

ORAL ARGUMENT – 04/02/03
02-0599
RIDGE OIL CO V. GUINN INVESTMENTS, INC.

JOHNSON: This is a review of a appellate decision reversing summary judgment in favor of my client, Ridge Oil Co., on a declaratory judgment action filed by Guinn Investments as to whether or not its lease was still in existence after production on my client's lease ceased.

The CA below by torturing the concept of the temporary cessation of production doctrine (TCOP) has explicitly created a new implied duty requiring people in the position of my client who continue to produce their wells in support of a operator that has not developed its land and is relying on that production to maintain its lease.

ENOCH: It is not clear in the briefs when the announcement of the cessation was given to the lessors in relation to when the Guinn's applied for a permit to begin drilling. It says, we ceased in December of 1997 and then we notified and they started in Feb. In the briefing it was never clear to me the announcement of the cessation occurring when.

JOHNSON: Ridge sent a letter to its lessors in January - 6 weeks after the production had ceased. The permit was obtained in Feb., after Guinn found out about the cessation of production.

SCHNEIDER: In that regard, which lessors did Ridge contact? Did he limit it to just his lessors, or did he include Guinns?

JOHNSON: There is one lease here, but two leasehold estates as the Ft. Worth CA indicated. The only people we have privity of state or contract with are our lessors. We call them the Ridge lessors. And we notified them that the production had ceased. They agreed and issued us new leases. We had no privity with Guinn or Guinn's lessors.

HECHT: The lessors are split up?

JOHNSON: Yes they are. And that's the tortured portion of this is that somehow Guinn believes that they can get involved in the TCOP doctrine, which is designed to _____ the rate the harshness of the fee simple determinable condition having the lease terminate and get in between our lessors and us.

O'NEILL: Would the case be different if you had some overlapping lessors? I understand that it's very clean and makes your case easier with totally separate groups, but what about a situation where half of the lessors are the same?

JOHNSON: We would have to advise to terminate our lease with people that gave us our lease. If the owners of the north tract, the Ridge tract, gave us the lease we would notify them that

production had ceased and seek a new lease from them.

O'NEILL: I guess what I'm saying is it's not really though necessary to your argument that you have two separate groups of lessors. You're saying theories are going to apply whether you have overlapping lessors or not.

JOHNSON: I think it is important that there's privity in the estate. And that's why Guinn has no standing to complain about the relationship that we have with our lessors.

PHILLIPS: Did it terminate immediately upon cessation or would it take 90 days?

JOHNSON: I believe that it would terminate with the intentional cessation of production to terminate the lease was terminated at that time.

PHILLIPS: Why did you give lessor 90 days?

JOHNSON: It was clear after 90 days the lease was dead. I think the testimony in the TC was that leases that have savings clauses usually are 60 days. Clearly after 90 days of non-production the lease would have terminated. I think the law is that it terminates when there's an intentional cessation at that time.

ENOCH: There would have been no need for your client, Ridge Oil, to cease production on the lease if as you say these are independent leases. As I understand the record, this is not the case. There is one lease that covers independent tracts. And over the course of time various interests in that lease had been assigned to various people so that in fact the way it's divided up there's one tract that's a Guinn tract, and there's one tract that's a Ridge Oil tract I guess for one of a better way of describing it. But if you cease the production of the Ridge tract, that ended the lease on the Guinn tract does it not?

JOHNSON: Because Guinn has not taken any action to develop its annual production.

ENOCH: Forget about that for a moment. The reason that you ceased production is so that you wiped out the lease on not only the Ridge but the Guinn tract. And then your new lease is just of the people that had the mineral interests on the Ridge tract. Is that correct?

JOHNSON: Yes.

ENOCH: In the outcome you're not arguing had the Guinns been in the process of drilling an oil well, of producing a well on their tract, you wouldn't stand here and say that that wasn't sufficient to maintain the lease even on the Ridge Oil tract.

JOHNSON: Yes. There is one lease and it terminates.

ENOCH: Once you cease production.

