Top Ten Texas Oil & Gas Cases of 2020 - Part 1 of 3

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For the next three months, we will discuss significant oil and gas decisions from state courts in Texas during 2020. It is not intended to be a strict legal analysis, but rather a useful guide for landmen in their daily work. Therefore, a complete discussion of all legal analyses contained in the decisions are not always included.

1. Samson Expl., LLC v. Moak Mortgage & Investment Co., No. 09-18-00463-CV, 2020 WL 238538 (Tex. App.—Beaumont [9th] Jan. 16, 2020) (mem. op.)

This case considered the duties owed by a unit operator to an unleased mineral interest owner in tracts within the unit, but upon which no well is drilled or completed.

Samson owned leases in a pooled unit created by a 2012 unit designation. Moak did not own any interest within the boundaries of the unit at the time the unit was created. Samson was the designated operator of the unit, and Moak was not a party to the Operating Agreement governing the unit.

After the creation of the unit, certain leases located on tracts within the boundaries of the unit were terminated when the lessors' interests were foreclosed via a mortgage which had not been subordinated to the leases. Moak acquired the minerals on some tracts and took leases from third parties who had acquired minerals on other tracts. The unit designation was never amended to include Moak's mineral interests or leases. Samson drilled and completed two wells in the unit, neither of which had a surface or bottom hole location on or within 467 feet of any of the mineral interest tracts.

Moak alleged that it owned real property in the pooled unit and asserted claims for an accounting, conversion, unjust enrichment, negligence, and to quiet title. Moak relied on Wagner & Brown, Ltd. v. Sheppard, a 2008 Texas Supreme Court case, to argue the lessee pooled the "lands." As such, when a lease in the pooled unit terminated, the "lands" were still pooled. The trial court agreed and ruled that Moak's mineral interests were pooled because the leases described the lands pooled rather than leases pooled. Moak was, therefore, an unleased mineral co-tenant within the unit. The trial court rendered judgment that Moak take nothing on its claims to quiet title and for negligence, but found for Moak for conversion and unjust enrichment against Samson, entitling Moak to equitable damages in the amount of $43k. Samson appealed.

On appeal, the court determined that the Sheppard case was distinguishable. The original lease in Sheppard authorized pooling, including the reversionary interest. However, because the portions of land acquired by Moak were encumbered by deeds of trust prior to the execution of the leases, the legal and equitable estates had severed, and the original lessors never acquired equitable title because they defaulted under their respective loans. The original lessors lost their reversionary rights when their interests were foreclosed upon. Because the original lessors lost their reversionary rights and the leases were terminated by foreclosure, Samson no longer had the authority to pool any land or interest covered by the leases. Additionally, the court noted that a contractual relationship between Moak and Samson or between Moak and the other owners of mineral interests in the Unit, which would give Moak the right to minerals produced from the Unit, did not exist. Accordingly, the court held Samson had no obligation to pay royalties to Moak and reversed the trial court's rulings for Moak on its unjust enrichment and conversion claims.

Finally, the court found that equitable remedies were improper. Moak failed to prove a claim for unjust enrichment or conversion. Samson owed no duty to Moak as unleased mineral co-tenant with no interest in the pooled unit to offer an opportunity to ratify the pre-foreclosure mineral leases.

2. 2.Copano Energy, LLC, et al. v. Stanley Bujnoch, Life Estate, et al., 593 S.W.3d 721 (Tex. 2020)

In this case, the Texas Supreme Court examined whether a series of emails between a landowner and a pipeline company was sufficient to show the parties' intent to be bound by the essential terms of an easement agreement.

In 2011, the landowners granted a 30-foot wide easement to Copano for the construction, operation and maintenance of a 24-inch pipeline on their properties, and the pipeline was completed as agreed. In December 2012, a landman for Copano, contacted an attorney representing the Landowners to discuss a proposed second easement. A series of emails between the landman and the attorney in December culminated in a January 30, 2013 email in which Copano's landman wrote to the landowner's attorneys that: "pursuant to our conversation earlier, Copano agrees to pay your clients $70.00 per foot for the second 24-inch line it proposes to build." In response, the Landowner's attorney stated: "[i]n reliance on this representation we accept your offer and will tell our client you are authorized to proceed with the survey on their property…." In February and March, communications were sent to the landowners by a different, contract landman acting on behalf of Copano. Those letters contained terms which differed from those Copano and the landowners had previously agreed upon. The attorney for the landowners emailed Copano's in-house landman regarding the differing compensation proposals, telling him, "THIS IS NOT OUR DEAL[.] WHAT IS GOING ON? PLEASE LET ME KNOW." Copano's landman responded

via email, stating that he knew that was not what they had agreed to and that their "deal still stands."

