SIXTEENTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF ST MARY, STATE OF LOUISIANA

PAUL MACLEAN

-VS- NO. 132,659 Div "D"

BP CORPORATION NORTH AMERICA, ET AL

MOTION

**** October 22nd, 2018 ****

**** HON. LEWIS PITMAN, Judge Presiding ****

APPEARANCES:

PLAINTIFF ATTORNEY:
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PROCEEDINGS:

BY THE COURT:

If you give us your appearances we can get started?

BY MS. KORNICK:

Cheryl Kornick for the Chevron/Texaco entity.

BY MR. VAN TASSELL:

Court Van Tassell for BP and ARCO defendants.

BY MR. MINYARD:

Chuck Minyard for the Tortuga defendant.

BY MR. PABST:

Richard Pabst for Marathon Oil Company.

BY CLERK:

I'm sorry, what was your last name.

BY MR. PABST:

Pabst, P-a-b-s-t.

BY MR. BROWNE:

David Browne, Your Honor, for the plaintiff Paul Maclean.

BY THE COURT:

Very good. Okay. Well, the defense brought the exception. Who wants to go first?

BY MR. MINYARD:

Your Honor, I'll be brief. We have briefed this extensively. This is an exception of res judicata. The important events really -- I think, the most important are the latest ones. Mr. Maclean filed an intervention. The intervention was dismissed on exception of no cause of action. That dismissal was upheld. It was exactly the same claim that the settlement in question, which occurred in 1993, and which have been subject of a lot of litigation ever since then, that exception was null and void, ab initio. That issue has been addressed by several

courts in the past and it was -- the last time it was addressed was in 2011 in Jefferson Parish. I have not seen what I would consider to be a serious analysis of res judicata by the plaintiff, I think, if I'm reading the defense exception correctly is that it shouldn't have been dismissed with prejudice, but the fact is it was. And we think that bars any further litigation on this issue in this case that doesn't seem to go away.

BY THE COURT:

Thank you, sir. Anything else from the defense?

BY MS. KORNICK:

Your Honor, I just would like to make clear -- Cheryl Kornick for Chevron/Texaco entities. One of the issues I think that Mr. Maclean is arguing that his petition -- he never really became a party to the Jefferson Parish case. That's not correct. He filed his petition for intervention before we had answered, so his petition for intervention was allowed. It's just that we later brought he exceptions. And the issue of -- and I do want to point out to the Court that the issue of whether that Jefferson Parish intervention should've been dismissed with or without prejudice was indeed raised at the Louisiana Fifth Circuit and the Court specifically held that it was to be dismissed with prejudice and have the proclusive effect. And that's all I wanted to mention.

BY THE COURT:

Thank you, ma'am. Anyone else for the defense?

(No response from defense attorneys.)

BY THE COURT:

Mr. Browne?

BY MR. BROWNE:

Thank you, Your Honor. May it please the Court,

my name is David Browne. I'm counsel for the plaintiff Mr. Paul Maclean. Mr. Maclean filed the petition in this matter for the purpose of challenging the composite settlement agreement that was drafted in 1996 to resolve a long standing dispute over the terms of the mineral lease, the resulting environmental damage and related matters on Joseph and Betty Blanchard's land where drilling operations were conducted beginning way back in 1942. For ease of reference we refer to the initial lawsuit that began in 1986 and ended with the settlement agreement in question in 1996 as the Blanchard 1. We refer to the Blanchard property as the Park Plantation, and in the petition that initiated the present litigation Mr. Maclean set forth the reasons why he believes he's entitled to a declaratory judgment in his favor and against the defendants insolito to set aside the purported 1996 settlement compromise of the Blanchard litigation as being absolutely null. The petition was lodged as a direct challenge to the settlement agreement which was designed in part of unscrupulous and underhanded purposes which has for these many years concealed manifest public hazards and contrary to defendant's representations has never enjoyed a final determination on the merits by any court at the state of federal level. This is the proper venue for this challenge as the lease, the land, the drilling and the Blanchard 1 litigation settlement were all situated inside St. Mary Parish.

