

The Supreme Court of the State of Louisiana

GLORIA'S RANCH, L.L.C.

No.2020-C-00780

VS.

**TAUREN EXPLORATION, INC.; CUBIC
ENERGY, INC.; WELLS FARGO ENERGY
CAPITAL, INC.; AND EXCO USA ASSET,
L.L.C.**

IN RE: Tauren Exploration, Inc. - Applicant Defendant; Applying For Writ Of
Certiorari, Parish of Caddo, 1st Judicial District Court Number(s) 541,768, Court of
Appeal, Second Circuit, Number(s) 53,226-CA;

November 04, 2020

Writ application granted. See per curiam.

WJC

BJJ

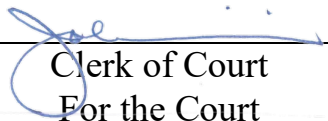
JDH

JTG

JHB

Weimer, J., would grant and docket.
Crichton, J., recused.

Supreme Court of Louisiana
November 04, 2020


Clerk of Court
For the Court

11/04/20

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VS.

**TAUREN EXPLORATION, INC.; CUBIC ENERGY, INC.; WELLS FARGO
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On Writ of Certiorari to the Court of Appeal, Second Circuit, Parish of Caddo

PER CURIAM*

Gloria's Ranch sued Tauren, Cubic, EXCO, and the lender, Wells Fargo, for failure to release a mineral lease when it stopped producing in paying quantities. In 2018, this court held Wells Fargo, as the lender, could not be liable as a lessee but affirmed the solidary liability of Tauren, Cubic, and EXCO. *Gloria's Ranch LLC v. Tauren Expl. Inc.*, 17-1518 (La. 9/7/18), 251 So.3d 392.

The case was ultimately remanded "for the trial court to consider the effect the reversal of Wells Fargo's liability has on the award, particularly as it relates to the virile share accounted for in the EXCO settlement."¹ In the interim, Cubic declared bankruptcy, and its liability to Gloria's Ranch was discharged. Tauren is the sole remaining defendant. We now must determine who bears the loss of Cubic's insolvency.

La. C.C. art. 1803 states:

Remission of debt by the obligee in favor of one obligor, or a transaction or compromise between the obligee and one obligor, benefits the other solidary obligors in the amount of the portion of that obligor.

* Retired Judge James Boddie, Jr., appointed Justice *pro tempore*, sitting for the vacancy in Louisiana Supreme Court District 4.

¹ Gloria's Ranch reached a settlement with EXCO on August 13, 2014, thereby releasing EXCO as a defendant in this matter.

Gloria's Ranch entered into a compromise with EXCO. By settling, Gloria's Ranch extinguished EXCO's debt. Thus, the obligation owed to Gloria's Ranch was reduced by EXCO's virile portion. When Cubic became insolvent, the issue arose as to whether Tauren should wholly bear Cubic's portion or whether Cubic's virile share should be split equally amongst Tauren and EXCO, with Gloria's Ranch absorbing the liability of the latter. This is a *res nova* issue.

Louisiana Civil Code Article 1803, Revision Comment (d), states, "In case of insolvency of a solidary obligor after the obligee has remitted the debt in favor of another, the loss must be borne by the obligee." A treatise on the subject states:

The obligee who remits^[2] the debt in favor of one of his solidary obligors shares in the loss resulting from the insolvency of another by losing the amount the remitted obligor would have had to contribute had he not been favored by a remission of the debt.

Litvinoff and Scalise, 5 La. Civ. Law Treatise, *The Law of Obligations*, 2 ed. (2001), §7.83.

These secondary sources are instructive. We expressly hold that when an obligee remits (or compromises) the debt of one solidary obligor, he absorbs that obligor's portion of the loss caused by another solidary obligor's insolvency. Because Gloria's Ranch discharged the debt of EXCO, thus impairing the legal rights of the other solidary obligors, it should bear EXCO's portion of the loss caused by Cubic's insolvency.

REVERSED and RENDERED.

² While they are separate legal concepts, remission, compromise, and transactions are given equal effect for purposes of Louisiana Civil Code article 1803. See La. Civ. Code art. 1803, Revision Comment (a).