JOHNSON: Right.

ENOCH: But if the Guinns had been producing...

JOHNSON: If Guinn had been producing the lease would still exist. And that's the situation in Cain v. Neumann that I think the court below misinterpreted. Cain v. Neumann, there was an attempt to say, hey let's agree that the lease is gone. And J. Pope says at least 10 times, the production has got to cease under this lease.

ENOCH: Now that the evidence demonstrates that the Guinns did not start any sort of work on their portion of the lease until after Ridge had announced their cessation, the real issue is can the temporary cessation of production overcome Ridge's involuntary cessation of production. You say it can't. And Guinn says it can. And that's really the only issue that's here.

JOHNSON: Guinn, by utilizing the TCOP implicitly agrees that production ceased. And when the production ceased and was never restarted under that old lease, that old lease was dead. That 1937 the lease was dead. We could not have agreed with our lessors to amend the lease. The lease had no surrender clause. The only way it was going to end was to cease the production of paying quantities or have no operation only. We stopped production. There were no operations on the lease. There was no production on the lease. The lease terminated.

OWEN: As I understand the briefing, the minerals were partitioned - the two tracts. Formally partitioned. Is that correct?

JOHNSON: The original 1937 lease was a lease of two different tracts.

OWEN: On page 3 of your brief you say, the mineral estates were also partitioned so that the lessors of the Guinn tract are now different from the lessors of the Ridge tract. I mean that was a formal partitioning, I take it.

JOHNSON: Right.

OWEN: And then likewise there were two different divisions of interests with respect to the operator.

JOHNSON: Through the 60 years there have been assignments that established different lessors on one tract or the other.

OWEN: So the lessors on the Guinn tract no longer own any mineral interests at all in the Ridge tract and vice versa?

JOHNSON: That's correct.

OWEN: Is it your position that had a well been drilled on the Guinn tract that would have held the lease on the Ridge tract?

JOHNSON: If there were operations or production anywhere on those two tracts it would have held that lease.

OWEN: Why is that so if they have been partitioned completely?

JOHNSON: That is the lease that both Ridge Oil and Guinn Investments operated under. That's the only connection. That lease remained in effect. Fortunately there was no surrender clause, so the only way to terminate that lease is to just let the condition happen - cessation of production or lack of operations.

We could not have agreed to change the lease to give our lessor a better lease. We had to stop the lease to avoid the Cain v. Neumann _____.

O'NEILL: Can you tell me what the summary judgment evidence was as to whether there actually was production during this 90 day period?

JOHNSON: There were affidavits and testimony from the operator, Ridge Oil, that the wells had stopped producing. There was evidence from the Texas RRC showing...

O'NEILL: There seemed to be some controverting evidence. What was the nature of that controverting evidence?

JOHNSON: I don't believe there was any controverting evidence. There have been some speculations made by attorneys in pleadings about what could have been the situation. But the fact of the matter was there was no production from the wells.

O'NEILL: Is that an issue because I thought I read the briefs to say that despite the first argument there is a question as to whether production was actually ceased. That is not an issue.

JOHNSON: If that was the position Guinn would not need the temporary TCOP doctrine. They would have said the production is continuing. But no they said it did cease and therefore we have a right to come in. We dispute their right to come in. But they've agreed that it had ceased. After the trial I think they tried to invent some sort of theory that there might have been some production. But I don't think it holds any - there's no logical inference that there was production. The intent was turn off the wells, and they were turned off and that was producing...

O'NEILL: So there's no controverting affidavit or no summary judgment evidence of production. Is that right?

JOHNSON: No. And I think by their pleadings they indicate that it had ceased.

JEFFERSON: You've spent a good bit of time telling us about why there's no privity of contract in this situation. It's kind of an unusual situation where, at least we don't see it in regular business transactions, what kind of relationship is there between Ridge and Guinn? Can you argue a third party beneficiary _____?

