

NO. 18-0942

ORIGINAL

IN THE OHIO SUPREME COURT

APPEAL FROM THE COURT OF APPEALS
FIFTH APPELLATE DISTRICT
GUERNSEY COUNTY, OHIO
CASE NO. 17 CA 20

BARRY BROWNE, *et al.*
Plaintiffs-Appellants

v.

ARTEX OIL COMPANY, *et al.*,
Defendants-Appellees

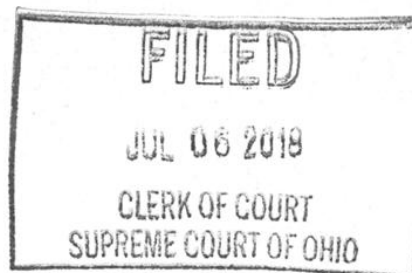
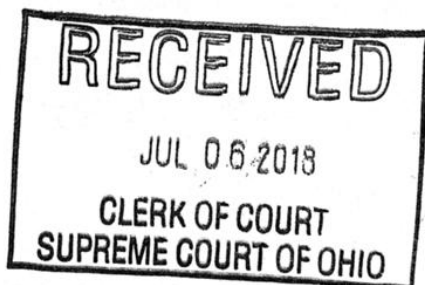
**NOTICE OF FILING
MOTION TO CERTIFY CONFLICT**

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Per Rule 7.07(A) of the Ohio Supreme Court Rules of Practice, Appellants Barry and Rosa Browne hereby give notice that they have filed a motion with the Guernsey County Court of Appeals, Fifth Appellate District, to certify a conflict with the Fourth Appellate District on the following proposition of law: In an action to declare that an oil and gas lease has terminated under its own terms for lack of production in paying quantities, the applicable statute of limitations is 21 years, per Ohio Revised Code § 2305.04, and does not begin to run until a "justiciable controversy" arises. (A copy of the front page of the time-stamped motion is attached hereto.)

The Fifth District, in the case at bar, applied a fifteen-year statute of limitations accruing from the last date of nonproduction, or the date of resumed production following a period of nonproduction. In the case of *Rudolph v. Viking International Resources, Co.*, 2017-Ohio-7369, 84 N.E.3d 1066 (4th Dist. 2017), the Fourth Appellate district applied a twenty-one year statute accruing from the date a "justiciable issue" arises.

Respectfully submitted,




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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Notice of Filing Motion to Certify Conflict** has been served this 5 day of July, 2018, by U.S. Mail, postage prepaid, upon the following:

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IN THE COURT OF APPEALS OF OHIO
FIFTH APPELLATE DISTRICT
GUERNSEY COUNTY

Barry Browne, *et al*,

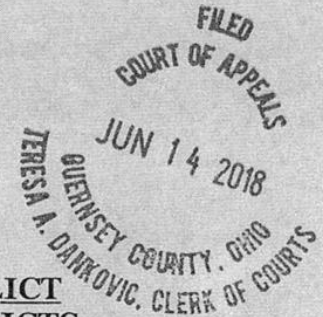
Appellants,

v.

Artex Oil Company., *et al*.

Appellees.

Case No. 17 CA 20



**MOTION TO CERTIFY CONFLICT
BETWEEN APPELLATE DISTRICTS**

This Court issued an Opinion¹ on May 31, 2018. Per Ohio Supreme Court Rule 8.01, Ohio Revised Code § 2501.12, and Ohio Appellate Rule 25, the Appellants move this Court to Certify a Conflict between the Appellate Districts.

Specifically, in ¶¶ 18 – 26, this Court held that a fifteen-year statute of limitations applied to the action to declare the termination of an oil and gas lease, running from the last date of cessation of production, citing O.R.C. § 2305.041 and § 2305.06.

This is in direct conflict with the Fourth District Court of Appeals in the case of *Rudolph v. Viking International Resources Co.*, 2017-Ohio-7369, ¶ 82 (4th Dist. 2017)² holding that a 21-year statute applies and does not begin to run until a controversy exists. “Rudolph filed his lawsuit in March 2014. Rudolph's declaratory judgment action to have the court declare the lease expired and to quiet title is governed by the 21-year statute of limitations under R.C. 2305.04 and accrued in June 2012 when a judicable controversy arose between the parties concerning the existence of the lease.”

¹ Attached as Exhibit 1.

² Attached at Exhibit 2.