In response to this petition defendants collectively filed a singular exception of res judicata and res judicata as asserted by the defendants, however cannot apply here because the exception by definition only applies where a final judgment on the merits has been rendered by a court

having jurisdiction and is conclusive between parties to a suit as to all matters that were litigated or that could have been litigated in that prior suit. The concept undergirding the rule acknowledges that the thing has been judged, meaning the issue before the Court has already been decided by another court and with the same parties. Clearly that is not the case here. The burden of proving the facts essential to sustaining the objection is on the party pleading the objection. If any doubt exist as to it's application the exception raising the objection of res judicata must be overruled and the second lawsuit maintained.

Counsel for defendants assert that the contract at issue herein was previously litigated twice to final judgment, but as a threshold question one should ask why if this is accurate it could've ever survived a res judicata exception to be adjudicated even a second time. To make the current case for res judicata the defendants introduced the Blanchard 1 in their first memorandum which again was initiated in 1986 in the 16th Judicial District Court in St. Mary Parish and resulted in the settlement agreement or contract in question. And then the defense introduced two other cases, the Blanchard 2 which was in the United States District Court for the Western District of Louisiana and the most recent one filed by Nancy Blanchard and referred to as the Blanchard 3. Now, it can get confusing with four different Blanchard litigations and now this current one. At some point hopefully soon we'll get past the procedural and political efforts and reach a decision on the merits so that we can final conclude this decade's long dispute. Nevertheless, it is true that the plaintiff Paul Maclean was a party to the Blanchard 1 case. He was a

party there. He was not a party to all of the other cases. He was variously joined by either the defendants or Nancy Blanchard, plaintiff previously, and reference was made multiple times by various judges in the past who believed that he was either a necessary party or an indispensable party.

The Tortuga memorandum on behalf of Tortuga and others, correctly cites the 1990 revisions to Louisiana's res judicata rule, but then misapplies them to the present fact pattern. Under those 1990 revisions there were five elements that defendants must establish to prevail on this peremptory exception. The judgment in the first suit is valid. The judgment in the first suit is final. The parties are the same. The cause or causes of action asserted in the second suit existed at the time of the final judgment in the first and the causes of action asserted in the second suit arose out of the transaction or occurrence that was the subject matter of the first suit. As the first element it's well settled legal principle that what Judge Wentworth stated on May 8th of 2006 in the Blanchard 3 is correct. On page number sixteen of his decision Judge Wentworth wrote ,"The plaintiff have alleged allegations of concealment of public hazards under the Code of Civil Procedure Article 1426 D and E sufficiently in the petition. This claim would fall under the absolute nullity category and is thus not susceptible to prescription. An absolute nullity may be raised at any time and doesn't prescribe." Mr. Maclean was a purported party to that agreement and is therefore susceptible to indefinite and perpetual litigation for the environmental damage to the Blanchard property or Park Plantation, thus even the very first element necessary validity of the judgment is

precarious, questionable and very likely invalid if this Honorable Court takes a closer look and performs a careful analysis of the settlement contract at issue. If the settlement itself is an absolute nullity then how can the judgment in that first case, the Blanchard 1, be valid. Still and independently whether this Court is ultimately undertaking a closer analysis of the settlement contract at issue is the evidence of the court record itself. The record plainly shows that Mr. Maclean definitely was not a party to the Blanchard 2 litigation. Although Magistrate Hill found Mr. Maclean to be a necessary party he was not joined as a party to that litigation. The Court dismissed the case without Mr. Maclean ever having been joined. That was the Blanchard 2. On July 15th of 2002 Magistrate Hill issued a report recommending dismissal of the case for failure to state a cause of action, prescription, lack of standing by Park Plantation limited or part and because indispensable parties were not joined, including Mr. Maclean. Judge Melancon then adopted these recommendations and entered judgment dismissing the case with prejudice. And so despite defendants representations to this Honorable Court the core issue the absolute nullity of that settlement agreement was unequivocally never reached on the merits.