Ultimately, an agreement on a second easement was never reduced to a formal writing, and the second pipeline was never built. In February 2014, the landowners sued Copano for breach of contract, alleging a contract to sell an easement to the landowners for $70 per foot. Copano moved for summary judgment, arguing in part that the statute of frauds barred the contract claim. The trial court granted summary judgment in Copano's favor. The court of appeals reversed summary judgment on the breach of contract claim. Copano petitioned the Texas Supreme Court for review, and it granted the petition.

An easement is an interest in real estate, and therefore, a contract for the sale of an easement is subject to the statute of frauds. To satisfy the statute of frauds, there must be a written memorandum which is complete within itself in every material detail, and which contains all of the essential elements of the agreement, so that the contract can be ascertained from the writings without resorting to oral testimony. Although multiple documents can comprise a single written contract, when considering multiple writings proffered as a single contract, the essential elements of the agreement must still be evident from the writings themselves, without resorting to oral testimony. The court held that the writings described above and relied upon by the landowners, even when considered together, do not satisfy the statute of frauds.

The court explained that the January 30 emails contain an offer and an acceptance, but they did not say what was being offered or accepted. Other than the price per foot and the pipeline's size, the January 30 emails contain none of the "essential elements of the agreement." The court reasoned that the landman's January 30 email indicates that other terms of the deal may have been discussed in "our conversation earlier"; however, none of the writings tell anything about that conversation.

Although the landowners conceded the January 30 emails did not themselves satisfy the statute of frauds on their own, they claimed to find the other essential terms—such as the easement's location and size—in the prior December email from the landman to the landowner. The court explained that the landman's December emails did not supply the missing essential elements for two reasons: (i) the emails themselves reflected no agreement to be bound by the terms they described; and (ii) no later writing evidenced an agreement to be bound by the terms stated in those earlier emails.

When it is alleged that an email amounts to a binding contract on the sender, the email's context must be carefully examined to determine whether it truly evidences the "grave intent to be legally bound." Here, neither the context of Copano's December emails, nor their verbiage reflected an intent to bind Copano to the easement terms stated in the emails. The entire email thread anticipates a future, in-person meeting at which the terms the landman's email described might or might not actually be offered. The future-tense phrasing of the December emails further confirms the absence of an agreement to be bound by the terms stated therein. Texas courts have confirmed that such writings couched in futuristic language contemplating later negotiations do not satisfy the statute of frauds. The court conceded that the earlier emails could conceivably be used to supply essential terms if another writing confirmed that the parties later agreed to the terms stated in the forward-looking writing; however, a fundamentally "essential element in the contract," without which no contact can exists, is the parties' intent to be legally bound to the contract's terms. Nothing in the January 30 emails reflect an agreement to the terms described in the earlier email. Although the January 30 email suggests there was a "conversation earlier," there was no writing that indicated what was discussed in that conversation or what easement terms the landman had in mind when he used the words, "[p]ursuant to our conversation earlier." Therefore, there was no way of knowing from the writings whether the parties agreed in "our conversation earlier"—and therefore in the January 30 emails—to the easement terms described in the earlier December emails.

To satisfy the statute of frauds, the writing or writings "must contain the essential terms of a contract, expressed with such certainty and clarity that it may be understood without recourse to parol evidence to show the intention of the parties." Notably, the landowners sought support from their attorney's affidavit wherein he stated that Copano's offered the alleged easement terms both through email and at an in-person conversation. The court reasoned, the need for witness testimony to explain that "our conversation earlier" recapitulated the easement terms contained in earlier emails demonstrates that the proffered writings do not "contain the essential terms of the contract . . . without recourse to parol evidence to show the intention of the parties." The court further concluded that none of the other later writings (the February letters and emails and the March emails) made the essential showing that Copano ever agreed to the easement terms described in forward-looking language in the earlier emails. As a result, under the statute of frauds, the landowners' proffered contract was not enforceable and Copano could not be held liable for breach of it.