JOHNSON: There is a law review article, I think we cite, that says that at - there's no really legal term and this author said that at best it's an incidental beneficiary that Guinn hold its lease by the tenuous efforts of someone else. That's far down on the food chain in oil and gas. When you're trying to hold a lease by even your own production that's pretty tenuous. But someone else's production without developing the lease and fulfilling your duties to develop your lease, you are in dire straits. You're a tenant at will. And I don't think there's really any relationship. We had no contractual relationship or estate relationship. It's just the fact that the lease that got assigned back in 1937 said that over both these tracts any production or any operations would maintain the lease for both tracts.

SCHNEIDER: Well it's obvious to the benefit of Guinn that the contract that Ridge continued to form under the lease to keep it alive.

JOHNSON: Right. And that's the creation of the new duty that Guinn seeks for you to affirm here. There is no duty of a operator who has no privity of contract or...

JEFFERSON: But the CA opinion doesn't forbid you from ceasing production. You can cease production at anytime. Right? I mean it's up to you.

JOHNSON: The CA says we can walk away from a lease. And our position, we did. We turned off the lease.

JEFFERSON: The question is whether that is just a pretext. I mean there was no real attempt to cease production. It was just to overcome this lease problem that you had with Guinn.

JOHNSON: The court was trying to interpret Cain v. Neumann when there wasn't an actual cessation. We were at risk. We turned off the wells and announced to our lessors that we had lost our lease. Please give us a new lease. They could have said, no. They could have said, we want ½ royalty. Or we are not going to do this.

OWEN: They could have taken over the operation of wells.

JOHNSON: Exactly. We were at risk. It was no pretext. It was no sham. It was open and honest, and we told the world.

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RESPONDENT

SIMS: J. Enoch you asked a question about when was the announcement made about this plan to terminate Guinn's leasehold interest. In the clerk's record at 392, the letter that was mentioned to you and the response. In the second paragraph of the letter it says, as I have explained to you via telephone the mineral leasehold of the 160 acre tract - and it goes on. There is evidence in this case, or there is at least fact issues in this case, that this plan to terminate Guinn's leasehold estate was a prearranged plan by Ridge to turn off the electricity on the wells and then go take new leases from _____.

J. Owen you just asked a question that I think is very important here too, and that is that had Ridge been honest with its lessors in connection with the status of the well, or the status of the lease as they now argue before the court, its lessors would not have signed releases. That's not what Ridge did though. Ridge went to its lessors and said, we don't know who owns the Guinn tract. It was owned by two guys that are now dead and their heirs are scattered all over the nation.

O'NEILL: And the lessors could have complained about that but they haven't. I mean do you have standing to even complain about that?

SIMS: That's correct. And the issue before this court is not the status of Ridge's leasehold interest under the 1937 lease. The issue is the status of Guinn's leases.

OWEN: My point is, the owners on the Ridge tract they could have said, go ahead. Shut off the well. And then come right back behind it and operate the wells themselves. You could have come in and offered to operate for a bigger royalty. Wasn't that lease up for grabs at that point?

SIMS: Their leasehold interest may very well have been up for grabs or may be an issue to be determined or litigated in the future. The issue we believe is what is the status of Guinn's leasehold interests under the 1937 lease. And I don't think it's an all or nothing proposition.

OWEN: Help me with the Sunac Petroleum v. Parkes case. There the court said that the operator doesn't even owe a duty to the overriding royalty owner to continue operations.

SIMS: In the Sunac and _____ line of cases there are a couple of very fundamental distinguishing factors. The first is, and also goes back to your question about was there a formal partition of the mineral ownership. That is not in the record. And there to my knowledge is not a formal partition of the mineral ownership under this 1937 lease. What happens is, is that the lessors of the lease combined two tracts under the leasehold interest. And by virtue of very _____ the mineral ownership is assigned, and the tracts - the lessee's interests gets assigned over the years as well. So what we have here is a situation where Ridge owns title to its leasehold interests under the 1937 lease and Guinn owns title to its leasehold interests under the 1937 lease. There is nothing that Ridge can do, and I think Mr. Johnson has admitted that, by virtue of just signing new leases with

its lessors that can wash out Guinn's leasehold estate.

