NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 0144

LEXINGTON LAND DEVELOPMENT, L.L.C.

VERSUS

CHEVRON PIPE LINE COMPANY, CHEVRON U.S.A., INC., DIXON MANAGEMENT CORP., KENMORE OIL CO., INC., THE STONE PETROLEUM CORPORATION, ZINN PETROLEUM COMPANY, SHELL PIPELINE COMPANY, L.P., STONE ENERGY CORPORATION, MICHAEL MADDEN, SCOTT ANDERSON, AND GREG SOUTHWORTH

Judgment Rendered: DEC 16 2010

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Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. 561,893

The Honorable Timothy E. Kelley, Judge Presiding

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BEFORE: GAIDRY, McCLENDON, KLINE[1], JJ.

[1] The Honorable William F. Kline is sitting pro tempore by special assignment from the Louisiana Supreme Court.

GAIDRY, J.

In this case, the plaintiff appeals a summary judgment in favor of three defendants dismissing all of plaintiff's claims against them with prejudice at plaintiff's cost. Because we conclude that this summary judgment was improperly certified as a final appealable judgment, we dismiss the appeal.

FACTS AND PROCEDURAL HISTORY

This suit involves claims for damage to land caused by oil and gas operations. The relevant history of the property is as follows: In 1959, the Hoffman Heirs granted a mineral lease to The California Company, predecessor in interest to Chevron U.S.A. (hereinafter collectively referred to as "Chevron"), affecting two contiguous tracts of land in East Baton Rouge Parish (hereinafter referred to as "the mineral lease premises"). Later that year, the Hoffman Heirs granted Chevron a surface lease covering a five-acre tract within the mineral lease premises, with an option to lease an additional five-acre tract. The surface lease appears to have expired in 1962. In 1963, Chevron released, relinquished, and surrendered its rights under the mineral lease, except for its rights affecting the portion of the mineral lease premises included within two production units created by the Commissioner of Conservation. Chevron also reserved certain surface rights affecting the acreage outside of the production units. In 1990, Chevron assigned all of its interests under the mineral lease to The Stone Petroleum Corporation, who in turn assigned all of its interests under the mineral lease in 1991 to Robert L. Zinn, d/b/a Zinn Petroleum Company. On June 10, 2005, Lexington Land Development, L.L.C. ("Lexington") and Integrity Homes, Inc. ("Integrity")

purchased three tracts of land from the Hoffman Heirs for $6,900,000.00.[2] Included within these three tracts was the land subject to the mineral lease and the surface lease. The Hoffman Heirs reserved all mineral rights to the property in the act of sale.

After purchasing the land, Lexington allegedly discovered unknown and/or more extensive subsurface contamination on the property which it alleged was caused by a combination of oilfield production and several pipeline leaks. Lexington filed suit in 2007 against Chevron, Chevron Pipe Line, Stone Energy Corporation ("Stone"), Michael Madden (an employee of Stone), and others, alleging that the defendants "conducted, directed and participated in various oil and gas exploration and production activities as operators and/or working interest owners/joint venturers, and/or assignees or sub-lessees" on property owned by Lexington which contaminated or otherwise caused damage to Lexington's property.

Chevron moved for partial summary judgment, seeking dismissal of all of Lexington's claims for breach of any express provisions of any mineral lease or surface lease affecting a portion of the property described as Tract 2 and for pre-acquisition damages to Tract 2.[3] Chevron's motion for partial summary judgment did not seek to dispose of Lexington's claims which were for damages to Tract 2 which may have been sustained after June 10, 2005 and which may arise under the Mineral Code, the Civil Code, or tort law. Stone and Madden adopted Chevron's motion for partial summary judgment.

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[2] Contemporaneously with the sale, Integrity transferred its entire interest in the property to Lexington as a capital contribution.

[3] Chevron also sought summary judgment on Lexington's claims for alleged damage to Tracts 1 and 3, but Lexington did not oppose summary judgment on those claims and they are not the subject of this appeal.

Chevron requested partial summary judgment on the basis that there was no privity of contract between Lexington and Chevron, there was no *stipulation pour autrui* in the mineral lease or surface lease in favor of Lexington, there was no express obligation to restore the property or to pay for contamination damages, and the act of sale by which Lexington purchased the property did not contain an express assignment of the right to make a claim for any physical damage to the property.

After a hearing, the trial court granted summary judgment in favor of Chevron, Stone, and Madden,[4] finding:

> Lexington Land is neither the lessor nor an assignee of . . . a lessor under the mineral lease. They are neither the lessor nor an assignee of the lessor under the surface lease either. There's no privity of contract between Lexington and Chevron. They're also not a third party beneficiary. There's no clearly stated *stipulation pour autrui.* The leases themselves contain no express obligation to restore the leased property under either of those leases. The jurisprudence is clear in this court's mind that I must grant summary judgment. . . .

Although Chevron, Stone, and Madden sought only partial summary judgment on certain claims by Lexington, the judgment signed by the court dismissed "all claims against Chevron U.S.A., Inc., Stone Energy Corporation and Michael Madden, with prejudice at Plaintiffs' cost." Finally, stating that there was no reason for delay, the court certified the judgment as a final appealable judgment. This appeal by Lexington followed.