So in the case of Blanchard 3, which is the most recent of all the four Blanchard proceedings, that's in Jefferson Parish, Mr. Maclean filed a petition for intervention which Ms. Kornick just referenced a moment ago. A petition for intervention in that case and was ultimately denied by a final judgment signed on November 20th of 2012. In the Blanchard 2 case the contract in question was that transaction or occurrence

that was the subject matter under review by the Court, but again Mr. Maclean was not a party to the lawsuit. In the Blanchard 3 the contract was not the principle transaction or occurrence that was the subject matter under review by that court, again neither was Mr. Maclean ultimately joined as a party to that case either and his petition for intervention it was denied. Further as Ms. Betty Blanchard was by then deceased neither party, Ms. Blanchard nor her agent Paul Maclean, were parties and no entity in privity to either was a party to the Blanchard 3, hence neither case has any meaningful relevance to the required res judicata analysis applicable here. Under the 1990 revisions recited by Mr. Minyard in the Tortuga memorandum there are five essential elements that defendants but establish to prevail on this peremptory exception. And the third one is that the parties are the same. And it's just one of the basic tenants of res judicata is that the parties have to be the same. A determination therefore as to the merits of the peremptory challenge of res judicata could hardly be any simpler or more straight forward. It requires checking to see whether the parties are the same. However in this instance despite Ms. Kornick's representations in the Chevron memorandum the record is clear that Mr. Maclean was not ever a party to the litigation in question. Civil action 11480 and then Civil action Number 606555 in Jefferson Parish, and thus the parties are not the same. Again Mr. Maclean sought intervention but was denied and thus never achieved intervenor or party status in that case.

We don't even make it to the fourth and fifth elements of res judicata because all elements, but be met in order to prevail and they certainly and plainly have not

been met. The defendants are really stretching the res judicata doctrine in the most insinuated sense to try and apply it here. It's true that there are cases on point that establish some of the things that they wrote about in their memoranda but there are obviously cases on the other side as well. Mr. Minyard's remarks at the bottom of page eight in the Tortuga memorandum really have to be addressed. He stated an in turn all defendants through their counsel agreed, and I quote, "that in the present matter," this one, "Maclean makes no claims against defendants that were not brought and adequately litigated in the federal court action. Whether Maclean was a named party in the federal court action is immaterial because he certainly was aware of the action derived his interest from Betty Blanchard, allegedly acted as Betty Blanchard's agent and had a full and fair opportunity to litigate the validity of the 1996 settlement agreement before the federal courts rejected the contention that it was null." So the first statement here is untrue because as we know the Blanchard 2 was dismissed. It most certainly does matter that the plaintiff was not a party to that matter because he did not have privity with any other party to that litigation and more importantly he couldn't have possibly have had a full and fair opportunity to litigate it if he wasn't in the courtroom to hear, say or see anything. But perhaps the most important point is that the defendants are arguing that the courts rejected the contention that the 1996 settlement agreement was null. And that simply never happened. And that goes straight to the core or revivement of the present case. The absolute nullity of that 1996 settlement agreement it has equivocally never been addressed on the merits to a final

judgment, thus res judicata is inapplicable here.

The Tortuga memorandum rewrites the facts to suit their needs. The Chevron memorandum misinterprets or misapplies the law to suit their needs. Nevertheless at the core the facts are rather more simple and the law is well settled and unambiguous. The facts are that these same corporations and others have been operating wells in this manner on the fields throughout St. Mary Parish and have left a massive legacy of contamination in their way. But the tremendous profits weren't enough for them. They had to swindle an elderly widow and many others pervert elements of our civil justice system and leave a swath of heavy surface and subsurface contamination that is only beginning to be known and which our people will be dealing with for perhaps generations to come. The policy behind the law is that the doctrine of res judicata exist to increase judicial efficiency and to protect parties against any unnecessary burdens of litigation arising from repeated lawsuits. Thus a denial of the application of res judicata when it might perhaps be applied can only cause harm in the forms of lessening of judicial efficiency or an increase in the burdens of litigation on the defendants. We recognize that those possible harms are not trivial matters, but we believe that they are far preferable to the possible loss of the plaintiff's substantive rights without their merits ever having been addressed if res judicata were to be applied when perhaps it should not be.

The doctrine of res judicata is strict de jure or according to a strict right of law requires a strict and narrow and close interpretation of the rights and accordingly any doubt concerning the applicability of the principle must be resolved against it's application.

There's a long standing preference in the law to decide a case on the merits rather than merely on procedure. The modern trend of jurisprudence in the trial lawsuits is to render justice upon the merits of the controversy rather than defeat justice upon technicalities. The Fifth Circuit in Hughes v Energy versus Marine Underwriters from the Fifth Circuit in 2009 fairly recently decided a case on a similar, their not identical procedural facts, with a fair and equitable result. The Court found that to do otherwise would result in irreparable harm to the plaintiff.