The reason for that is that Guinn's leasehold interests is not carved out of Ridge's leasehold interests. Guinn's leasehold interest is under the 1937 lease. It is on an equal plain on the equal dignity with Ridge's leasehold interest. So there's no way that they can just sign new leases with their lessors and wash out Guinn's leasehold interests.

O'NEILL: You don't have any quarrel that they could cease production whenever they wanted to?

SIMS: I do have a little bit of quarrel with that. And the quarrel is but for the foundation of misrepresentations that underlie the plan...

O'NEILL: Which the lessors could have complained about but haven't.

SIMS: I understand that. But they never would have turned the electricity off had not that foundation been a part of the overall plan, the misrepresentations.

O'NEILL: So you're saying if they are in good faith turn it off. But if they have some ulterior motive they can't cease production.

SIMS: Perhaps under this court's decisions it may go a little further than just good faith or not. I think the question is, was tortuous conduct involved in the overall plan? Here it was.

O'NEILL: There would have to be some sort of duty that they owed to Guinn. I mean it's hard for me to see how we can accept your argument without imposing a duty that I believe you concede that there is not. So I'm having a hard time reconciling those two.

SIMS: I don't think the CA's opinion creates any duty, and we're not asking this court to create any duty. And I think the way it gets there is it goes back to other arguments that have been made before the court this morning. The key issue in this case is the effect of the habendum clause in an oil and gas lease. Under *Sun v. Matthews Oil*, this court has held that the rule of indivisibility applies with respect to the habendum clause in an oil and gas lease. That rule simply says that if one lease covers more than one tract of land production on any tract will maintain the lease as to all tracts.

O'NEILL: And nonproduction will stop. That's the corollary.

SIMS: Correct. Except that under the TCOP doctrine the lease at least as to Guinn's leasehold interest is maintained if that doctrine applies.

ENOCH: We have always looked at the TCOP doctrine to apply to the operator who has for some reason stopped production temporarily and then they re-engage in production. Aren't

you asking this court to make a fairly substantial leap in that doctrine to say that when the operator ceases production if there is anybody else who can come in within a few weeks after that cessation of production and volunteers to do their own production, they can themselves save the lease. Not the operator, but actually some person, some third party can save this lease if they race in within just a few weeks when the original operator ceases production and volunteers to take on production that they've saved the lease. Isn't that a pretty dramatic movement in the TCOP issue?

SIMS: We don't think the court has to make any movement at all to rule in Guinn's favor with respect to TCOP _____.

ENOCH: But Ridge Oil doesn't want to start production on that original lease.

SIMS: And the issue under the 1937 lease is not what production is under a lease. Is there production on the land covered by the lease? And here the oil and gas that's being produced on the same land that's covered by the 1937 lease.

OWEN: Let's suppose the facts were just a little bit different that the lessors said, we're not going to play ball with Ridge after they stopped production. They said, we're off the lease. It's terminated. You can't come on my property anymore. We're going to take over the operation of the well. And then they decided, we're tired of sharing our royalty with the Guinns next door. So we're going to shut down these oil wells for 1 year, not let you come on the property. You don't have any right to come on the property to start the wells. Couldn't the lessors themselves have cut you out of this lease? Do you have any right to go on that property and operate that well?

SIMS: I think that we have a reasonable opportunity under the TCOP doctrine to maintain operations or actual production under this lease.

OWEN: My question is could the lessors have terminated this lease under that scenario as to you if you didn't go out there and drill on your own tract?

SIMS: I think if we just sat idle for a year and did nothing clearly I think the lease would terminate. And the lessors would be able to say, as to our leasehold interests, that leasehold interest is terminated. But this is not a situation here where we've been painted as being a _____ lessee. Guinn acquired its interests in its leasehold estate under the 1937 lease 5 months before they implemented the scheme on Dec. 1..

