



In a case of first impression, on December 19, 2018, the San Antonio Court of Appeals held that Section 5.029 of the Texas Property Code (the “Material Correction Statute”) requires that correction instruments be executed by a party’s heirs, successors, or assigns as opposed to the original party to a recorded instrument if the property interest conveyed in the original instrument has been assigned or conveyed by an original party to that party’s heirs, successors, or assigns.

The Facts

In 2005, Broadway Bank, Trustee of the Mary Frances Evers Trust executed a mineral deed (the “2005 Mineral Deed”), which conveyed mineral interests in DeWitt and Gonzales Counties to Eben John Evers (“John”) in fee simple. In 2006, the Bank executed a correction mineral deed that attempted to change the fee mineral interest conveyed to John to a life estate interest only, but John did not sign this correction instrument.

In 2012, John executed a series of royalty deeds conveying his oil and gas interests in DeWitt and Gonzales Counties to Yates Energy Corporation. In 2013, Broadway Bank, John, and all of the original grantees of the 2005 Mineral Deed executed a second correction mineral deed (the “2013 Correction Deed”), which again attempted to change the fee mineral interest conveyed to John in the 2005 Mineral Deed to a life estate interest only. But, the 2013 Correction Deed was not executed by Yates Energy or any of its successors and assigns.

The Dispute

After John died, the parties began to dispute whether the royalty interests John conveyed to Yates Energy vested in the remaindermen identified in the 2013 Correction Deed or whether Yates Energy and its successors had obtained a fee interest. Ultimately, Broadway Bank brought suit against Yates Energy and its successors. The probate court granted summary judgment in favor of Broadway Bank and declared that the 2013 Correction Deed was valid and conveyed only a life estate to John. Yates Energy appealed, contending that the 2013 Correction Deed did not comply with the requirements of the Material Correction Statute.

Texas’ Correction Deed Statute

Historically, Texas courts allowed parties to use correction deeds in limited circumstances to remedy defects and “facial imperfections” in original instruments. But in 2009, the Texas Supreme Court brought into question the scope of corrections permitted by the use of correction deeds. In *Myrad Properties, Inc. v. La Salle Bank National Ass’n*, the Court held that a correction deed could not convey additional property excluded from the original instrument. In 2011, the Texas Legislature responded with the Correction Deed Statute (Texas Property Code §§ 5.027-5.030) to enlarge the instances in which a correction instrument could be executed. The Correction Deed Statute provides that correction deeds may correct ambiguities or errors in recorded original real property transfers, including ambiguities or errors that relate to the description of or extent of an interest conveyed. Correction instruments that properly comply¹ with either the Non-Material Correction Statute (§ 5.028) or the Material Correction Statute relate back to the date of the recorded original and effectively “replace” the original instrument.

¹ And correction instruments recorded before September 1, 2011, that substantially comply with either the Non-Material Correction Statute or the Material Correction Statute.

DALLAS

1601 Elm Street, Suite 4600
Dallas, TX 75201
T: 214.954.4135 F: 214.953.1332

HOUSTON

1300 Post Oak Blvd., Suite 2000
Houston, TX 77056
T: 713.986.7000 F: 713.986.7100

Who Must Sign a Material Correction Deed?

It was undisputed by the parties that changing the interests conveyed in the 2005 Mineral Deed from fee simple to a life estate was a material correction and it was also undisputed by the parties that the first attempt at correcting the 2005 Mineral Deed failed because the grantees did not join in the correction. Thus, the key question before the Court of Appeals was whether Yates Energy and its successors and assigns were necessary parties to the 2013 Correction Mineral Deed.

Section 5.029(b) states:

A correction instrument under this section *must* be:

- (1) executed by each party to the recorded original instrument of conveyance the correction instrument is executed to correct or, if applicable, a party's heirs, successors or assigns, and
- (2) recorded in each county in which the original instrument of conveyance that is being corrected is recorded.

The Court of Appeals reversed the probate court's judgment and determined that the plain language of the statute requires that when a party to an original instrument conveys an interest to another party, that third party—not the original party—must execute any correction instrument that makes a material correction. Thus, the 2013 Correction Mineral Deed was required to be signed by the successors to Broadway Bank (John and the other grantees under the 2005 Mineral Deed) as well as the successors and assigns to John, being Yates Energy and its successors and assigns.

Practical Considerations

This interpretation was expected by real estate and oil and gas practitioners and further highlights the hazards inherent in utilizing the Correction Deed Statute to correct errors and ambiguities in original recorded instruments of conveyance. Going forward, real estate and oil and gas land professionals should exercise caution in determining 1) whether a correction is material or non-material, and 2) who exactly should execute a correction instrument.

ABOUT THE AUTHORS



Ryan Sears - Partner, Oil & Gas - rsears@grayreed.com

Ryan Sears serves as outside general counsel for both domestic and international energy clients, focused primarily on structuring upstream and midstream transactions and advising on the various issues that typically arise during the exploration and production of oil and gas.



Cole Robinson - Associate, Real Estate - crobinson@grayreed.com

Cole Robinson focuses his practice on the acquisition, disposition, development financing and leasing of commercial properties located in Texas and many other states across the country. His clients range from small and mid-size local businesses to multi-national corporations, including developers, landowners, investors, landlords, tenants and lenders.



Ethan Wood - Associate, Oil & Gas - ewood@grayreed.com

Ethan Wood advises upstream and midstream energy clients on the entire range of transactions and issues that arise during oil and gas operations in Texas and many states across the country. He has guided clients through a variety of multi-million-dollar deals and other operational transactions, with a strong emphasis on the acquisition, divestiture and financing of producing assets, private securities offerings, oil and gas leases and joint operating agreements.

DALLAS

1601 Elm Street, Suite 4600
Dallas, TX 75201

T: 214.954.4135 F: 214.953.1332

HOUSTON

1300 Post Oak Blvd., Suite 2000
Houston, TX 77056

T: 713.986.7000 F: 713.986.7100