CAROLYN SCRANTON, CHRISTINE : NUMBER: 534,994, “B”

ODOM AND RACHELLE HESTER

VERSUS : FIRST JUDICIAL DISTRICT COURT

ASHLEY ANN ENERGY, L.L.C.,

CHESAPEAKE OPERATING, INC.

CALVIN BEASLEY AND LYDIA GUNN : CADDO PARISH, LOUISIANA

**REASONS FOR JUDGMENT**

 Trial on H. F. Sockrider, Jr.’s Peremptory Exception of Peremption and/or Prescription (filed February 3, 2011) was held May 2, 2011. Numerous exhibits were admitted along with testimony from the plaintiffs in the main demand - Christine Odom, Carolyn Scranton and Rachelle Jones[[1]](#footnote-1) (plaintiffs) – and the plaintiff in intervention, Herman F. Sockrider, Jr. Having considered the evidence, memoranda filed by Sockrider on February 3, April 28 and May 6, 2011; memoranda filed by plaintiffs on April 25 and May 6; oral arguments of counsel on May 2; the entire record, applicable law and for reasons which follow, the Court concludes that the plaintiffs’ legal malpractice claims against Sockrider are perempted and are therefore dismissed with prejudice.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**ON CONSTRUCTIVE KNOWLEDGE ISSUE**

 Based on the evidence presented at the exception trial, the Court concludes that in mid-October 2008 plaintiffs received information from a landman with Ashley Ann Energy, L.L.C. (Ashley Ann) that should have put them on notice that, for whatever reason, Chesapeake Louisiana, L.P. (Chesapeake) did not intend to honor its commitment to them. Certainly, by January 15, 2009, when the substantial lease bonus was not paid, the plaintiffs had sufficient knowledge that Ashley Ann and/or Chesapeake and/or Sockrider had failed to do what should have been done to close the transaction. Thus, in mid-October 2008 or January 15, 2009, at the latest, plaintiffs had constructive knowledge – that is, enough information to excite attention, place them on guard and call for reasonable inquiry, all as set forth by law[[2]](#footnote-2) - that either the companies had violated their duties or their counsel had violated his, or both. By August 2009, plaintiffs retained new counsel, Peirce Hammond, II; on October 1, 2009, he and co-counsel, Guy Wall, filed the original petition against Ashley Ann, Chesapeake, Calvin Beasley and Lydia Gunn. Based on the evidence adduced at the May 2 hearing, the Court concludes that the peremptive period ran from the date of the plaintiffs’ constructive knowledge – either October 2008 or January 15, 2009, at the latest, and therefore any claims against Sockrider, filed on February 4, 2010, are perempted.

**PROCEDURAL STATUS AND EFFECT OF THE INCIDENTAL DEMAND**

 As stated previously, on October 1, 2009 plaintiffs timely filed suit against four defendants, setting forth causes of action for breach of contract and deceptive or unfair trade practices. Sockrider was not named as a party defendant in that main demand and there has been no amended or supplemental petition adding him as a party defendant.

On November 13, 2009, Geneva Williams, one of the family members but not a party in the main demand, and Sockrider filed a petition of intervention for breach of contract naming Ashley and Chesapeake as defendants in intervention. It is noteworthy that the plaintiffs were not named as defendants in intervention; in fact, Williams and Sockrider aligned themselves with plaintiffs with the objective being enforcement of the contract and receipt of the lease bonus money.

On February 4, 2010, plaintiffs filed a 3 ½ page pleading, titled “Plaintiff’s Exception, Answer, Affirmative Defenses and Reconventional Demand to Petition of Intervention” in which, for the first time, plaintiffs made allegations of legal malpractice against Sockrider. For reasons set forth above these claims were preempted, at the latest, on January 15, 2010.

A question which seemed to present itself at oral argument is whether Sockrider’s intervention of November 13, 2009 somehow triggered a suspension of peremption (assuming peremption on January 15, 2010) or whether this intervention somehow served to extend or revive the perempted claim. Williams and Sockrider did not name plaintiffs as defendants in intervention and therefore the plaintiffs could not procedurally file a reconventional demand against Sockrider. Instead, the plaintiffs claim on this incidental demand leg of this lawsuit is in the nature of a cross claim as, in accordance with La. C.C.P. art. 1071, it is a “demand against a co-party arising out of the transaction or occurrence that is the subject of the original action[[3]](#footnote-3)”. A cross claim is an incidental demand which triggers the application of art. 1067, which provides, as follows:

An incidental demand is not barred by prescription or preemption if it was not barred at the time the main demand was filed and is filed within ninety days of date of service of main demand or in the case of a third party defendant within ninety days from service of process of the third party demand.

