Legal Issues in Modern Oil and Gas:

A Recap of the Top 10 Decisions from Texas Courts in 2024

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NORTEX MINS. LP V. BLACKBEARD OPERATING LLC[1]

Nov. 9, 2023

Issue

Does a corporate merger constitute a "transfer of leases" under the limited assignment provision in oil and gas leases in Texas?

Facts

The case involved oil and gas leases covering 27,000 acres of the Alliance Airport in Tarrant County, Texas. These leases contained a limited assignment provision that restricted the lessee's ability to assign or transfer lease interests without the lessor's consent, except for certain "Permitted Transfers." The provision allowed transfers without consent if they were part of a merger, sale of membership interests or sale of substantially all assets.

A series of transactions occurred involving the sale of equity in one company through mergers. The lessor argued that these transactions required consent under the limited assignment provision. The lessee contended that no transfer of lease interests had occurred and, thus, no consent was required.

Result

The Fort Worth Court of Appeals held that the sale of equity through mergers did not constitute a transfer of an interest in the leases and, therefore, did not trigger the lessor's consent rights.

The court's analysis ended after determining that no transfer had occurred, without needing to consider whether it was a "Permitted Transfer" or if the provision was an unenforceable restraint on alienation. The decision relied on the plain language of the unambiguous limited assignment provision and Texas Business Organization Code Section

1 No. 02-23-00027-CV, 2023 WL 7401052 (Tex. App. — Fort Worth 2023).

10.008(a)(2)(C), which states that the effect of a merger is not a transfer of title. The court refused to interpret the provision as requiring consent for a change of control, as the leases contained no such provision. The lessor's arguments focusing on the "Permitted Transfers" clause and the phrase "an interest in this lease" were rejected, as they ignored the fundamental requirement of a transfer, which did not occur in this case.

This decision clarifies that, in Texas, a merger does not constitute a "transfer of leases" under limited assignment provisions in oil and gas leases, absent specific language to the contrary.

DARKHORSE WATER LP V. BIRCH OPERATIONS INC.[2]

Dec. 21, 2023;
petition for review filed.

Issue

Does a water well operator have a sufficient property interest to bring a quiet title action against a drilling company that allegedly interfered with the operator's rights by drilling a saltwater disposal well on the property?

Facts

A water well operator entered into an agreement for saltwater reclamation, treatment, purchase and disposal with a landowner who held a 20% interest in a tract of land in Martin County, Texas. This agreement was promptly recorded in the public records. Three weeks prior, the landowner and other co-owners had signed a surface lease agreement with two drilling companies, which was not recorded until 19 months later.

The saltwater disposal agreement granted exclusive rights to: drill for, produce, treat, and transport water for sale; utilize the property for saltwater and waste disposal from oil and gas leases; drill and equip various types of wells; use facilities for water treatment and reclamation; and construct pipelines and roads.

The water well operator filed a complaint against the drilling companies for quiet title and accounting, alleging interference with its property interest. The District Court granted the drilling companies' motion for summary judgment and denied the water well operator's competing motion. The water well operator appealed.

Result

The Eastland Court of Appeals held that the saltwater disposal agreement granted the water well operator exclusive rights to drill for, produce, treat and transport water for commercial sale as well as utilize the property for disposal of saltwater and other waste from oil and gas leases. This conveyance of exclusive rights to the subsurface reservoir storage space was deemed similar to a determinable fee interest in minerals, which Texas courts have recognized as a conveyable interest.

To qualify as a bona fide purchaser, the water well operator needed to demonstrate that it acquired the property interest in good faith, for value and without notice of any third-party claims or interests. The court found insufficient evidence to establish this status as a matter of law. A remand was necessary because being a bona fide purchaser is an affirmative defense that could protect an unsuspecting buyer from third-party claims if the buyer had no knowledge of such claims.

The court emphasized that the form of an instrument affecting real property in Texas does not determine the interest conveyed; rather, it is the content of the document that matters. The court also highlighted the importance of promptly recording agreements affecting real property in public records. The court noted that the drilling companies could have potentially avoided this dispute by timely recording their agreement in the county public records.

