

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

VINTAGE ASSETS, INC.	*	Civil Action No. 2:16-cv-00713
Plaintiff	*	
	*	Section H
versus	*	
	*	Judge Jane Triche Milazzo
TENNESSEE GAS PIPELINE	*	
COMPANY, L.L.C. and SOUTHERN	*	Magistrate Judge Michael North
NATURAL GAS COMPANY, L.L.C.	*	
Defendants	*	

First Supplemental and Amended Complaint

NOW INTO COURT, through undersigned counsel, come Plaintiffs, Vintage Assets, Inc., Jacques Perez de La Vergne, Suzanne de La Vergne McIntosh, Anne Perez Inabnett, Susan Perez Magee, Joan Elizabeth Heather Huey, John R. Perez, III, Arthur S. Huey, IV, Renee Perez Sachs, and Mercedes Perez Mack Exempt Trust, Whitney Bank Successor Trustee, and in support of the First Supplemental and Amended Complaint state as follows:

Parties

1.

Plaintiff, Vintage Assets, Inc. is a Louisiana corporation domiciled in Orleans Parish, Louisiana.

Plaintiff, Jacques Perez de La Vergne is a person of the full age of majority and domiciled in Orleans Parish, Louisiana.

Plaintiff, Suzanne de La Vergne McIntosh is a person of the full age of majority and domiciled in Charleston County, South Carolina.

Plaintiff, Anne Perez Inabnett is a person of the full age of majority and domiciled in Orleans Parish, Louisiana.

Plaintiff, Susan Perez Magee is a person of the full age of majority and domiciled in Hancock County, Mississippi.

Plaintiff, Joan Elizabeth Heather Huey is a person of the full age of majority and domiciled in Orleans Parish, Louisiana.

Plaintiff, John R. Perez, III, is a person of the full age of majority and domiciled in St. Tammany Parish, Louisiana.

Plaintiff, Arthur S. Huey, IV, is a person of the full age of majority and domiciled in Jefferson Parish, Louisiana.

Plaintiff, Renee Perez Sachs, is a person of the full age of majority and domiciled in Orleans Parish, Louisiana.

Plaintiff, Mercedes Perez Mack Exempt Trust, Whitney Bank Successor Trustee. Whitney Bank is a citizen of Mississippi.

(Hereinafter collectively referred to as “Plaintiffs”).

2.

Made defendants herein are the following:

a. Tennessee Gas Pipeline Company, L.L.C., a Delaware limited liability company with its principal business establishment in Houston, Texas, individually and as successor-in-interest to Tennessee Gas Transmission Company.

b. Southern Natural Gas Company, L.L.C., a Delaware limited liability company with its principal business establishment in Houston, Texas, individually and as successor-in-interest to Southern Natural Gas Company.

(Hereinafter collectively referred to as “Defendants”).

Jurisdiction and Venue

3.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000, excluding interest and costs, and there is complete diversity of citizenship between the Plaintiffs and Defendants.

4.

Venue is proper in this District because Defendants conduct business within this District and a substantial part of the events or omissions giving rise to the claim occurred in this District.

Allegations

5.

Plaintiffs are the owners of an undivided interest in property located throughout the east bank of Plaquemines Parish that is subject to right of way servitudes pursuant to which Defendants’ have dredged canals and laid pipelines on Plaintiffs’ Property including within the following areas:

- T15S R14E: W/2 of Sec. 4
- T16S R15E: Sec 17, 23, 24, 31, and 32
- T16S R16E: N/2 Sec. 19 and NW/4 Sec. 20
- T17S R15E: NE/4 and S/2 of Sec 5

(Collectively referred to as “Plaintiffs’ Property”).

6.

Plaintiffs’ Property is composed of coastal wetlands. Prior to the activities complained of herein, the marsh was healthy with consistent marsh vegetation and a stable hydrologic ecosystem.

7.

Defendants entered into right of way agreements with Plaintiffs pursuant to which they dredged canals and installed/constructed pipelines on Plaintiffs' Property.

8.

On information and belief, Defendants also dredged canals and installed/constructed pipelines on portions of Plaintiffs' Property without consent from Plaintiffs.

9.

The right of ways include, but are not limited to, the following:

- a. Upper Realty, Inc. to Southern Natural Gas Company, January 9, 1953, C.O.B. 166, Folio 197;
- b. Lenmark Lands, Inc. to Southern Natural Gas Company, January 9, 1953, C.O.B. 166, Folio 199;
- c. Lenmark Lands, Inc., et al. to Tennessee Gas Transmission Company, August 19, 1957, C.O.B. 200, Folio 881;
- d. Manning Oil Corp., et al. to Southern Natural Gas Company, February 13, 1958, C.O.B. 204, Folio 847;
- e. Lenmark Lands, Inc., et al. to Tennessee Gas Transmission Company, July 3, 1958, C.O.B. 208, Folio 861;
- f. Upper Realty, Inc., et al. to Tennessee Gas Transmission Company, May 7, 1964, C.O.B. 274, Folio 325;
- g. Lenmark Lands, Inc. to Southern Natural Gas Company, June 15, 1970, C.O.B. 354, Folio 289; and
- h. Lenmark Lands, Inc. to Southern Natural Gas Company, June 15, 1970, C.O.B. 354, Folio 297.

