

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Robert Post Johnson, and A.V.M. Inc.,)	
<i>Plaintiffs and</i>)	
Appellants,)	Supreme Court Case No. 20180050
))	
vs.)	
))	McKenzie County District Court
Statoil Oil & Gas LP, formerly known)	Case No. 27-2014-CV-00286
as Brigham Oil & Gas LP, Missouri)	
Basin Well Service, Inc., MBI Oil and)	
Gas, LLC, Northern Energy)	
Corporation, Sunshine Pacific Corp.,)	
Stewart Geological, Inc., Brent Clum,)	
Earthstone Energy, Inc., Vincent)	
Melashenko, Hill L.P., LGFE-J L.P.,)	
Reef 2011 Private Drilling Fund, L.P.,)	
Missouri River Royalty Corporation,)	
Rainbow Energy Marketing)	
Corporation, United Energy Trading,)	
LLC, Abaco Energy, L.L.C., Wolfe)	
Exploration LLC, Joe Wolfe, Global)	
Gas & Oil, L.L.C., SourceRock)	
Exploration, LLC, Cody Oil & Gas)	
Corporation, David Peterson, Slawson)	
Exploration Company, Inc., Hess)	
Bakken Investments II, LLC, and)	
LGFE-M L.P.,)	
<i>Defendants and</i>)	
Appellees.)	

Appeal from Judgment Entered on December 7, 2017
Case No. 27-2014-CV-00286
County of McKenzie, Northwest Judicial District
The Honorable Robin A. Schmidt, Presiding

BRIEF OF APPELLEE HESS BAKKEN INVESTMENTS II, LLC

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TABLE OF AUTHORITIES

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Cases

Egeland v. Cont'l Res., Inc.,
2000 ND 169, ¶ 17, 616 N.W.2d 8618

Tank v. Citation Oil & Gas Corp.,
2014 ND 123, ¶ 12, 848 N.W.2d 6918

STATEMENT OF THE ISSUES

[¶1] Hess adopts the Statements of Issues set forth in the Brief of Appellee Statoil Oil & Gas LP (the “Statoil Brief”) and in the Brief of Appellee Stewart Geological, Inc.¹

STATEMENT OF THE CASE

[¶2] Hess adopts the Statement of the Case set forth in the Statoil Brief.

STATEMENT OF THE FACTS

[¶3] Hess is the successor-in-interest to American Oil and Gas, Inc. and the current owner of a fractional interest in the oil and gas leases at issue in this case. *See* Doc. ID No. 4 (Hess Answer and Counterclaim at p. 5). American Oil & Gas, Inc. was assigned an interest in the subject leases. *See* Doc. ID Nos. 118-120 (Oil and Gas Leases and Assignment of Oil and Gas Leases). Hess, in turn, is the successor-by-merger to the interests of American Oil & Gas, Inc., and therefore is the current owner of an interest in the subject leases. *See* Doc. ID Nos. 138-140 (Exhibits 1-3 to Forster Affidavit).

[¶4] It is undisputed that drilling operations occurred and resulted in producing wells on all tracts that Plaintiffs-Appellants assert are no longer subject to the leases at issue. Doc. ID Nos. 143-163 (Second Affidavit of Michael D. Schoepf with Exhibits 1-20). The record evidence of these operations is summarized in a timeline reflecting spud dates, completion dates, and dates of production from April 22, 2011 through early 2016. Doc. ID No. 164 (Exhibit 21 to Second Affidavit of Michael D. Schoepf). After the District Court ruled in Defendants’ favor regarding the construction of the Pugh clause at issue, the parties stipulated to dismissal of Plaintiffs’ remaining claims, including their claim that

¹ Various portions of the other appellees’ briefs are adopted pursuant to Rule 28(j) of the North Dakota Rules of Appellate Procedure.

Defendants had not pursued continuous drilling operations sufficiently to hold the leases. App. 398-402 (Joint Stipulation to Dismissal of Remaining Claims).

[¶5] For the remainder of its Statement of Facts, Hess adopts the Statement of Facts set forth in the Statoil Brief.

STANDARD OF REVIEW

[¶6] Hess adopts the Standard of Review set forth in the Statoil Brief.

ARGUMENT

[¶7] Hess adopts the Argument set forth in the Statoil Brief.

[¶8] To emphasize, the District Court was correct to rule that the oil and gas leases at issue in this case remain valid. As a general rule, oil and gas leases are indivisible, and “production or other operations on any part of the land will generally maintain the lease beyond the primary term for all of the land covered by the lease.” *Tank v. Citation Oil & Gas Corp.*, 2014 ND 123, ¶ 12, 848 N.W.2d 691. The parties to an oil and gas lease are free to create a lease that does not follow this general rule, but they must do so “clearly and explicitly.” *Egeland v. Cont’l Res., Inc.*, 2000 ND 169, ¶ 17, 616 N.W.2d 861. The leases at issue in this case each have a Habendum clause that establishes an initial or primary lease term of three years. App. 370 at 1 (¶ 1). After the end of the primary term, the Habendum clause allows the lease to be extended if oil and gas are produced from the leased lands, or if the lessee conducts “additional drilling or re-working operations” within a specified time period. *Id.*

[¶9] Each lease also has a Pugh clause stating that at the expiration of the primary term, “the lease shall terminate as to any part of the property not included within a well unit or units, as established by appropriate regulating authority, from which oil or gas is being

produced in paying quantities.” *Id.* at 1. This language limits the “production” provisions in the Habendum clause: a producing well will no longer hold the entire lease after the primary term, but will instead only hold the leased lands included within its North Dakota Industrial Commission spacing unit. However, the Pugh clause does not modify, or address in any way, the “drilling or reworking operations” provisions in the Habendum clause. As a result, the District Court properly held that drilling or reworking operations conducted at the end of each lease’s primary term had the effect of holding the entire lease. The District Court’s ruling gives full effect to each of the lease provisions at issue, and any other result “would render irrelevant significant provisions” within each lease. App. 396.

CONCLUSION

[¶10] For the reasons set forth above, Appellee Hess Bakken Investments II, LLC respectfully requests that this Court affirm the decision of the District Court.

Dated this 29th day of May, 2018.

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

[¶11] This Brief contains 813 words, excluding the parts of the brief exempted by N.D.R.App.P. 32(a)(8)(A). I certify that this Brief complies with the typeface requirements of N.D.R.App.P. 32 and the type style requirements of that rule, because it has been prepared in a proportionally-spaced typeface using a Microsoft Word, Times New Roman, 12 point font.

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CERTIFICATE OF SERVICE

[¶12] I hereby certify that a true and correct copy of the Brief of Appellee Hess Bakken

Investments II, LLC was served on May 29, 2018, via electronic mail, upon the following:

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