 The plaintiffs could have timely filed their legal malpractice claim at the time of their main demand against the four defendants on October 1, 2009; however, counsel conceded at oral argument that they “didn’t have a claim against Mr. Sockrider”[[4]](#footnote-4) at that time. Notwithstanding the fact that one of their complaints about Sockrider – that he filed and recorded the Agreements to Lease on October 28, 2008 – is a matter of public record and constituted notice to the plaintiffs, their lawyers, all landmen, mineral companies, and the world, they now argue that they did not have enough information to excite attention, place them on guard or call for reasonable inquiry even on October 1, 2009. The plaintiffs could also have timely amended or supplemented their main demand. However, the plaintiffs’ claim against Sockrider has surfaced as a cross claim in the incidental demand leg of this lawsuit after January 15, 2010, the position of plaintiffs being that “we had to file a compulsory counterclaim to anything we have against him”.[[5]](#footnote-5)

 The Court disagrees with the position taken by plaintiff counsel. Moreover, the Court does not believe that under the circumstances of this case, an incidental demand serves to extend the 90 day period envisioned by La. C.C.P. art. 1067; further, the exception of prescription and peremption set forth in article 1067 does not revive a perempted claim. Specifically, La. R.S. 9:5605B provides that the one year and three year periods of limitation are peremptive and “may not be renounced, interrupted, or suspended”.

**CONCLUSION**

 For assigned reason, the Court concludes that the plaintiffs had constructive knowledge, at the latest, on January 15, 2009. Sockrider’s intervention, filed November 13, 2009, did not suspend peremption or prescription nor did the filing of the cross claim/incidental demand after January 15, 2010 serve to revive a preempted claim. Thus, the claims made by plaintiffs on February 4, 2010 against Sockrider are perempted and are therefore dismissed with prejudice.

 Signed this 10th day of May 2011 in Shreveport, Caddo Parish.

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 SCOTT J. CRICHTON

 DISTRICT JUDGE

DISTRIBUTION:

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Fred H. Sutherland, counsel for Geneva Williams and H. F. Sockrider, Jr.

1. Listed as Rachelle Hester in petition. [↑](#footnote-ref-1)
2. La. R.S. 9:5605, *Teague v. St. Paul Fire and Marine Ins. Co.,* 07-1384 (La. 2/1/08),974 So.2d 1266; *McGuire v. Mosley Rogers Title Co., LLC*, 43554 (La. App. 2d Cir. 9/17/08) 997 So.2d 23; *White v. Willis-Knighton Medical Center,* 25,575 (La. App. 2 Cir. 2/23/94), 632 So.2d 1198. [↑](#footnote-ref-2)
3. See *Stenson v. City of Oberlin*, 10-0826 (La. 3/15/11) \_\_So.3d\_\_. [↑](#footnote-ref-3)
4. MR. HAMMOND: We were hired to sue Chesapeake to enforce the agreement. The clients came to us with the understanding that it was a binding agreement and that’s what we were doing suing Chesapeake. The issue of his -- Mr. Sockrider’s potential negligence we weren’t aware of the facts then at that time so when we filed it we didn’t have a claim against Mr. Sockrider.

Then you have a situation when he intervenes he makes himself a party and we have to decide at that moment as a counterclaim if we have reason to file a counterclaim so we have to file the counterclaim, all right. And the ninety day argument, the reconventional demand argument, I think that this case that I’ve cited that’s really -- I don’t think is going to hold up the Court. I think—thank you. [↑](#footnote-ref-4)
5. MR. HAMMOND: What I’m saying is, he put himself into the case over his fee, okay, and we had to file a compulsory counterclaim to anything we have against him. We could have filed a separate lawsuit against him when we had more time to do more deliberate – we didn’t sue him lightly, put it that way, we were forced to sue him. [↑](#footnote-ref-5)