3. Piranha Partners, et al. v. Joe B. Neuhoff, et al., 596 S.W.3d 740 (Tex. 2020)

In this case, the Texas Supreme Court rejected the application of arbitrary rules of construction and surrounding circumstances to construe an assignment of overriding royalty interest; rather, the court looked to the entirety of the assignment itself and harmonized all of its words.

In 1975, Neuhoff Oil & Gas purchased a working interest in the Puryear Lease, which covered all of the minerals under a tract of land in Wheeler County, Texas referred to as Section 28. A few years

later, Neuhoff Oil assigned its interest in the Puryear Lease, but reserved for itself a 3.75 percent overriding royalty interest on all production under the lease. The Puryear B #1-28, located in the NW/4 of Section was the only well on the Puryear Lease until 1999. Neuhoff Oil received royalty payments on production from said well until it sold its overriding royalty interest at auction. Piranha Partners had the winning bid. To effectuate the sale, Neuhoff Oil and Piranha executed an Assignment of Overriding Royalty Interests and Oil and Gas Leases. The 3.75 percent overriding royalty on production from the Puryear B #1-28 well was then paid to Piranha. A few years later, Neuhoff Oil & Gas went out of business and assigned all of its remaining assets to individuals in the Neuhoff family. Over time, additional wells were drilled on Section 28 (including a well on the NW/4). The operator paid the 3.75 percent overriding royalty from the new wells to the Neuhoffs because it thought Neuhoff Oil only assigned its interest insofar as it covered the Puryear B #1-28 well. However, in 2012, the operator obtained title opinions indicating that Piranha owned the overriding royalty interest on all production under the Puryear Lease, and not just from the Puryear B #1-28 well. Accordingly, the operator retroactively paid Piranha the overriding royalties due on all of Section 28 and demanded a refund from the Neuhoffs.

To no surprise, the Neuhoffs sued claiming Neuhoff Oil assigned Piranha its overriding royalty only in production from the Puryear B #1-28 well. On cross-motions for summary judgment, the trial court agreed with Piranha that the overriding royalty sold by Neuhoff covered all of Section 28. The court of appeals disagreed with both the trial court and the Neuhoffs, holding that Neuhoff Oil sold the overriding royalty in production from all of the NW/4 of Section 28. The issue the Texas Supreme Court had to decide was whether the Assignment conveyed Neuhoff's interest only in production from the Puryear B #1-28 well, in production from any well drilled on the NW/4, or in all production under the Puryear Lease. The court held that the Assignment unambiguously conveyed Piranha a 3.75 percent overriding royalty interest in all production under the Puryear Lease.

The court's first task was to determine whether the Assignment was ambiguous, considering its language as a whole in light of well-settled construction principles and the relevant surrounding circumstances. In doing so, the court looks not for the parties' actual intent but for their intent as expressed in the Assignment. The court considered the entire Assignment and, if possible, resolve any conflicts by harmonizing the Assignment's provisions, rather than applying arbitrary or mechanical default rules. The Assignment's granting clause in Section I provided:

> [Neuhoff Oil] does hereby assign, sell and convey unto [Piranha] . . . without warranty or covenant of title, express or implied, subject to the limitations, conditions, reservations and exceptions hereinafter set forth . . . all of [Neuhoff Oil's] right, title and interest in and to the properties described in Exhibit "A" (the "Properties").

After the granting clause, but still in Section I, the Assignment provided:

> All oil and gas leases, mineral fee properties or other interest, INSOFAR AND ONLY INSOFAR AS set out in Exhibit A . . . whether said interest consists of leasehold interest, overriding royalty interest, or both….

