



Things You May Have Missed

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Allocation Wells Revisited

(Monroe Properties)

- Monroe's complaint argued Devon should not have been issued a permit for an allocation well by the RRC
 - Devon did not intend to form a pooled unit that encompassed all tracts crossed by the well, nor did they have a production sharing agreement (PSA)
- Complaint was dismissed by the RRC in accordance with earlier decision (*Klotzman*)
 - Commission was without jurisdiction to determine whether or not the leases permitted the operator to drill without pooling; therefore, permit applications were approved
 - Neither Pooling Authority nor PSA is required to establish a good faith claim to drill an allocation well
- Monroe is seeking judicial review to appeal the RRC's dismissal of their complaint
 - Unlawful issuance of an allocation well permit
 - Unlawful determination that pooling authority or PSA is not required to receive a permit for an allocation well

Allocation Wells Revisited (cont.)

- To be determined...
- If the dispute is heard by Travis County district court this means:
 - The legality of allocation wells in Texas would be clarified
 - Decision will provide guidance and a proper allocation formula
- Until then...
 - The legality of allocation wells remains unsettled in Texas

Top Leases and Rule Against Perpetuities

(BP vs. Laddex)

- Facts:
 - 1971: Lease acquired with a 5 year primary term and continued “as long thereafter as oil or gas is produced from said land hereunder”
 - BP is the successor lessee by assignment (“BP Lease”)
 - April 2005: the well had significantly slowed production
 - April 2006: lessor’s attorney sent BP a letter stating that the BP Lease terminated due to “failure to produce in paying quantities...”
 - November 2006: well returned to producing quantities pre-slowdown
 - March 2007: lessors of the BP Lease made a top lease with Laddex
- Issues:
 - Laddex sued alleging that BP Lease had terminated for failure to produce in paying quantities
 - BP moved to dismiss contending that the Laddex lease violated the rule against perpetuities

Top Leases and Rule Against Perpetuities (cont.)

- A typical oil and gas lease in Texas conveys the mineral estate as a determinable fee
- The possibility of reverter is the interest left in a grantor after the grant of a determinable fee
 - Although the possibility of reverter isn't presently possessory at the time the lease is executed, it is presently vested
- Therefore, the BP Lease conveyed the lessors' mineral estate to BP (as successor lessee) as a determinable fee, subject to a vested possibility of reverter in the lessors
 - A lessor may sell or assign all or part of the possibility of reverter
- Holding: Top lease that is a conveyance of an interest in a lessor's possibility of reverter does not violate the Rule Against Perpetuities

Top Leases and Rule Against Perpetuities (cont.)

- BP contended that the top lease was contingent on a future uncertain event which therefore made the lease invalid under the rule against perpetuities
 - “This Lease is intended to and does include and vest in Lessee any and all remainder and reversionary interest and after-acquired title of Lessor in the Leased Premises **upon expiration of any prior oil, gas or mineral lease...**”
- Laddex maintained that the lease conveys the lessor’s possibility of reverter
- The court agrees that both interpretations are plausible **BUT** they concluded:
 - the proper approach is to interpret the vesting language as an attempt to avoid violating the rule
 - when there are two possible constructions of a lease, the one will be accepted which renders it valid rather than void

Cotenancy Accounting

- Each cotenant has a right to enter upon the common estate and a corollary right to possession
- Cotenant has the right to extract minerals from common property without first obtaining the consent of his cotenants
 - Even if the cotenant has a leasehold interest and not a mineral interest. *Byrom v. Pendley*, 717 S.W.2d 602 (Tex.1986).
 - A cotenant may “extract minerals from common property without first obtaining the consent of his cotenants; however, he must account to them on the basis of the value of any minerals taken, less the necessary and reasonable costs of production and marketing.”

Cotenancy Accounting (cont.)

