

# Louisiana Supreme Court Upholds Subsequent Purchaser Doctrine

By Loulan J. Pitre, Jr. and Demarcus J. Gordon

Gordon Arata McCollam Duplantis & Eagan, LLC

The Louisiana Supreme Court has recently upheld the Subsequent Purchaser Doctrine with its decision in *Eagle Pipe and Supply, Inc. v. Amerada Hess Corporation*, 2010 C 2267 (La. 10/25/11), \_\_\_ So.3d \_\_\_. While this decision relates to the contamination of a historic pipe yard associated with pipe cleaning operations, its breadth also encompasses Act 312 and oilfield exploration and production contamination matters.

Within its decision, the Louisiana Supreme Court examined what is commonly known as the “subsequent purchaser doctrine” to determine if Eagle Pipe and Supply, Inc. (“Eagle Pipe”) had the right to sue for damages that occurred prior to its acquisition of property and absent a specific assignment of the right to pursue past damages to the property. The subsequent purchaser rule “is a jurisprudential rule which holds that an owner of property has no right or actual interest in recovering from a third party for damage which was inflicted on the property before his purchase, in the absence of an assignment or subrogation of the rights belonging to the owner of the property when the damage was inflicted.”

Eagle Pipe purchased the subject property, located in Lafayette Parish, in 1988 from its previous owner, Union Pipe, who operated the property as a pipe yard from 1981-1988 where it bought, stored and sold used oilfield tubulars. Subsequent to Eagle Pipe’s purchase of the property, the Louisiana Department of Environmental Quality (“LDEQ”), following-up on an alleged field interview, found that the property was contaminated with Technologically Enhanced Naturally Occurring Radioactive Materials (“TENORM”). The LDEQ cited Eagle Pipe for violating TENORM exposure regulations and ordered that the property be remediated.

After the alleged LDEQ actions, Eagle Pipe filed suit against four groups of defendants: (1) oil company defendants who either sold or tendered to Union Pipe used oil field equipment for cleaning or maintenance; (2) the previous landowners who leased the property to Union Pipe to clean, inspect, and store a large number of used oilfield pipe; (3) the transporter defendants who transported TENORM contaminated pipe to the property; and (4) insurance companies liable for Eagle Pipe’s damages. Several defendants filed declinatory, dilatory, and peremptory exceptions. Following a hearing on the exceptions, the trial court granted the exception of no right of action, dismissing Eagle Pipe’s claims with prejudice. On appeal, the Fourth Circuit Court of Appeal originally affirmed the trial court’s decision; however, on rehearing the Fourth Circuit vacated its previous judgment and reversed the trial court’s decision sustaining the exception of no right of action.

The Louisiana Supreme Court granted writs to determine whether a subsequent purchaser of property has the right to sue a third party for property damages inflicted prior to its acquisition of the property in the absence of the assignment of or subrogation to that right. Within its plea (to both the Fourth Circuit Court of Appeal and the Louisiana Supreme Court), Eagle Pipe attempted to carve out an exception to the subsequent purchaser rule. Eagle Pipe contended that the subsequent purchaser rule only applies “where the prior damage to property was overt or

apparent at the time of the sale.” Eagle Pipe further argued that the radioactive contamination on the property at issue was not apparent at the time of its purchase and, therefore, the subsequent purchaser rule does not apply to preclude it from seeking monetary damages against the entities alleged to have caused the contamination.

Relying on the fundamental principles of Louisiana property law, the Louisiana Supreme Court reversed the Fourth Circuit Court of Appeal and reinstated the trial court’s decision. The Louisiana Supreme Court held that:

The property owner at the time the damages were inflicted has a personal right of action against the tortfeasor for the disturbance of his real right in the property. When the damage is apparent, the property owner obtains the personal right of action to sue for damages to compensate for a loss of value in the property or an interference with the property’s use. This personal right exists during his use and enjoyment while he owns the property. This personal right exists even during and after his disposal of the property, as it is assumed the apparent damage would result in a loss of value to the property which would be reflected in the sale price. Where the damage to the property is not apparent, and the property has been sold, the law provides the purchaser with the right to seek rescission of the sale or a reduction in the purchase price. In that instance, the former owner’s right to dispose of the property without disturbance has been affected, as the owner must now defend against an action in redhibition or take some other action to repair, remedy or correct the defect.

Significantly, when there is apparent damage to the property, the law does not provide the subsequent purchaser an opportunity to profit by allowing him/her to negotiate a low purchase price based on the condition of the property and then have a separate right to seek damages from the tortfeasor who is responsible for the property’s poor condition. In addition, when the damage is not apparent, the law only provides the subsequent purchaser “with the right to seek rescission of the sale, or a reduction in the purchase price,” but not the right to sue for damages against the tortfeasor. In either instance, whether damage to the property is apparent or not, “the personal nature of the right of the landowner at that time does not change, and remains with the landowner unless the right is explicitly assigned or subrogated to another.”

In further reaching its conclusion, the Louisiana Supreme Court asserted that the legislature could have created a right of action to seek damages against tortfeasors for damage to property no matter when the damage occurred, or could have made an exception to prescription rules for long-term contamination of property. However, aside from the current legal remedies, the legislature has only provided a mechanism for remediating properties through regulatory hearings and/or actions, which does not afford a subsequent purchaser the right to sue tortfeasors for damages.

This Louisiana Supreme Court decision will limit the scope of legacy lawsuits based upon historic contamination to property, while certainly not eliminating all such lawsuits. Specifically, landowners will no longer be able to recover in tort for damages that preceded their ownership, absent an assignment or subrogation of the rights belonging to the owner of the

property when the damage was inflicted. While this will not eliminate all claims of the current landowner in every situation, it will limit significantly the scope of such claims.