the defendant refuses to make the determination in question." Contrary to plaintiffs' claim, the court did not impose a heightened standard of proof for plaintiffs to prove their pleaded causes of action. Rather, the court merely concluded that, in addition to the pleaded causes of action, plaintiffs could be entitled to relief on a showing of bad faith if they had evidence of an inability of defendants to obtain a zoning variance.

In any event, aside from demonstrating that the current zoning on the parcel was for residential use, plaintiffs presented no evidence that defendants would be unable to obtain a change in the zoning. Slater, on the other hand, testified that he believed defendants could achieve a zoning change for new drilling operations and that no zoning change was necessary for redrilling, only city approvals that in his experience would be granted. The trial court concluded, "So now, when the defense tells us that they need this property for oil production, I appreciate that . . . they may have a challenge with the City, but it's certainly a good faith determination." The evidence supports the court's

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partner of lessee testified by affidavit that surface was necessary for continued oil and gas production].)

conclusion. As a result, the court did not err in determining plaintiffs were not entitled to relief on a unpleaded bad faith theory based on defendants' claims of necessity in the face of the current zoning for residential use.

DISPOSITION

The judgment is affirmed. Defendants are entitled to recover their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

JOHNSON, J.