- Rule of Accountability: proportionate market value of the product less the proportionate necessary and reasonable costs of producing and marketing
- Does not include interest. *Cox v. Davidson*, 397 S.W.2d 200 (Tex.1965).
- Can apply to non-signing contingent remaindermen and unleased cotenants in regards to royalty productions. *ConocoPhillips Company v. Ramirez*, 04-15-00487-CV.
 - Royalties paid to other lessors are not costs chargeable to the unleased cotenants as a cost of production when there is no valid lease binding the interest
 - This is currently on a Second Petition for Review to the court

Lease Precedence

(TRO-X vs. Anadarko)

Facts:

- 2007: TRO-X acquired leases ("2007 Leases") from the Coopers
 - TRO-X entered into a participation agreement with Eagle and transferred its interest
 - But, retained a five percent "back-in" option if Eagle reached "project payout"
- 2011: Eagle assigned its interest to Anadarko
 - After failing to drill a required offset well, Anadarko surrendered 320 acres to the Coopers and negotiated the 2011 leases
- The 2011 leases contained:
 1. the same parties of the 2007 Leases
 2. cover the same mineral interests as the 2007 Leases
 3. materially different terms from the 2007 Leases
 4. do not mention either the 2007 Leases or TRO-X's interest under those Leases, and
 5. do not include language releasing the 2007 Leases.
- When TRO-X later approached Anadarko to confirm that its back-in interest was valid under the new 2011 leases, Anadarko denied

Lease Precedence (cont.)

- Were the 2011 Leases top leases and therefore subject to TRO-X's back-in?
- No, they were not top leases because:
 - There was no evidence that Coopers and Anadarko intended for the 2011 leases to be subordinate to the 2007 leases
 - The act itself of executing the 2011 Leases terminated the 2007 Leases
 - An existing lease terminates when the parties enter into a new lease covering the same interest
 - Unless, the new lease objectively demonstrates that both parties intended for the new lease not to terminate the prior lease

Adverse Possession Against Co-Tenant

(Section 16.0265)

- One or more cotenant heirs may acquire interests of the other heirs by adverse possession if, for a continuous and uninterrupted ten year period:
- (1) *the possessing cotenant heir or heirs:*
 - (A) *hold the property in peaceable and exclusive possession;*
 - (B) *cultivate, use, or enjoy the property; and*
 - (C) *pay all property taxes on the property not later than two years after the date the taxes become due; and*

Adverse Possession Against Co-Tenant (cont.)

- (2) no other cotenant heir has:
 - (A) contributed to the property's taxes or maintenance;
 - (B) challenged a possessing cotenant heir's exclusive possession of the property;
 - (C) asserted any other claim against a possessing cotenant heir in connection with the property, such as the right to rental payments from a possessing cotenant heir;
 - (D) acted to preserve the cotenant heir's interest in the property by filing notice of the cotenant heir's claimed interest in the deed records of the county in which the property is located; or
 - (E) entered into a written agreement with the possessing cotenant heir under which the possessing cotenant heir is allowed to possess the property but the other cotenant heir does not forfeit that heir's ownership interest.

Adverse Possession Against Co-Tenant (cont.)

- To take advantage of the statute, the possessory cotenant heir must file an affidavit of heirship in the form required by the Texas Estates Code as well as an affidavit of adverse possession
- The possessory cotenant must also publish notice of their claim in a newspaper for four weeks following the filing of the affidavits and must provide written notice by certified mail, return receipt requested to the last known addresses of other cotenant heirs
- If no controverting affidavit or lawsuit is filed within five years from the date that the possessory cotenant heir's affidavits are filed, and no notice by a contesting cotenant heir has been filed in the deed records, then title to the property vests in the possessory cotenant heir
- The statute provides a somewhat more streamlined and lower cost procedure for heirs to obtain clear title to inherited property

Oil and Gas Royalty Lease

OIL & GAS ROYALTY LEASE

STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF HOWARD

This Agreement dated January 14, 2015 between **Kathryn C. Chadwell**, whose address is PO Box 2277 Big Springs, TX 79721, hereinafter called the Lessor (whether one or more persons), for and in consideration of the sum of Ten and More (\$10.00) Dollars and other good and valuable considerations, in hand paid by **Leasing Partners, LLC, 4516 Lovers Lane, Suite 176, Dallas, TX 75225**, hereinafter called the Lessee, the receipt of which is hereby acknowledged and confessed, hereby grants, leases and lets exclusively unto the said Lessee, all of Lessor's royalty interest in and to all of the oil, gas and other minerals produced and saved from the hereinafter described lands, including all proceeds hereof and the right to demand, collect and receive same, located in the County of Howard State of Texas, to-wit:

SEE EXHIBIT "A"

This is a paid up lease and subject to the other provisions herein contained. This lease, grant and conveyance shall be for a term of three (3) years from the date of the effective date herein, and as long thereafter as oil, gas or minerals are produced from said lands or lands pooled therewith, and at the termination of said production and cessation of operations to restore it, this lease and all rights granted hereby shall terminate.

As royalty, Lessor reserves an equal one-fourth (25%) part of the Royalty from the sale of all oil, gas and condensate produced and saved from said land and attributable to Lessor's interest subject to the terms this agreement. Effective date shall be December 1, 2014.

Lessor hereby expressly represents and warrants that no representation, promise or other statement that is not herein expressed has been made to Lessor in executing this Lease and Lessor did not rely on any representation, promise or other statement of Lessee and/or its agents and employees relating to this Lease or the subject matter thereof, except as set forth herein, and it is the Lessor's express intent to fully disclaim and disavow reliance on any such representation, promise or other statement.

Oil and Gas Royalty Lease (cont.)

In the event of any dispute(s) (as defined herein below) arising out of or relating to this contract, or the breach thereof, the parties agree to participate in at least four (4) hours of mediation in accordance with the commercial mediation rules of the American Arbitration Association before having recourse to arbitration. If the mediation procedure provided for herein does not resolve any such dispute, the parties agree that all disputes between the parties shall be resolved solely by binding arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules pursuant to the Federal Arbitration Act, 9 U.S.C. Sections 1-14

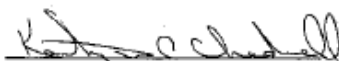
(In the event this act shall be held to be inapplicable, then the provisions of the Texas General Arbitration Act shall apply.) Judgment upon the award rendered by the arbitrator may be entered in any Court having jurisdiction. The term "dispute(s)" shall include, but is not limited to all claims, demands and causes of action of any nature, whether in contract or in tort, at law or in equity, or arising under or by virtue of any statute or regulation or judicial reasons, that are now recognized by law so that may be created or recognized in the future, for resulting past, present and future personal injuries, contract damages, intentional and/or malicious conduct, actual and/or constructive fraud, statutory and/or common law fraud, class action suit, misrepresentations of any kind and/or character, liable, slander, negligence, gross negligence, and/or deceptive trade practices/consumer protection act damages, all attorney's fees, and all penalties of any kind, prejudgment interest and costs of court by virtue of the matters alleged and/or matters arising between the parties. The award of the arbitrator issued pursuant herein shall be final, binding and non-appealable. The parties hereby waive any rights to punitive or exemplary damages and the Arbitrator(s) will not have the authority to award exemplary or punitive damages to either party. Venue for any mediation or arbitration provided for by these punitive damages to either party. Venue for any mediation or arbitration provided for by these provisions shall be

Oil and Gas Royalty Lease (cont.)

Dallas County, Texas. Notwithstanding anything to the contrary in the aforementioned arbitration rules, no arbitration shall exceed a total of twelve hours per dispute unless extended by mutual agreement of the parties.

TO HAVE AND TO HOLD unto the said Lessee, its successors, and assigns said royalty interest as above set forth; and Lessor does hereby grant, lease and let said royalty interest under any valid oil and gas lease covering said lands and extensions thereof.

WITNESS my hand this 20 day of Jan, 2015.



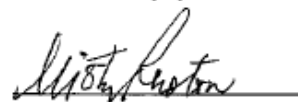
Kathryn C. Chadwell

ACKNOWLEDGMENT

STATE OF Texas

COUNTY OF Howard

This instrument was acknowledged before me on the 20 day of Jan, 2015, by Kathryn C. Chadwell, Independently and in all other capacities, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.