They actually may similar such cases when the technical application of res judicata was denied in the interest of justice in favor of a substantive hearing on the merits. Under any interpretation of federal or state res judicata doctrine or prior court precedent the res judicata exception does not apply here. None of the prior courts have actually and actively dealt with the issue of the absolute nullity of the 1996 settlement contract. But that's why we brought this matter. That's why Mr. Maclean, he's been in this case for thirty-two years, I've had it for over eight years now, and we looked at it carefully over time and realized that the rate -- that the absolute nullity claim for that initial settlement agreement had never been squarely addressed on the merits and absolutely needs to be considering all that manifested and took place in time after that settlement agreement was confected. We've learned a lot more about the pollution on the property and of course there's been four different lawsuits that have followed in its way, but none of them have squarely addressed the absolutely nullity claim. The absolutely nullity claim has appeared in multiple of those court rooms, but it was either peripheral or as dicta and never

squarely on the merits.

Apparently Chevron misreads the US District Court's opinion because Judge Methen's report in the Blanchard 4 recommended dismissal without prejudice and that was actually done. Absolutely nullity was not before that court. Judge Methen wrote on June 9, 2003 the Fifth Circuit affirmed the judgment. Blanchard 3 on April 20, 2004, Park and Nancy Blanchard, Betty Blanchard's daughter, filed suit in the 24th Judicial District Court for the parish of Jefferson raising many of the same issues asserted in the Blanchard 1 and the Blanchard 2. The Blanchard 3 defendants filed an exception of res judicata arguing that the claims were barred because they were and or could've been brought in this Court during Blanchard 2. On May 8, 2006 the state court entered judgment denying the exception of res judicata finding that this court could not have subject matter jurisdiction in Blanchard 2 and therefore it's assessment of the merits was essentially dicta in the Chevron's memos reference to any other dismissal with prejudice that applies to the Blanchard 2, but that decision too was based on a lack of standing or subject matter jurisdiction. Of course all agree with that outcome as Park Plantation, LLC could not bring the suit because it was not a party to the settlement agreement so consider that result could only attain if the nullity were a relative nullity though. Of course Civil Code Article 2030 is clear that an absolute nullity can be invoked by any person. So it must've been a relative nullity or it would not have been dismissed on those grounds.

The defendants have argued it both ways and have gotten what they wanted in the first effort, the Maclean

Petition for Intervention. To defeat his petition for intervention a dutiful process that was fought with several significant irregularities. These same defendants argued strenuously with a combined total of approximately thirty-four overlapping exceptions that Paul Maclean was not a necessary party and should therefore not be joined. As to the intervention Judge Wentworth agreed with the defense but never addressed the absolute nullity again on the merits. And now the defendants argue that Mr. Maclean's interest were so closely aligned with Betty Blanchard that he had privity that he was a successor in interest and that he was a virtual representative of Betty Blanchard.

We urge this Court not to allow the defendants to have it both ways and thus not only to have cheated Ms. Blanchard out of her rightful revenue, but also cheated Mr. Maclean out of his revenue, exposed him to future litigation for his historic role and also for his very real and enduring interest in the contaminated property. We urge this honorable court to do what is well within it's discretion and deny these defendants the opportunity to have polluted all of this land and drinking water for what perhaps amounts to an eternity if Mr. Maclean is actuality what he appears to be, the sole remaining party with any standing to sue. Truly that would be a miscarriage of justice of monumental proportions and especially if it were allowed on a discretionary technicality. The doctrine of res judicata is strict de jure. And accordingly any doubt concerning the applicability of the principle must be resolved against its application. What's the risk in denying the exception, well we could proceed and perhaps finally actually get to the merits of the absolute

nullity claim, thus we would have at least a chance of overturning an unjust settlement agreement and cleaning up the pollution that has been left by these same operators and is presently still being litigated all over St. Mary Parish. Rule in favor of the exception and the defendants have escaped justice once again. They have succeeded in violating the original contracts with the Blanchard's and using a nefarious settlement agreement that within it's four corners lacks the requisite signatures and ascent to form a valid authentic act or binding contract and using an unlawful agreement to circumvent, evade and violate various important environmental laws to unjustly enrich themselves and to pollute both the land and the water of this parish all without consequence. We urge this honorable court therefore to carefully analyze the element of res judicata rule -- each element of the res judicata rule to determine whether it applies here. To painstakingly review each of the prior court proceedings to make sure that either then or now there will ultimately have been a final decision on the merits as it regards the claim of absolutely nullity and then if res judicata is found to potentially apply then to grant an exception to the exception. In the interest of justice overrule it. Other courts have seen it, we have underscored it and emphasized it again throughout our pleadings here and respectfully urge this court to reject the defendants efforts to obfuscate, deflect and evade their responsibilities under the laws of our state.