ETC TIGER PIPELINE LLC V. DT MIDSTREAM INC.[3]

April 10, 2024

Issue

Does an "exclusive" pipeline servitude grant the right to prohibit underground crossings by other pipelines?

Facts

The owner of an existing natural gas pipeline sought injunctive relief against a company attempting to construct a new pipeline that would cross under and perpendicular to its existing pipeline. The owner argued that its servitude, described as "exclusive," prohibited any crossings of its pipeline because it granted the owner exclusive control over the servitude area. The District Court granted a preliminary injunction in favor of the existing pipeline owner, preventing the construction of the crossing pipeline. The company seeking to construct the new pipeline appealed the decision.

Result

The Court of Appeals reversed the District Court's grant of a preliminary injunction with three key holdings.

First, the servitude was a "right of use," not a "predial servitude." The court determined that the servitude in question was a personal servitude classified as a "right of use" under Louisiana law, rather than a predial servitude. A right of use allows specific rights for the benefit of a person or entity but does not grant dominion over the land itself. As such, it did not give the owner absolute control over all uses of the servitude area.

Second, the servitude did not prohibit underground crossings or

2 681 S.W.3d 900 (Tex. App. — Eastland 2023, pet. filed).

3 55,534 (La. App. 2 Cir. April 10, 2024), 384 So. 3d 458, *reh'g denied* (May 16, 2024), *writ denied*, 2024-00763 (La. Oct. 8, 2024), 394 So. 3d 271.

extend to infinite depth. The court found that while the servitude granted certain rights to operate and maintain the existing pipeline, it did not explicitly prohibit other parties from constructing pipelines at different depths or crossing beneath it. The court rejected the argument that an "exclusive" servitude automatically extended to infinite depths or prohibited all other uses by third parties.

Third, the owner was not entitled to a preliminary injunction. Because the servitude did not grant exclusive control over all potential uses of the subsurface area, including underground crossings, the court held that there was no legal basis for enjoining the construction of the crossing pipeline.

The concurrence provided additional reasons, emphasizing that granting exclusive rights beyond what was explicitly stated in the servitude would improperly expand its scope.

Finally, the court clarified that an "exclusive" right-of-use servitude for a natural gas pipeline does not inherently prohibit other parties from constructing pipelines that cross beneath or near it unless such restrictions are explicitly stated in the servitude agreement.

PRUETT V. RIVER LAND HOLDINGS LLC[4]

April 24, 2024

Issue

Can the Texas Railroad Commission adjudicate questions of title?

Facts

In 2001 Stephen Pruett acquired 323 acres and his mother acquired 194 acres of an original 550-acre tract in Milam County, Texas, which was burdened by an oil and gas lease. In 2021, River Land purchased the 194 acres. The deed reserved "any oil and gas leases to the extent that these remain viable and in effect."

River Land sued for a declaration that the lease had terminated as to the 194 acres in accordance with the cessation of production clause. River Land claimed that oil production had ceased for more than 60 days and that Pruett was judicially estopped from denying the lease had terminated because he had taken a contrary position in a 2008 lawsuit with then-operator Smith. The trial court granted summary judgement for River Lands, declaring the lease terminated.

On appeal, Pruett contended there was a genuine issue of material fact regarding cessation of production, requiring a reversal of summary judgment. River Land introduced commission records showing that no production had been reported by any operator of record for more than five years. Pruett claimed that when he acquired the 323 acres, he became the sole owner of certain wells that he self-operated to produce every two months from 2005 to 2012. He asserted that in 2012 Jet Tex obtained a P-4 and began to produce and sell oil from those wells on a profitable basis. Pruett routinely pumped oil from the wells using portable generators, stored the oil in a tank battery and produced gauge reports showing 391 barrels on hand in December 2011, and thereafter the oil was stolen.

River Land said those claims failed to create a fact issue as to production because Smith, not Jet Tex or Pruett, was recognized by the commission as operator of the wells at the time of the alleged operations and any production sold by Jet Tex during that time was illegal and could not constitute production under the lease.

Result

The Court of Appeals disagreed with the trial court and held that whether Jet Tex was legally entitled to engage in operations is a property rights issue. The commission has no authority to determine ownership of land or property rights. Thus, the commission's records reflecting Smith as operator of record were not dispositive of whether Jet Tex was legally entitled to operate the lease.