Notary Public, State of Texas

Notwithstanding anything contained herein to the contrary, if, at the expiration of the primary term of three years of this lease, this lease is not being maintained in effect in any manner provided for herein, including but not limited to operations upon or production from the leased premises or on land pooled therewith, Lessee shall have the exclusive right and option to renew and extend this leases as to the lands then covered thereby or any portion chosen by Lessee for an additional two (2) year primary term, on or before the expiration of the three year primary term as stated herein, by payment or tender to Lessor on or before said date, a sum of money equal to the initial bonus paid under the terms and conditions of said lease.

Conveyances in Representative Capacity

(Title Standard 4.120)

- “A conveyance signed by a party online in a representative capacity will, nevertheless, convey whatever interest that person owns individually where that party’s deed purports to convey the property (as opposed to a quitclaim deed)” (*Standard 4.120*)
 - Adopted August 2018
- Does a trustee’s failure to identify her capacity in a deed fatal to the conveyance? *West 17th Resources, LLC v. Pawelek*, 482 S.W.3d 690 (Tex. App. - San Antonio 2015).
 - This case explicitly holds that a trustee’s failure to identify her capacity is not fatal to a mineral conveyance
 - The San Antonio Court of Appeals unanimously determined that Plaintiffs had “cited no authority and [it] ha[d] found none that a grantor’s failure to specify her capacity either ‘individually’ or ‘as trustee’ nullifies a deed’s purported conveyance of property that the grantor holds in trust.”
 - The Court viewed the case as one of deed construction and found that clear intent from the plain language of the deed—which conveyed “all” of the 260.69-acre tract, necessarily including the trust’s interest—was to convey both her individual interest and the trust’s interest.

Conveyances in Representative Capacity (cont.)

- In *Grange v. Kayser*, 80 S.W.2d 1007, 1009 (Tex.Civ.App.–El Paso 1935), a nonresident purchased land in Texas with funds which were separate under the laws of his domicile but would be considered community property in Texas
 - The Court held that the status of the consideration paid for the land was determined by the law of the marital domicile. Therefore, the land in Texas became the husband's separate property.
 - Father left a will devising that property to his children; wife executed a quitclaim deed conveying to her sister all her right, title and interest in the Texas property
- Holding: wife was precluded from asserting any community interest in the land because the father by his will undertook to dispose of the land as his own.
 - The wife, undertaken by her four deeds to convey in her representative capacity the estate in the land, was estopped to assert that such estate did not pass

Retained Acreage Clauses

(Endeavor vs. Discovery)

Facts:

- Endeavor acquired oil and gas leases covering a 640-acre tract and the north half of an adjoining 640-acre tract to the south
- The leases contained retained acreage clauses and Endeavor drilled four wells on the leases
- After completing the wells, Endeavor filed certified proration plats with the RRC
 - The plats designated approximately 80 acres for each well
- After Endeavor's leases' primary terms expired, Patriot obtained leases on that expired acreage and later assigned them to Discovery
 - Discovery then drilled producing wells on that acreage, which led to the lawsuit

Retained Acreage Clauses (cont.)

Issues:

- Endeavor assigned 80 acres to each of four wells, and Discovery said the lease expired except as to those four proration units “assigned” to the wells.
- Endeavor argued that it was entitled to 160 acres per well because the leases’ references to “maximum producing allowable” meant that each proration unit automatically consists of the greatest amount of acreage permitted per RRC rules

Holding:

- Endeavor can retain only the lands within proration units “assigned to a well” as **specified in the lease**
 - In this case, that is 80 acres and not 160
- A retained acreage clause allows an operator to assign the amount of acreage “necessary to obtain the maximum allowable,” and if the well is not capable of producing at the maximum allowable rate, the Court’s language indicates that it may recognize a claim that the operator designated the “maximum allowable” acreage in bad faith
 - The operator must verify that additional acreage is actually necessary or required to achieve the maximum allowable

Lien Foreclosures

(Section 66.001)

- Sale of Property Subject to Oil or Gas Lease
- 66.001 (b) "Notwithstanding any other law, an oil or gas lease covering real property subject to a security instrument that has been foreclosed remains in effect after the foreclosure sale if the oil or gas lease has not terminated or expired on its own terms and was executed and recorded in the real property records of the county before the foreclosure sale."
- Therefore, if a lease was dated and filed of record prior to the foreclosure sale it is given statutory priority and will no longer be extinguished, even if it was recorded after the original mortgage
- Instead of lease forfeiture, the purchaser of the foreclosed property acquires the property subject to the lease, along with the right to receive lease royalty payments

Lien Foreclosures (cont.)