HECHT: But you acquired it _____.

SIMS: Perhaps. But again under Tile law in Texas our title, once we acquired it it was as of equal dignity with Ridge's title. And what happened 50 years ago is really irrelevant. Once we acquired title, we had title.

HECHT: If the facts were that Ridge said, well we don't know what we're going to do

about this and we're tired of messing with it and so we're going to shutoff and we're just going to hope for the best. Maybe they will give us a new lease. Maybe they won't. We don't know. But anyway we've got to do something. So they shut the wells down. And the lessor says, okay. Well this lease is expired and now we're going to re-lease to Ridge. We've decided that that's what we want to do. Can you quarrel about that?

SIMS: I think that again with respect to the TCOP doctrine, Smith and Weaver in their treatise say that of course the rule of indivisibility applies to the habendum clause in oil and gas leases. And that this is the doctrine that a geographic division of the lease among landowners does not affect the habendum clause and other clauses that modify the habendum clause. The TCOP rule is implied into any oil and gas lease that does not otherwise have a cessation of production clause in it. And so the rule of indivisibility applies with respect to the TCOP doctrine. Just like it applies to actual production under the lease. It in effect is a substitution for production.

HECHT: So the answer is, yes. You could have.

SIMS: I believe that under the TCOP doctrine Guinn has a responsibility to keep up and know what's going on out there. And he did in this case. And once he finds that there's been a cessation, he has a reasonable amount of time to try to remedy the situation. And he had obtained a drilling permit and he was paying surface damages on the day he found out about this letter that I refer to.

SCHNEIDER: Let's assume you get what you ask for. Let's assume you've got the TCOP doctrine and the court gives you what you want. Now you don't have these other lessors in this lawsuit. You were the one that filed the first declaratory judgment. How would you enforce that as to them when you have an outstanding contract or lease with the lessors? Were they necessary parties? What's your position on that?

SIMS: I don't believe so. Guinn is simply in the posture here of trying to maintain its leasehold estate under the 1937 lease. Contrary to what you may have been told, Ridge actually took leases on the Guinn tract after it turned off the electricity to the wells. In fact it represented to Guinn that it had no intent of doing that, and while it was representing that to Guinn it was out taking leases on the Guinn tract. But the issue here is not what Guinn's lessors may or may not do in the future. It's simply an issue as between Guinn and Ridge: Has Guinn's leasehold estate under the 1937 lease been maintained as a result of the TCOP doctrine. It doesn't. And the CA was very careful. They never said the TCOP doctrine applies to Ridge to cause them to tie their hands under the 1937 lease.

HECHT: But the argument seems to be that they are bad people and because they are sneaking around doing this that changes things. And what I was really getting at is suppose they are good people and there's not a hint or misrepresentation. They just don't know what else to do. And they say, look. This is not temporary cessation. We're turning it off. And you say, no, no it is. Can you make that argument against the lessors with the other lessees saying, No. We're not doing that.

SIMS: I think we can. And the reason that we can is because when you view the cessation from Guinn's perspective it meets the test. You're not putting a square peg into a round hole.

HECHT: But don't you have to view it from the lessor's perspective?

SIMS: No. For example in Winsauer, a term royalty owner was allowed to take advantage of the TCOP doctrine. And there again, the reason is because of the habendum clause. In a term royalty deed, the habendum clause is just like it is in a lease. And so this court in Windsauer said, a term royalty owner can take advantage of that. In our situation we are a lessee under this lease that has that clause built into it. And so when you view it from Guinn's perspective there was a sudden stoppage. It was involuntary. It was unforeseeable. It was unexpected. It was unavoidable. All of those things apply when you look at it from Guinn's perspective. Now if you come over and look at it from Ridge's perspective, it may not apply.

HECHT: But this looks like all kinds of mischief. You divided up the operating interests and the oil operator goes to the other operator and says, look. I've really got to do something over here. I want to cease production for awhile. But I don't want to lose the lease. So I'm just going to do what I do, but I want you to take the position that this is just temporary cessation. Because as to you it is. You couldn't do anything about it. And the lessor is standing there innocently wondering what's going on over here. And one lessee is playing off against the other lessee trying to keep the lease in effect.