There's nothing wrong with making a profit -- I mean, there's nothing wrong with making a killing. There is something wrong with what happened here. It's a run-on sentence of greed stated so many different ways

and covering a lot of geography in multiple decades. Contracts were violated, pollution was buried and our politicians and state agencies looked the other way. Now, it's another courts turn. We pray that this Honorable Court will just take a closer look and refuse to take BP's word for it and all the operators that took their turn. We feel certain that res judicata doesn't apply here, but if there's any proclusive effect at all in any of the prior cases cited by the defendant it's minimal indeed. If it is there at all it may perhaps found in the petition for intervention in Blanchard 3. From an objective perspective it should be acutely curious why an individual who had to be third partied into other Blanchard litigation by both Ms. Blanchard and the defendants and called an indispensable party or necessary party by the judge would not be allowed as a intervenor or brought in supraspinatus by the judge, Judge Wentworth himself. Regardless if the entirety of the preclusive effect draws from the judgment in the petition from intervention then we pray that this court will take a close look at the multiple irregularities and questionable things that transpired in that matter. And that's all I have, Judge. Thank you.

BY THE COURT:

Thank you, Mr. Browne. Any response?

BY MR. MINYARD:

Briefly, Your Honor, we would offer, file and introduce into the record the exception with the exhibits. We have certified copies of all the exhibits from the pleadings from the various court's rulings that were signed as exhibits.

BY THE COURT:

Very well.

BY MS. KORNICK:

I'll just be real brief, Your Honor. I think that he made three arguments. One that an exception of no cause of action is not a judgment on the merits so it shouldn't count. We cited to you case law that says an exception of no cause of action has proclusive effect. Second that he wasn't a party to Blanchard 2, we admitted that. The argument is that he was agent for Betty Blanchard. Betty Blanchard's interest were in Park Plantation. They were a party. And I just want to be clear in Blanchard 3 if you read the Fifty Circuit opinion it says that the petition was effective for intervention so he made his claims then we filed exceptions to that petition of no cause of action which were granted so the petition's claims were there and they were dismissed with prejudice. There's nothing more proclusive about that.

BY THE COURT:

Thank you. Well, I've read everyone's memorandums. I have reviewed the cases cited therein and I've been mulling over it for a week now.

Mr. Browne your argument was quite persuasive, but I concur with the defendants in this matter. I believe the argument of res judicata is proper and therefore I'm going to grant it and sustain the exception.

BY MS. KORNICK:

We can prepare a judgment.

BY THE COURT:

Thank you.

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STATE OF LOUISIANA **(Rev. 1/1/2013)**

PARISH OF ST. MARY

REPORTER'S CERTIFICATE

I, STACEY M. VERDIN, Official Court Reporter for the 16th Judicial District Court, Parishes of St. Mary, Iberia, and St. Martin, of the State of Louisiana, employed as a court reporter for the 16th Judicial District Court, State of Louisiana, as the officer before whom this testimony was taken, do hereby certify that this testimony was reported by me in the stenomask method, was prepared and transcribed by me or under my direction and supervision, and is a true and correct transcript to the best of my ability and understanding, that the transcript has been prepared in compliance with the transcript format guidelines required by statute or by the rules of the board or by the Supreme Court of Louisiana, and that I am not related to counsel or to the parties herein, nor am I otherwise interested in the outcome of this matter.

This certificate is valid only for a transcript accompanied by my original signature and official required seal on this page.

IN WITNESS WHEREOF, I have affixed my official signature this **28th** day of **December, 2018,** St. Mary Parish, Louisiana.

Stacey M Verdin

Stacey M. Verdin
Official Court Reporter
Certificate #23033