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Cedar Farm, Harrison County, Inc., v. Louisville Gas and Electric Co.

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Cedar Farm, Harrison County, Inc., v. Louisville Gas and Electric Co., 658 F.3d 807
(7th Cir. 2011).

Matt Jennings

I. INTRODUCTION

In *Cedar Farm, Harrison County, Inc. v. Louisville Gas and Electric Company*,¹ the U.S. Seventh Circuit Court of Appeals upheld summary judgment for Louisville Gas and Electric Co. (LG & E), an oil and gas company.² The court rejected the request made by plaintiff Cedar Farm, Harrison County, Inc. (Cedar Farm) to terminate a lease agreement and expel LG & E due to environmental damage to the property.³ LG & E destroyed trees in a “certified-forest” area without notice to Cedar Farm, placed large pumps in scenic areas, scattered rubbish and construction debris on the property, damaged roads, and installed leaky storage tanks.⁴ However, the lease agreement provided for monetary damages for any harm to the property and allowed Cedar Farm to terminate the lease only in the case of non-payment by LG & E to Cedar Farm.⁵ The Seventh Circuit determined that summary judgment was appropriate.⁶ LG & E acquired an interest in the land once it started drilling and the lease could not be terminated absent either a provision in the lease or evidence that money would be an insufficient remedy to compensate Cedar Farm.⁷

II. FACTUAL AND PROCEDURAL BACKGROUND

Cedar Farm owns a large, historically significant antebellum plantation in Southern Indiana.⁸ Cedar Farm allows the public to use its land for recreation, education, and science.⁹ In

¹ *Cedar Farm, Harrison Co., v. Louisville Gas and Electric Co.*, 658 F.3d 807 (7th Cir. 2011).

² *Id.* at 809.

³ *Id.*

⁴ *Id.* at 809–10.

⁵ *Id.* at 809.

⁶ *Id.* at 813.

⁷ *Cedar Farms*, 658 F.3d at 813.

⁸ *Id.* at 809.

addition, the Indiana Department of Natural Resources designated nearly 2,000 acres of the property as “classified forest” where numerous endangered species live.¹⁰

LG & E began acquiring oil and gas leases on the property in 1947.¹¹ In 1996, Cedar Farm consolidated multiple leases into a single lease encompassing a majority of the farm.¹² The lease was to remain in effect until oil or gas was no longer produced in “paying quantities.”¹³ The lease provided only two circumstances in which the lease could be terminated: (1) LG & E could “surrender” the lease at any time for one dollar; or (2) Cedar Farm could terminate the lease if LG & E failed to make payments required by the lease.¹⁴

Pursuant to the agreement, LG& E was to use the property only “as may be minimally necessary . . . in connection with its production or storage operations,” and was required to “use its best efforts to do all . . . activities related to its operations in a workmanlike manner.”¹⁵ Additional provisions governed the proximity of activity to buildings, preservation of scenery, destruction of trees, and notice to Cedar Farm of activity on the property.¹⁶ LG & E was required to pay Cedar Farm for any damage to the property.¹⁷

Cedar Farm initially filed its complaint in state court but it was removed to the U.S. District Court for the Southern District of Indiana.¹⁸ The complaint alleged that LG & E damaged Cedar Farm’s property by destroying trees in classified-forest areas without notice, installed large pump jacks on elevated platforms in a scenic area, disposed of rubbish in the brush, dumped construction and scrap materials on the farm, damaged roads to the extent they

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Cedar Farms*, 658 F.3d at 809.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Cedar Farm*, 685 F.3d at 809.

¹⁸ *Id.* at 810.

were impassable, and installed storage tanks that leaked fluids.¹⁹ Cedar Farm’s complaint sought compensatory damages and eviction of LG & E from the property.²⁰ LG & E moved for partial summary judgment on the eviction and termination of the lease arguing that property destruction was not grounds for termination.²¹ The district court granted partial summary judgment in favor of LG & E, holding that disagreements over land use were not grounds for termination under the lease.²² On a separate motion, Cedar Farm’s claim for damages was dismissed with prejudice.²³

III. ANALYSIS

On appeal, Cedar Farm asked the Seventh Circuit to determine if it was an error for the district court to hold that the oil and gas lease deprived Cedar Farm of the right to terminate the lease and eject LG & E due to property damage.²⁴ The court analyzed Cedar Farm’s claim on the question of whether termination of an oil and gas lease based on damage to property is permitted.²⁵ The court reasoned that a property owner has leeway to terminate a lease before oil and gas production begins so as to ensure that potential revenue is captured in the event that the lessee has not extracted the resource.²⁶ But once an oil and gas lessee produces oil, the lessee acquires an interest in the land, and the lease can only be terminated if monetary damages are not an adequate remedy.²⁷ The court conceded that “environmental injury, by its nature, can seldom be adequately remedied by money damages.”²⁸ However, Cedar Farm failed to provide specific evidence that showed the environmental damage could not be remedied by “writing a check.”²⁹

¹⁹ *Id.* at 809–10.

²⁰ *Id.* at 810.

²¹ *Id.*

²² *Id.*

²³ *Cedar Farm*, 685 F.3d at 810.

²⁴ *Id.* at 811.

²⁵ *Id.*

²⁶ *Id.* (citing *Rembarger v. Losch*, 118 N.E. 831, 833 (Ind. 1918)).

²⁷ *Id.*

²⁸ *Cedar Farm*, 658 F.3d 812 (citing *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531 (1987)).

²⁹ *Id.*

Additionally, Cedar Farm asked the Seventh Circuit to certify to the Indiana Supreme Court whether termination of an oil and gas lease would be possible when an oil and gas company repeatedly and permanently damaged property.³⁰ The Seventh Circuit declined to certify the question because there was no conflict in law between state intermediate courts of appeal or an issue of first impression.³¹ The court reiterated that summary judgment was granted for two reasons: (1) Cedar Farms failed to provide evidence that proved the existence of damages that could not be remedied with money, and (2) Cedar Farms failed to state a legal question that needed certification.³²

IV. CONCLUSION

This case demonstrates that unlike other types of leases, an oil and gas leaseholder acquires an actual interest in land once it begins drilling. The issue of whether property damage is material to the lease is not determinative; rather, the sufficiency of the remedy to the environmental damage should be analyzed. A landowner will have difficulty terminating a productive oil and gas lease because drilling for oil and gas is expensive and time consuming. If landowners were able to cancel leases, a landowner may try to cancel an active, producing lease to obtain additional revenue without greater protection of a company's investment. While the Seventh Circuit believes a lease could be terminated before production begins, property damage is unlikely to occur before drilling starts. Thus even if a lease prohibits property damage, once a well produces oil, it may be extremely difficult to terminate an oil and gas lease. Accordingly, if specified in the lease, monetary damages will be the only remedy available for a breach of a lease due to property damage.

³⁰ *Id.* at 812–13.

³¹ *Id.* at 813.

³² *Id.*