SIMS: Lessors certainly have the right to invoke whatever rights they may think they are entitled to.

HECHT: Measured from your perspective this was a temporary cessation of production. And you make a credible argument there. But it seems to me you have to look at it from the lessor's perspective as well.

SIMS: The cause of cessation - I mean anything from litigation to drilling a new well, the causes of cessation have been all over the map in the case law. And when you look at this cause, even causes caused by third parties. Here as to Guinn this cessation was caused by a third party to Guinn's leasehold title. I would submit that the greater mischief is for parties, for people in the oil industry to get the message that this kind of mischief is authorized that it's okay - basically a set of facts were created here to destroy Guinn's leasehold interest.

O'NEILL: That can work both ways. I'm sure the other side says, well you're the mischief person because you wouldn't allow this new production to happen or the water flow project to work and everybody seemed to want it and you were standing in the way. I don't think we're trying to get into the merits of who did what to who at this level. It seems to me the CA went off on what was the intent. Was the intent for the cessation to be permanent or temporary? And it seems to me the CA said that they never really intended to permanently cease production and therefore the

TCOP doctrine did apply. Rather than get into the intent, doesn't just the passage of time itself mean that for 90 days if there's no production then it ceases. In other words, that seems to be semantics to me. It seems that here Ridge wanted to permanently cease production under these leases. And if I'm not producing for 90 days that's a presumption that they intended permanent cessation.

SIMS: And I don't think that Guinn's leasehold title ought to be governed by what Ridge's intent was.

O'NEILL: That's my point exactly. Shouldn't the intent be the 90 days? If there was no production for 90 days under this lease, this lease terminates. And that is evidence of what the intent was.

SIMS: This lease does not have a 90 day clause in it. This lease has no cessation of production clause in it. So we're simply under the TCOP doctrine which implies or creates a reasonable amount of time to remedy the situation. And there's never been a hard and fast rule about 90 days or otherwise.

OWEN: Let's suppose that this operator was in financial straits and just decided to abandon this well, and abandoned it for 90 days. Now it seems to me that terminates your lease and that there's nothing you can do about that except drill.

SIMS: That may be. I would say that if we find out about it - again when you do it from our perspective though it's exactly the same. There's a sudden stoppage.

OWEN: But it's not temporary. The operator abandons the well and the lessor - let's say for over 1 year they decide to leave there. And it seems like under your lease that wells been abandoned, it's not producing, there's no production.

SIMS: And I do think that if it goes that long over a period of time, there are clearly cases the _____ mill case...

OWEN: The abandonment is not temporary cessation.

SIMS: That's correct. An abandonment is not temporary cessation. But again, Guinn ought to have the ability under its leasehold interest once it finds out about that cessation of production it should have the ability to invoke the TCOP doctrine assuming that it is acting diligently as it was in this case.

OWEN: You're asking us to treat an abandonment like a temporary cessation. Our case law hasn't don't that before.

SIMS: I'm really not. Because I'm simply asking the court to apply the equitable temporary cessation of production doctrine in a situation that is clearly a very unique fact situation.

OWEN: Let's suppose the well has ceased production of paying quantities but a reasonable operator would have reworked the well. But Ridge chooses to wait 1 year to do that, to terminate your lease. Is that temporary cessation of production?

SIMS: I think the question of paying quantities, this court in Clifton v. Koonze has said there is no defined time over which you are looking at that.

OWEN: Let's say there was no production at all. But a reasonable operator could have gone in there and reworked the well _____ production, but Ridge chose not to do it. Doesn't that terminate your lease?