- However, with regard to tracts of land in which the surface and mineral estates have **not** been severed, Section 66.01(c) provides:
 - “the foreclosure sale terminates and extinguishes any right granted under the oil or gas lease for the lessee to use the surface of the real property to the extent that the security instrument under which the real property was foreclosed had priority over the rights of the lessee under the oil or gas lease”
 - Therefore, the right of “ingress and egress” granted under most any oil and gas lease is extinguished by foreclosure, and the operator loses the right to conduct surface operations on the foreclosed tract
- This leaves uncertain those situations where surface operations have commenced prior to the foreclosure. The lease could remain in effect, but the operator could lose its right to use the surface. Therefore, pursuant to Section 66.01(d):
 - lessees may seek to “contract around” Chapter 66 and obtain a subordination agreement that clearly reserves their surface rights in the event of foreclosure.

Catch-All Clauses and Conveyances

(Davis vs. Mueller)

Facts:

- The parties aligned as successor to Grantor and Grantee under a 1991 Deed
- Grantor conveyed mineral interest in vaguely described tracts, which did not satisfy the statute of frauds
- The list of tracts was followed by this sentence:
 - “Grantor agrees to execute any supplemental instrument requested by Grantee for a more complete or accurate description of said land”
- This was followed by a paragraph containing a Mother Hubbard clause and the following “general granting clause”:
 - “Grantor hereby conveys to Grantee all of the mineral, royalty, and overriding royalty interest owned by Grantor in Harrison County, whether or not same is herein above correctly described.”

Catch-All Clauses and Conveyances (cont.)

Issues:

- Grantor sought to avoid the effect of the 1991 Deed and asserted that the Deed was insufficient to satisfy the requirement of the Statute of Frauds that property conveyed be identified with reasonable certainty
- Grantee argued that the general granting clause was sufficient to pass title of all of Grantor's mineral interests in Harrison County

Holding:

- The general grant in the 1991 Deed was valid and unambiguous, conveying Grantor's title to Harrison County mineral interests to Grantee
- Establishes that a further assurances clause will not have the effect of making an otherwise certain grant uncertain

Transfer on Death Deed

(Chapter 114 of The Estates Code)

- Sec. 114.003. APPLICABILITY. This chapter applies to a transfer on death deed executed and acknowledged on or after September 1, 2015, by a transferor who dies on or after September 1, 2015
- Sec. 114.051. TRANSFER ON DEATH DEED AUTHORIZED. An individual may transfer the individual's interest in real property to one or more beneficiaries effective at the transferor's death by a transfer on death deed

Transfer on Death Deed (cont.)

- Sec. 114.055. REQUIREMENTS. To be effective, a transfer on death deed must:
 - (1) except as otherwise provided in Subdivision (2), contain the essential elements and formalities of a recordable deed;
 - (2) state that the transfer of an interest in real property to the designated beneficiary is to occur at the transferor's death; and
 - (3) be recorded before the transferor's death in the deed records in the county clerk's office of the county where the real property is located.

Transfer on Death Deed (cont.)