DISCUSSION

Initially, we note that Chevron, Stone, and Madden's motions sought only partial summary judgment; they did not seek to dispose of Lexington's claims for post-acquisition damages which arise under the Mineral Code, the

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[4] Chevron Pipe Line also filed a motion for summary judgment seeking dismissal of all claims against it. Lexington did not oppose Chevron Pipe Line's motion for summary judgment, and its claims against Chevron Pipe Line were also dismissed.

Civil Code, or tort law. However, the trial court judgment improperly provided for dismissal of all claims and then certified the judgment as final and appealable, finding that there was no just reason for delay. Since the summary judgment in this case only concerned some of the claims against these defendants, we must consider whether this judgment was properly certified as final and appealable under La. C.C.P. art. 1915.

Louisiana Code of Civil Procedure article 1915 provides:

> A. A final judgment may be rendered and signed by the court, even though it may not grant the successful party or parties all of the relief prayed for, or may not adjudicate all of the issues in the case, when the court:
>
> (1) Dismisses the suit as to less than all of the parties, defendants, third party plaintiffs, third party defendants, or intervenors.
>
> (2) Grants a motion for judgment on the pleadings, as provided by Articles 965, 968, and 969.
>
> (3) Grants a motion for summary judgment, as provided by Articles 966 through 969, but not including a summary judgment granted pursuant to Article 966(E).
>
> (4) Signs a judgment on either the principal or incidental demand, when the two have been tried separately, as provided by Article 1038.
>
> (5) Signs a judgment on the issue of liability when that issue has been tried separately by the court, or when, in a jury trial, the issue of liability has been tried before a jury and the issue of damages is to be tried before a different jury.
>
> (6) Imposes sanctions or disciplinary action pursuant to Article 191, 863, or 864 or Code of Evidence Article 510(G).
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> B. (1) When a court renders a partial judgment or partial summary judgment or sustains an exception in part, as to one or more but less than all of the claims, demands, issues, or theories, whether in an original demand, reconventional demand, cross-claim, third party claim, or intervention, the judgment shall not constitute a final judgment unless it is designated as a final judgment by the court after an express determination that there is no just reason for delay.
>
> (2) In the absence of such a determination and designation, any order or decision which adjudicates fewer than all claims or the

> rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties and shall not constitute a final judgment for the purpose of an immediate appeal. Any such order or decision issued may be revised at any time prior to rendition of the judgment adjudicating all the claims and the rights and liabilities of all the parties.
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> C. If an appeal is taken from any judgment rendered under the provisions of this Article, the trial court shall retain jurisdiction to adjudicate the remaining issues in the case.

The purpose of article 1915 is to prevent multiple appeals and piecemeal litigation and to promote judicial efficiency and economy. *R.J. Messinger, Inc. v. Rosenblum*, 2004-1664, p. 13 (La. 3/2/05), 894 So.2d 1113, 1122. Article 1915 attempts to strike a balance between the undesirability of piecemeal appeals and the need for making review available at a time that best serves the needs of the parties. *Id.*

In order to assist the appellate court in its review of designated final judgments, the trial court should give explicit reasons, either oral or written, for its determination that there is no just reason for delay. When the trial court does give explicit reasons for its determination, the proper standard of review for an order designating a judgment as final for appeal purposes is whether the trial court abused its discretion. *Id.* If no reasons are given but some justification is apparent from the record, the appellate court should make a *de novo* determination of whether the certification was proper. *Messinger*, 2004-1664, p. 13-14, 894 So.2d at 1122. The following list of factors, although not exclusive, may be used by trial judges when considering whether a partial judgment should be certified as appealable:

> 1) The relationship between the adjudicated and unadjudicated claims;
>
> 2) The possibility that the need for review might or might not be mooted by future developments in the trial court;

3) The possibility that the reviewing court might be obliged to consider the same issue a second time; and

4) Miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like.

Id., 2004-1664, p. 14, 894 So.2d at 1122.

However, the overriding inquiry for the trial court is whether there is no just reason for delay. Courts of appeal, when conducting *de novo* review in matters where the trial court fails to give explicit reasons for the certification, can consider these same criteria. *Id.*, 2004-1664, p. 14, 894 So.2d at 1122-23.

In this case, the trial court failed to give explicit reasons for its determination that there is no just reason for delay and certification of the partial summary judgment as final and appealable. It appears from the judgment, which improperly dismisses all of Lexington's claims against Chevron, Stone, and Madden, that trial court thought the partial summary judgment resolved all issues regarding those defendants and thus the judgment was properly appealable. Therefore, we will conduct a *de novo* review of the court's determination that there was no just reason for delay.

Considering the factors set forth in *Messinger*, we note that the adjudicated and unadjudicated claims in this case are very closely related. Chevron, Stone, and Madden sought summary judgment on Lexington's claims for breach of any express contractual provisions and for pre-acquisition damages, but did not seek summary judgment on claims for post-acquisition damages which arise under the Mineral Code, the Civil Code, or tort law. From the affidavit of plaintiff's expert submitted in opposition to the motions for partial summary judgment, the causes of the contamination

of the property included both pre-acquisition actions and post-acquisition actions of different defendants. The damages elements of the various claims are also closely tied to each other. Considering all of these factors, we conclude that the close relationship between the adjudicated and unadjudicated claims provides just reason for delay and makes an immediate appeal inappropriate.

CONCLUSION

Because we conclude that the summary judgment in this matter was improperly certified as a final appealable judgment, we dismiss the appeal. Costs of this appeal are to be borne one-half by the appellant and one-half by the appellees.

APPEAL DISMISSED.