10.

Plaintiffs are direct successors in interest, heirs, and/or beneficiaries to the above referenced grantor entities referenced in paragraph 9, above.

11.

It was understood and agreed by Defendants that they would maintain adequate protection to prevent erosion across the width of the right-of-way.

12.

Defendants failed to maintain the canals and banks on Plaintiffs' Property. The failure to maintain is continuing. The result of Defendants' failures to maintain the canals and banks has resulted in the widening of the canals and erosion of Plaintiffs' Property.

13.

Defendants' continuing failure to maintain the pipeline canals and banks has altered the hydrology of the marsh and has adversely impacted the marsh's ecology.

14.

The failure to maintain the pipeline canals and banks by Defendants has adversely impacted Plaintiffs' Property as the canals have widened, and continue to widen, significantly beyond the scope allowed by the right of way agreements and prudent operating practices.

15.

Defendants' failure to maintain the pipeline canals and banks and restore the damaged property is continuing and has caused, and continues to cause, severe ecological damage to Plaintiffs' Property by altering and/or destroying the natural hydrology of the property, in addition to causing loss of acreage due to continuing erosion.

16.

Plaintiffs aver that Defendants have breached their right of way agreements and standards of prudent operating practices by failing to maintain the pipeline canals and banks and by failing to restore the property that has been damaged as a result of Defendants' continuing failures.

17.

The above referenced right of ways are still in full force and effect.

18.

Plaintiffs aver that the damage done by Defendants' continuing failure to maintain the pipeline canals and banks commenced a continuous course of conduct that has damaged and continues to damage Plaintiffs' Property.

19.

Defendants are jointly and solidarily liable.

20.

Plaintiffs are solidary obligees.

Contract Claims

21.

Plaintiffs incorporate by reference all previous allegations in the preceding paragraphs as if fully set forth herein.

22.

Pursuant to the above referenced right of ways, and/or by Defendants' exercise of control over Plaintiffs' Property, conventional predial servitudes were created whereby Defendants became the dominant estate owners while Plaintiffs are owners of the servient estate.

23.

Defendants breached the express terms of the referenced right of ways in addition to the implied obligations therein pursuant to the suppletive rules regarding servitudes as set forth in the Louisiana Civil Code arts. 697, et seq. by failing to:

- a. Maintain the canals and their banks to prevent erosion of the surrounding property;

- b. Protect the servient estate against damage resulting from use of the servitude;
- c. Not aggravate the condition of the servient estate;
- d. Prevent the canals from widening;
- e. Prevent the canal banks from being breached;
- f. Use only so much of Plaintiffs' Property as necessary to conduct operations;
- g. Act as a reasonably prudent operator to cause the least possible damage, and
- h. Restore the property.

24.

Defendants breached their express and implied obligations pursuant to the right of ways including those set forth in paragraph 23, above. Defendants' failure to maintain the canals and restore the adjacent property constitutes a breach of their obligations to not aggravate and cause the least possible damage to the servient estate pursuant to the Louisiana Civil Code, including articles 730, 743, and 745.

25.

Defendants have breached and continue to breach the foregoing obligations.

26.

Defendants' duties to not aggravate the condition of the servient estate are co-extensive with the life of the servitudes and accordingly are continuous.

27.

Defendants are in continuing breach of those obligations and duties, both express and implied, based upon the right of ways and Defendants' exercise of and control over Plaintiffs' Property.

28.

Plaintiffs aver that they are entitled to compensatory damages as a result of Defendants' breach of those obligations and are entitled to injunctive relief in the form of abatement and restoration of the land loss and to maintain and repair the canal banks.

Negligence Claims

29.

Plaintiffs incorporate by reference all previous allegations in the preceding paragraphs as if fully set forth herein.

30.

Defendants knew, or in the exercise of reasonable care should have known, that their acts and/or omissions outlined herein would cause the damages outlined herein and could have been prevented in the exercise of reasonable care.

31.

The State and Local Coastal Resources Management Act of 1978 and related coastal zone regulations bearing directly on pipeline activities impose a litany of duties and obligations expressly designed to minimize adverse ecological, hydrological, topographical, and other environmental effects associated with such activities. Pursuant to the state regulatory framework, Defendants were obligated to plan, site, design, construct, operate, and maintain their uses and activities to avoid adverse environmental impacts. Defendants failed to comply with these regulatory obligations which include, but are not limited to:

Linear facilities shall be planned, designed, and built using the best practical techniques to prevent bank slumping and erosion, and saltwater intrusion, and to minimize the potential for inland movement of storm-generated surges. Consideration shall be given to the use of locks in navigation canals and channels which connect more saline areas with fresher areas.¹

¹ 43 La. Admin. Code Part I § 705 J.