- Sec. 114.057. REVOCATION BY CERTAIN INSTRUMENTS; EFFECT OF WILL OR MARRIAGE DISSOLUTION.
(a) Subject to Subsections (d) and (e), an instrument is effective to revoke a recorded transfer on death deed, or any part of it, if the instrument:
 - (1) is one of the following:
 - (A) a subsequent transfer on death deed that revokes the preceding transfer on death deed or part of the deed expressly or by inconsistency; or
 - (B) except as provided by Subsection (b), an instrument of revocation that expressly revokes the transfer on death deed or part of the deed;
 - (2) is acknowledged by the transferor after the acknowledgment of the deed being revoked; and
 - (3) is recorded before the transferor's death in the deed records in the county clerk's office of the county where the deed being revoked is recorded.
 - (b) A will may not revoke or supersede a transfer on death deed.
 - (c) If a marriage between the transferor and a designated beneficiary is dissolved after a transfer on death deed is recorded, a final judgment of the court dissolving the marriage operates to revoke the transfer on death deed as to that designated beneficiary if notice of the judgment is recorded before the transferor's death in the deed records in the county clerk's office of the county where the deed is recorded, notwithstanding Section 111.052.
 - (d) If a transfer on death deed is made by more than one transferor, revocation by a transferor does not affect the deed as to the interest of another transferor who does not make that revocation.
 - (e) A transfer on death deed made by joint owners with right of survivorship is revoked only if it is revoked by all of the living joint owners.
 - (f) This section does not limit the effect of an inter vivos transfer of the real property.

Transfer on Death Deed (cont.)

- Sec. 114.101. EFFECT OF TRANSFER ON DEATH DEED DURING TRANSFEROR'S LIFE. During a transferor's life, a transfer on death deed does not:
- (1) affect an interest or right of the transferor or any other owner, including:
 - (A) the right to transfer or encumber the real property that is the subject of the deed;
 - (B) homestead rights in the real property, if applicable; and
 - (C) ad valorem tax exemptions, including exemptions for residence homestead, persons 65 years of age or older, persons with disabilities, and veterans;
- (2) affect an interest or right of a transferee of the real property that is the subject of the deed, even if the transferee has actual or constructive notice of the deed;
- (3) affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;
- (4) affect the transferor's or designated beneficiary's eligibility for any form of public assistance, subject to applicable federal law;
- (5) constitute a transfer triggering a "due on sale" or similar clause;
- (6) invoke statutory real estate notice or disclosure requirements;
- (7) create a legal or equitable interest in favor of the designated beneficiary; or
- (8) subject the real property to claims or process of a creditor of the designated beneficiary.

Transfer on Death Deed (cont.)

- Sec. 114.102. EFFECT OF SUBSEQUENT CONVEYANCE ON TRANSFER ON DEATH DEED. An otherwise valid transfer on death deed is void as to any interest in real property that is conveyed by the transferor during the transferor's lifetime after the transfer on death deed is executed and recorded if:
 - (1) a valid instrument conveying the interest is recorded in the deed records in the county clerk's office of the same county in which the transfer on death deed is recorded; and
 - (2) the recording of the instrument occurs before the transferor's death.

Transfer on Death Deed (cont.)

- Sec. 114.103. EFFECT OF TRANSFER ON DEATH DEED AT TRANSFEROR'S DEATH.
- (a) Except as otherwise provided in the transfer on death deed, this section, or any other statute or the common law of this state governing a decedent's estate, on the death of the transferor, the following rules apply to an interest in real property that is the subject of a transfer on death deed and owned by the transferor at death:
 - (1) if the designated beneficiary survives the transferor by 120 hours, the interest in the real property is transferred to the designated beneficiary in accordance with the deed;
 - (2) the share of any designated beneficiary that fails to survive the transferor by 120 hours lapses, notwithstanding Section 111.052, and is subject to and passes in accordance with Subchapter D, Chapter 255, as if the transfer on death deed were a devise made in a will; and
 - (3) subject to Subdivision (2), concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.
- (b) If a transferor is a joint owner with right of survivorship who is survived by one or more other joint owners, the real property that is the subject of the transfer on death deed belongs to the surviving joint owner or owners. If a transferor is a joint owner with right of survivorship who is the last surviving joint owner, the transfer on death deed is effective.
- (c) If a transfer on death deed is made by two or more transferors who are joint owners with right of survivorship, the last surviving joint owner may revoke the transfer on death deed subject to Section 114.057.
- (d) A transfer on death deed transfers real property without covenant of warranty of title even if the deed contains a contrary provision.