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NOTES

OIL AND GAS INTERESTS SUBJECT TO WYOMING LIEN LAWS

In Wyoming there are five statutes available for obtaining a lien upon oil and gas interests. These are Sections 55-401,¹ 55-301,² 55-308,³ 55-310,⁴

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1. Wyo. Comp. Stat., § 55-401 (1945). Liens of Contractors—"Every person, corporation, firm, association, copartnership, materialman, artisan, laborer or mechanic who does work or labor upon, or furnishes or rents material or services for constructing, altering, digging, drilling, boring, operating, completing or repairing of any gas wells, oil wells or other wells, mine or quarry, or for altering, repairing or constructing any oil derrick, oil tank or oil or gas pipelines whether or not such material is incorporated therein or becomes a part thereof, by virtue of a contract, express or implied, with the owner, part-owner or lessee, of any interest in real estate, or the authorized agent of any such owner, part-owner or lessee or with the trustee or receiver of any such owner, part-owner or lessee, shall have a lien to secure the payment thereof, including without limitation transportation and mileage charges connected therewith and interest from the date the same was due, upon said gas well, oil well, or other well and upon said oil derricks, oil tanks, oil or gas pipeline including the right-of-way therefor, mine or quarry, and upon all material furnished to be used in connection with said improvement, and upon the whole of the land or leasehold including all other wells, buildings and appurtenances located upon said land or leasehold upon which said improvement may be located; and provided, however, that if such labor is performed for, or materials or services are furnished to the owner, part-owner or lessee of an estate less than a fee, the lien granted by this Act shall not extend to the underlying fee or royalty interest unless expressly provided by contract with the owner of the underlying fee or royalty interest; and

and 55-319,⁵ Wyoming Compiled Statutes (1945). As a result of there being several statutes, and each being different, it is a problem as to which of these statutes will best serve the lienor in obtaining a lien upon an oil and gas interest.

Section 55-301, Wyoming Compiled Statutes (1945) covers both mines and wells, without regard to the separate property interests of the owners of the leasehold and mineral fee, and gives a lien upon the mine or oil well by the miner or other person who worked in or upon the mine at the request of the owner. The property subjected to the lien is the "well," the extent of which has not been defined by any reported case in Wyoming. In some jurisdictions, a dry hole is considered a well,⁶ and in others a dry hole will never be considered a well of any kind,⁷ although in the latter situation creditors' claims would be more apt to arise. This statute is otherwise insufficient in that it limits the property subject to a lien to the vein or lode, mine, bank, well, lake or spring and fails to give the lienor an action against the equipment of the debtor.

Section 55-308, Wyoming Compiled Statutes (1945) applies only to oil lands and gives to all persons performing labor or furnishing materials a

provided further, that in the event labor is performed for, or materials or services are furnished to the owner, part-owner or lessee of the working interest in only a portion of the acreage covered by a lease, the lien granted by this Act shall be restricted to such portion of the acreage." (Laws 1919, ch. 128, § 1; C. S. 1920 § 4830; R. S. 1931, § 66-604; Laws 1955, ch. 101, § 1.) Effective Date: Approved February 15, 1955.

2. Wyo. Comp. Stat. § 55-301 (1945). Lien of laborer. — "Every miner or other person, who at the request of the owner of any ledge or lode of quartz bearing gold, silver, lead, cinnabar or copper, or of any coal bank or mine, shall work in or upon said mine or bank, or do assessment work upon or in any mining claim, lode or placer, or upon or in any soda well or lake, oil well or spring, shall have a lien upon such vein or lode, mine, bank, lake or spring, to the amount due at any time when a demand shall be made upon such owner or his or their agent, for money due for such labor, and payment shall be refused." (C.Y. 1876, ch. 77, part IV, § 1; R. S. 1887, § 1486; Laws 1897, ch. 62, § 1; R. S. 1899, § 2868; C. S. 1910, § 3778; C. S. 1920, § 4827; R. S. 1931, § 66-601.)
3. Wyo. Comp. Stat. § 55-308 (1945). Lien on oil lands. — "Any owner of any oil well or spring, who shall employ any person to perform any work of any kind around, or about, any oil well or spring, either in building derricks, buildings, or any kind of machinery, or in boring or drilling, shall be deemed within the provision of this Act (§§ 55-301, 55-308); and all persons performing labor or furnishing materials, shall have like liens upon oil territory upon which they labored or for which they furnished materials or the improvements thereon, as miners or other laborers upon, or in, mines as provided in this Act and shall proceed in the same manner to enforce a lien."
4. Wyo. Comp. Stat. § 55-310 (1945). Lien for labor or materials. — "That every miner or other person, who at the request of the owner or owners, or his or their agent, of any ledge or lode of quartz bearing gold, silver, cinnabar or copper, or of any coal bank or mine, shall perform any labor, or furnish any timber, rope, nails or any other material for timbering shafts or levels for erecting windlass, whims or any other hoisting apparatus or machinery, shall have a lien upon such lode, ledge, lead, mine or bank to secure the payment of the same."
5. Wyo. Comp. Stat. § 55-319 (1945). Application to iron and other mines. — "The provisions of this Act (§§ 55-310, 55-319) shall apply to oil wells or springs, and iron mines, so far as the same may be applicable, and to all mines not herein specified, with this state."
6. *Minerva Oil Co. v. Sohio Petroleum Co.*, 336 Ill.App. 372, 84 N.E.2d 167, 169 (1949).
7. *Knight Brothers v. Standard Oil Co.*, 147 La. 272, 84 So. 653 (1920); *Struss v. Stoddard*, Tex.Civ.App., 258 S.W.2d 413, 417 (1953).