SIMS: I don't think it does. Under these facts because I think the TCOP doctrine as it applied under the lease is available to Guinn, and when Guinn exercises diligence as it did in this case, it just so happens it is moot because they turned on and oil began to flow before they could have produced it themselves. But Guinn acted with diligence. So all we're asking the court to do is to say, temporary cessation of production doctrine applies when you view it from Guinn's standpoint under the facts of this case to preserve its leasehold interest. What happens with respect to Ridge's interest or their issues is not before the court. It's just not an issue before the court. All we're trying to do is preserve Guinn's leasehold interest under the lease.

O'NEILL: In your brief you did say there are issues of fact about operation and production during the 90 day period. I understand opposing counsel said that was not an issue.

SIMS: We submit there are many fact issues that...

O'NEILL: Was there any summary judgment evidence that there was production or operation during that period?

SIMS: Yes. The deposition of Bryan Woodward, who is the VP of Ridge Oil Co is in the summary judgment record. The TC at clerk's record 605 said, I considered all the summary judgment evidence in reviewing the motion for summary judgment. And that's clearly part of the summary judgment record. In that deposition Bryan Woodward testified that there's a compressor that served both the two wells on the Ridge tract and two wells on another tract. And that that compressor - the function of that compressor was to pull a vacuum on the wells and to pull gas out of those wells, and that that gas was then metered. And all that's in our brief. It went to the pipeline. It goes to the processing plant that Ridge owns. And the liquids will be pulled out and would be paid for. That's all in the record. And they filed a traditional motion for summary judgment.

O'NEILL: So you would say we would have to remand?

SIMS: At a minimum, I think all these issues would need to be remanded to the CA for a decision.

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REBUTTAL

JOHNSON: We understand the court has many cases involving TCOP. This is an easy one. This is not a TCOP case. Production ceased. The lease ceased.

What Guinn wishes the lease said was that it had a clause like the Anadarko v. Thompson case, that as long as it can produce, then there would have been a question. Maybe you needed to plug out the wells and stop the production; walk away from the lease like the lower court said. That's not what this lease says. This lease is a fee simple determinable. Cessation of production stops the lease whether or not it can be producible or not.

ENOCH: The temporary cessation as I understand it generally is supposed to protect a producer, a lessee, of the property because you would anticipate there will be times when the well may not produce that are out of the control of the lessee, and so we just don't want these to be forfeited because of those circumstances. So the court tries to deal with what are the kind of circumstances. But you have two unrelated lessees. One lessee says, I'm relying on the producer who is a co-lessee to produce. And the producer comes in and says, I've decided not to produce any more. That's just the risk the co-lessee takes that they are going to lose their lease. Once I announce, the lease expires and that's just the risk that the co-lessee takes that they might have - there's under no circumstances would they be able to protect their lease if they rely on the other lessee to do the producing.

JOHNSON: It was a very tenuous situation that was Guinn in and he took no actions to produce his own lease.

The funny thing is, is that Guinn should have sued his own lessor to say, is our lease still good? They were so mad at us they sued us. They are estopped. And I think limitations have run. The lease ended. Ridge has a right to deal with his lessor. And has dealt with his lessor without interference of party, without privity or contract or _____.

The hypothetical show that there is implicit in this a duty that's trying to be created but some of the hypotheticals have pointed out the silliness of calling this temporary cessation of production because you create all sorts of duties. If we stop could Guinn come in and start our wells? No. They have no right to be on our property. Suppose Ridge said, our wells have gone down. Please drill a well, Guinn. Keep the lease alive. We've been producing for 50 years and you haven't done anything. That's silly. There's no duty there. There's no duty here that allows Guinn to come in, to use a doctrine that ameliorates the dispute between a lessor and lessee to get involved in our dealings with our lessor and lessee. Our lessor was happy. They weren't even sued. We don't have no idea what their opinion is. They were happy to give us a new lease. They got benefits out of the new lease.

OWEN: What about the evidence he was talking about that _____ liquid sales?

JOHNSON: The compressor is not a production. Compression by this court's ruling is not a production. Compressor expenses are not allowed as a cost of production. It's not a production. There was no reported production. The reported production at the RR commission was zero, zero, zero for 3 months in a row.