While the court did assume, without deciding, that production by a nonregistered operator is unmarketable as a matter of law,

4 No. 03-22-00478-CV, 2024 WL 1745652 (Tex. App .— Austin 2024).

Pruett had satisfied his burden to show that there were genuine issues of material fact. Further, the prudent operator test does not apply where there is total cessation of production for the number of days stated in the cessation-of-production clause. Cessation in paying quantities and total cessation are independent grounds for seeking termination of an oil and gas lease.

Lastly, River Land's summary judgment also failed because there was no evidence as to what time frame would constitute a reasonable time for measuring profitability and whether the wells were profitable during that time. Accordingly, the court reversed and remanded the case to the trial court.

With respect to judicial estoppel, River Land argued that in the 2008 lawsuit Pruett sought a declaration that the 1976 lease had terminated and was therefore now estopped from claiming a contrary position. However, the court could not conclude that River Land met its burden to conclusively establish that Pruitt successfully maintained his prior position, as there was no evidence that a final judgment that the lease terminated was signed by the court in that case.

CARL V. HILCORP ENERGY CO.[5]
May 17, 2024

Issue

Does a lease's "off-premises use" clause and "free use" clause alter the royalty owners' obligation to bear postproduction costs when the lease specifies an "at-the-well" royalty?

Facts

The royalty owners disputed Hilcorp Energy Co.'s method of calculating royalties on gas used off-premises for postproduction activities. The lease required Hilcorp to pay royalties "on gas ... produced from said land and sold or used off the premises ... the market value at the well of one-eighth of the gas so sold or used." It also included a "free use" clause allowing Hilcorp "free use of ... gas ... for all operations hereunder." Hilcorp deducted the volume of gas used for off-premises postproduction activities from the total volume used to calculate royalties, considering it a postproduction cost. The royalty owners argued this practice violated the lease terms, particularly the "off-premises use" and "free use" clauses.

5 689 S.W.3d 894 (Tex. 2024).

Result

The Texas Supreme Court held the following:

1. The "at-the-well" royalty provision requires royalty owners to bear their proportionate share of postproduction costs, including the value of gas used for off-premises postproduction activities.
2. The "off-premises use" clause requiring royalties on all gas "sold or used off the premises" does not override the "at-the-well" royalty provision or alter the royalty owners' obligation to share postproduction costs.
3. The "free use" clause is irrelevant to the dispute and does not impact the royalty owners' obligation to bear postproduction costs under an "at-the-well" royalty.
4. Hilcorp's method of accounting for postproduction costs by subtracting the volume of gas used in off-premises postproduction activities from the royalty calculation is permissible under the lease terms.

The court emphasized that lease interpretation should be based on specific language rather than general labels like "off-lease-use-of-gas" or "free-on-lease-use" clauses. This decision reaffirms that holders of "at-the-well" royalties must bear their share of postproduction costs, even when gas is used off-premises for postproduction activities.

The court's ruling clarifies that the "at-the-well" language in the royalty clause sets the royalty valuation point and allows for the deduction of postproduction costs, including the value of gas used off-premises for postproduction activities. The decision also rejects the argument that the "free use" clause changes the royalty owners' obligation to bear postproduction costs, stating that it merely reiterates the longstanding rule that an "at-the-well" royalty bears its usual share of such costs.

OCCIDENTAL PERMIAN LTD. V. CITATION 2002 INV. LLC[6]

May 17, 2024

Issue

Did Shell effectively reserve deep rights by including footage depths and geological formations as a distinct column on Exhibit A to an assignment?

Facts

A 1987 assignment from Shell Western E&P Inc. to Citation of a large number of properties contained the following granting clauses:

1. "all right, title and interest in the ... leasehold estates described in EXHIBIT A."
2. "all right, title and interest in contracts ... including, but not limited to, ... rights above or below certain footage depths or geological formations, affecting the property described in EXHIBIT A."
3. "It is the intent of this assignment to ... convey ... all rights and interests now owned by Shell Western ... regardless of whether same may be incorrectly described or omitted from Exhibit A."