right to a lien upon the "oil territory" or the improvements thereon upon which they labored or for which they furnished materials. It would seem that this statute would authorize a lien which would attach to the mineral estate of the property involved with the lien, an estate which normally is the property of the lessor and not of the lessee. Regarding this statute, it must be remembered that it was enacted in 1876. Since that time, the phrase "oil territory" as used in the statute has not been defined by any case. Furthermore, since the enactment of this statute, it has been held, that in Wyoming the right under an oil and gas lease is a profit a prendre and therefore is an incorporeal hereditament,⁸ which gives the lessee only a right to explore for and reduce any oil and gas found to his possession, whereby the oil and gas then becomes personal property.⁹ This was reasoned on the basis of an old theory that since oil and gas are of a fugitive nature, they could not actually be subject to a corporeal interest and therefore a corporeal interest could not be created in them. Clearly, there is no estate in land or in the oil and gas in place by virtue of an oil and gas lease. Such a definition of the nature of an oil and gas lease is in conflict with this statute, in that the statute implies a lien upon a corporeal interest which is not normally owned by the lessee who incurs the indebtedness. The ineffectiveness of this statute is further shown by the fact that the lease creating a profit a prendre and an incorporeal hereditament is terminated by abandonment.¹⁰ When the intention to abandon and the external act by which the intention is carried into effect¹¹ is shown, the lease can be terminated and the lessee no longer has any rights to the "oil territory." These decisions have all occurred since the enactment of this statute, and indicate that it is presently ineffective and inappropriate.

Sections 55-310 and 55-319, Wyoming Compiled Statutes (1945) duplicate Section 55-301 with respect to a lien for labor upon mines but also includes that those who furnish certain mining materials shall have a lien upon such lode, ledge, lead, mine or bank to secure the payment of the same. This statute is also narrow in limiting the property subject to a lien.

The Wyoming Legislature enacted Section 55-401 in 1919 and revised that section in 1955. This revised statute covers both oil and gas interests and mining interests with regard given the difference in ownership of the lease and the mineral fee. It specifies the property to which the lien will attach and in doing so, completely includes and broadens that property as set forth in previous statutes. It includes all the persons entitled to a lien in previous statutes but differs significantly with regard to the property attached. The lien will not attach to the underlying fee or royalty interests unless expressly provided for by contract with the owner. This

8. *Boatman v. Andre*, 44 Wyo. 352, 12 P.2d 370 (1932); *Denver Joint Stock Land Bank of Denver v. Dixon*, 57 Wyo. 523, 122 P.2d 842 (1942).

9. *State v. Snyder*, 29 Wyo. 163, 197, 212 Pac. 758 (1953).

10. *Phillips v. Hamilton*, 17 Wyo. 41, 95 Pac. 846 (1908).

11. *State v. Snyder*, 29 Wyo. 163, 212 Pac. 758 (1923).

limitation is clearly contra to the provision for a lien on "oil territories" as provided for in Section 55-308. This provision is the general view of the lien law throughout the country in that one cannot create a contractual lien on the property of another without the owner's consent.¹² In Kansas it has been held that an oil and gas lease will create an incorporeal hereditament or profit a prendre, and that a mechanic's lien will not attach to the interest acquired in lands by the lessee under an ordinary oil and gas lease, notwithstanding oil or gas is discovered.¹³ Oklahoma has held these interests to be incorporeal or a profit a prendre, and further, that they were not of such an interest as would support a judgment on real estate.¹⁴

From the foregoing, it appears that Section 55-401 of the Wyoming Compiled Statutes (1945) is a modern statute, and conforms to the current concepts of proprietary interests created by oil and gas leases. In view of this, Sections 55-301, 55-308, 55-310 and 55-319 are of doubtful utility and add only to the confusion regarding the interests created in oil and gas leases, and do not afford a lienor assurance as to the extent of his security interest.

JOHN W. PATINO

PINBALL MACHINES WHICH AWARD FREE GAMES AS GAMBLING DEVICES

The manufacturers of gaming devices in the United States by constantly inventing new, ingenious machines have been able to keep ahead of the majority of the legislation and decisions aimed at outlawing gambling. A quick look at some of these devices will show how this has been accomplished.

When the states in which gambling is considered against public policy began their attack on this evil, the attack was primarily directed toward traditional gambling games such as are played with cards, dice and machines like the roulette wheel. Such statutes were easily circumvented when the manufacturers came out with the "one armed bandit" slot machine which paid off in money or tokens exchangeable for money. These machines were soon outlawed in most states by decision and legislation.

The manufacturers then turned to another "gimmick." This was to

12. *Meek v. Parker*, 63 Ark. 367, 38 S.W. 900 (1897); *Terminal Drilling Co. v. Jones*, 84 Colo. 279, 269 Pac. 894 (1928); *Eastern Ohio Oil Co. v. McEvoy*, 75 Kan. 515, 89 Pac. 1048 (1907); *Martin Coal and Coke Co. v. Brewer*, 185 Okla. 169, 90 P.2d 63 (1939).
13. *Rawlings v. Armel*, 70 Kan. 778, 79 Pac. 683 (1905); *Eastern Ohio Oil Co. v. McEvoy*, 75 Kan. 515, 89 Pac. 1048 (1907); *Burden v. Gypsy Oil Co.*, 141 Kan. 147, 40 P.2d 463 (1935); *Phillips v. Springfield Crude Oil Co.*, 76 Kan. 783, 92 Pac. 1119 (1907).
14. *Alexander v. Continental Petroleum Co.*, 63 F.2d 927 (10th Cir. 1933); *Francis v. Superior Oil Co.*, 102 F.2d 732 (C.C.A.Okla. 1939); *Jones v. Tower Production Co.*, 120 F.2d 779 (C.C.A.Okla. 1941)