The entirety of Exhibit A's description appeared as follows:

<u>Lands and Associated Well(s)</u>: Puryear #1-28
Wheeler County, Texas
NW/4, Section 28, Block A-3, HG&N Ry Co. Survey

<u>Oil and Gas Lease(s)/Farmout Agreement(s):</u>

Oil & Gas Lease(s)
Lessor: [the Puryears]
Lessee: Marie Lister
Recorded: Volume 297, Page 818

Piranha argued that the reference to the lease identified the interest assigned, being all of the overriding royalties due under the Puryear Lease. Conversely, although the Neuhoffs argued at trial that the reference to the well identified the interest conveyed (only the overriding royalties due from the Puryear B #1-28 well), on appeal the Neuhoffs agreed with the court of appeal and argued that the reference to the lands identifies the interest conveyed, being overriding royalties due from production from the NW/4 of Section 28. The parties presented argument on which rules of contract construction the court should apply, and spent considerable effort describing the circumstances of the sale – in a clearinghouse auction—and why those circumstances supported each respective party's arguments.

The court set aside inapplicable rules of construction and unhelpful surrounding circumstances and looked to the terms of the Assignment. The court reasoned that its "holistic and harmonizing approach" to construe the Assignment required it to consider all of the Assignment's provisions and prohibits it from giving greater weight to the granting clause or to any other particular types of clauses. The court concluded the Assignment's provisions unambiguously demonstrated the intent to convey all of Neuhoff Oil's overriding royalty interest in the Puryear Lease, covering all of Section 28. First, Paragraph 1 of Section 1 begins by describing "All oil and gas leases, mineral fee properties or other interests, INSOFAR AND ONLY INSOFAR AS set out in Exhibit A . . . whether said interest consists of leasehold interest, overriding royalty interest, or both…." Although this clause points to Exhibit A to determine the interest conveyed, the rest of the sentence provides, "which [interest] shall include any working interest, leasehold rights, overriding royalty interests and reversionary rights held by [Neuhoff Oil], as of the Effective Date. Second, Paragraph 2 of Section 1 confirms the conveyance included:

All presently existing contracts to the extent they are assignable and to the extent they affect the Leases, including agreements for the sale or purchase of oil, gas and associated hydrocarbons,

division orders, unit agreements, operating agreements, and all other contracts and agreements arising from, connected with, or attributable to the production therefrom.

By conveying existing contracts to the extent, they affect "the Leases," as opposed to just the well or the land, indicates that Neuhoff Oil conveyed its entire interest under the Puryear Lease. Finally, Paragraphs 1 and 3 of Section II reveals the parties' intent. Paragraph 1 states that the "overriding royalty interest(s) herein assigned, if any, are payable out of and only out of the oil and gas produced, saved and marketed pursuant to the terms and provisions of the oil and gas leases described in EXHIBIT A." Paragraph 3 provided that if "[Neuhoff Oil's] interest(s) in the oil and gas lease(s) described in EXHIBIT A is less than the entire fee title, then the interest(s) assigned herein shall be reduced proportionately." The court explained that these paragraphs pointed directly to the leases described in Exhibit A and confirm that the interest assigned was the interest payable from the production under all of the Puryear Lease. The court reasoned that in construing the Assignment in its entirety and harmonizing all of its provisions, the only reasonable construction is that Neuhoff Oil conveyed its 3.75 percent overriding royalty interest in all production under the Puryear Lease. Therefore, the court reversed the court of appeals' judgment, reinstated the trial court's summary judgment, and held that the Assignment unambiguously conveyed to Piranha all of the interest that Neuhoff Oil owned at the time of the conveyance.

In a dissenting opinion, two justices would have found the property description ambiguous, remand to a jury to "break the logjam," and let each side emphasize the surrounding circumstances in favor of its interpretation. When competing interpretations are reasonable and no context favors one over another, the contract is ambiguous. The dissent relied on "… INSOFAR AND ONLY INSOFAR as set out in Exhibit A …[,]" which described the NW/4 and the well. The majority, they say, ignored those descriptive limitations. Because the description contained an expressed geographic reference to the NW/4 the majority's construction was the least reasonable of the three readings. That the court should take a holistic and harmonizing approach to deed construction does not also mean that all provisions of the document will be helpful in interpreting an ambiguous provision.

STAY TUNED …

Next month, we will discuss three more cases that may have an impact on your daily work. We hope this series will help you address the legal issues presented by modern oil and gas activities. As always, if you believe one of these decisions might have a bearing on an action you are about to take or a decision you might make, consult a lawyer.

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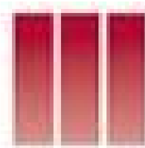
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