All nonnavigation canals, channels, and ditches which connect more saline areas with fresher areas shall be plugged at all waterway crossings and at intervals between crossings in order to compartmentalize them. The plugs shall be properly maintained.²

Areas dredged for linear facilities shall be backfilled or otherwise restored to the pre-existing condition upon cessation of use for navigation purposes to the maximum extent practicable.³

The best practical techniques for site restoration and revegetation shall be utilized for all linear facilities.⁴

Defendants' violations of the applicable regulations provide further evidence that they breached the standard of care under Louisiana law that Defendants owed and knowingly undertook when they engaged in pipeline activities as described herein.

32.

Defendants owed a duty to Plaintiffs to:

- a. Maintain the canals and their banks to prevent erosion of the surrounding property;
- b. Protect the servient estate against damage resulting from use of the servitude;
- c. Not aggravate the condition of the servient estate;
- d. Prevent the canals from widening;
- e. Prevent the canal banks from being breached;
- f. Use only so much of Plaintiffs' Property as necessary to conduct operations;
- g. Act as a reasonably prudent operator to cause the least possible damage, and
- h. Restore the property.

² 43 La. Admin. Code Part I § 705 K.

³ 43 La. Admin. Code Part I § 705 N.

⁴ 43 La. Admin. Code Part I § 705 O.

33.

Yet, Defendants failed, and continue to fail, to exercise such reasonable care and have breached the duties outlined above.

34.

The breach of the duties referenced above has caused and continues to cause widening of the canals and erosion of Plaintiffs' Property.

35.

Thus, in accordance with the Louisiana Civil Code, including article 2315, Plaintiffs aver that they are entitled to compensatory damages as a result of Defendants' acts and omissions and are entitled to injunctive relief in the form of abatement and restoration of the land loss and to maintain and repair the canal banks.

36.

Defendants' acts and omissions included violations of their own company policies and industry practice and custom, and did not comply with the standards of care required of pipeline operators and by regulation. Defendants knew or should have known that their acts and omissions would damage Plaintiffs' Property thereby causing erosion and land loss. Defendants had a duty to protect Plaintiffs and Plaintiffs' Property from these effects. In addition, when Defendants learned that their operations caused damage to Plaintiffs' Property, Defendants had a duty to inform Plaintiffs and restore Plaintiffs' Property. Defendants' violation of these duties proximately caused the damages described herein.

Trespass

37.

Plaintiffs incorporate by reference all previous allegations in the preceding paragraphs as if fully set forth herein.

38.

Additionally and in the alternative, Plaintiffs aver that Defendants' continuous actions regarding the maintenance and usage of their canals have resulted in an encroachment of the canals that constitutes a continuous trespass on Plaintiffs' Property that Plaintiffs are entitled to have abated. The continuing widening of the canals is causing new and ever increasing damage to Plaintiffs' Property, and such damage will continue until the canals are properly used, maintained, and the land is restored.

39.

Plaintiffs aver that they are entitled to compensatory damages as a result of Defendants' acts and omissions and are entitled to injunctive relief in the form of abatement and restoration of the land loss and to maintain and repair the canal banks.

40.

Plaintiffs are entitled to an accounting of all civil fruits gathered by bad faith possessors pursuant to Louisiana Civil Code article 486, which provides that a possessor in bad faith is liable for the "fruits he has gathered or their value subject to his claim for reimbursement of expenses." Defendants became bad faith possessors, when they dredged across Plaintiffs' Property without permission and thereafter exceeded the rights granted to them by Plaintiffs through their failure to maintain the pipeline canals and banks and restore the damaged property. Defendants derived a substantial economic benefit from this trespass – avoiding the costs of maintenance and

restoration. This unpaid rent is a civil fruit, and Plaintiffs are entitled to an accounting for Defendants' bad faith gathering of this civil fruit.

41.

Plaintiffs request a bench trial.

WHEREFORE, Plaintiffs pray that:

- A. Defendants be served with a copy of this First Supplemental and Amending Complaint and that they provide an answer thereto within the delays allowed by law;
- B. There be a monetary judgment with interest from date of judicial demand, until paid, and all costs of these proceedings, in favor of Plaintiffs and against Defendants, finding that Defendants are liable, jointly and solidarily, for compensatory damages resulting from Defendants' acts and omissions;
- C. There be a judgment in favor of Plaintiffs for injunctive relief in the form of abatement and restoration of Plaintiffs' Property, including the restoration of the land loss and the maintenance and repair of the canal banks;
- D. There be a judgment awarding Plaintiffs any civil fruits derived from Defendants' illegal trespass and the failure to maintain the pipeline canals and banks and restore the damaged property, or in the alternative, an award of unjust enrichment damages for this trespass and unauthorized use; and
- E. Such other and further relief be granted in favor of Plaintiffs which the Court deems necessary and proper at law and in equity and that may be just and reasonable under the circumstances in this matter.

Respectfully submitted,

/s/ Kevin E. Huddell

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd of September, 2016, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice of the electronic filing to the counsel of record for the Defendants.

/s/ Kevin E. Huddell
KEVIN E. HUDDPELL