Additionally, the attached Exhibit A contained six columns describing permits from the surface to the base of certain formations. The assignment further included several "subject to" clauses.

Occidental Permian claimed Shell Western reserved deep rights interests based upon the depths provided in "Column IV" when it executed the 1987 Shell–Citation assignment and that those reserved interests were later assigned by Shell Western to Oxy. Citation, on the other hand, claimed there was no reservation of deep rights.

Result

The Texas Supreme Court, in affirming the Court of Appeals, held that the assignment unambiguously conveyed all rights, title and interests — by assigning overlapping property interests, overarching leasehold mineral estates, tracts within those leases with depth applications and smaller property interests encompassing larger property interests — with no express reservation of the property beyond the smaller interests.

The court provided four main takeaways: First, the interpretation of an unambiguous contract is a question of law. The court's job was to consider the entire agreement and, to the extent possible, resolve conflicts by harmonizing the provisions so as to give effect to all provisions so that none will be rendered meaningless.

Second, the court considered the entire conveyance together with Exhibit A to conclude that the assignor Shell (predecessor to Oxy) conveyed its entire ownership in the leasehold without reserving an interest in portions outside identified tracts within the leases. The leases were the significant interest described in Exhibit A, and Shell intended to convey all rights inherent in the leases to Citation.

Third, the court declined to disregard the third granting clause as an overly broad Mother Hubbard clause. Mother Hubbard clauses are not intended to convey significant property interest not adequately described in the deed. However, the court held that it was not a Mother Hubbard clause at all. It was merely a general grant or conveyance, and it could not be read as covering only overlooked interests.

Fourth, the subject-to clauses did not limit the grant. Such clauses are widely used for purposes other than their ordinary meaning of subordinate to, subservient to or limited by. An agreement may be subject to a term that does not limit the scope of the conveyance but instead notifies the grantee of a right or obligation attendant to the property conveyed.

One might be inclined to treat this case as a lesson in sloppy

6 689 S.W.3d 899 (Tex. 2024).

drafting, but perhaps a better way is to see property descriptions in Exhibits as a hazard that comes with such a complex transaction. If there's enough at stake, the drafter should expect that a future reading of such an agreement will be by a party who is looking to challenge the conveyance.

MONTGOMERY, TR. OF TRI-MONT IRREVOCABLE TRUSTS V. ES3 MINS. LLC[7]

May 30, 2024

Issue

Does a 1955 deed reserving "one fourth (1/4) of the landowners' usual one eighth (1/8) royalty" create a fixed or floating nonparticipating royalty interest?

General Rules of Construction

Before diving into the details, we will describe the pattern Texas courts rely on to resolve fixed or floating royalty disputes. These are general rules of construction one sees time after time in these cases:

- To the extent possible, apparent inconsistencies or contradictions must be harmonized by construing the document as a whole. The court will consider the entire document, not just each party's favorite parts.
- To discern the parties' intent, words and phrases of the instrument must be construed together and in context, not in isolation.
- Words and phrases generally bear their ordinary meaning unless the context supports a technical meaning or different understanding.
- The text of an instrument retains the same meaning today that it had when it was drafted.
- When faced with a double fraction involving 1/8, the court is not to give the fraction its arithmetical meaning; rather, evaluation of conveyances and reservations executed in the "early to mid-20th century" — whenever that was; this deed was in 1955 — begins with the presumption that 1/8 reflects the entire mineral estate, not just 1/8.
- The estate misconception theory refers to the prevalent mistaken belief during that time that a lessor reserving a 1/8 royalty only retained a 1/8 interest in the minerals rather than the entire mineral estate in fee simple determinable with the possibility of reverter.
- Because of the presumption, treating 1/8 as a placeholder for future royalties generally results in a floating royalty interest.
- The presumption is "readily and generally" rebuttable, but the court must examine the entire instrument to determine whether the text rebuts the presumption.
- Although not present in this case, courts often consider the presumed grant doctrine. Did the parties historically treat the deed as granting or reserving one fraction even though the words said another.

Facts

The dispute was over a 1955 deed with language stating: "The grantors … exclude from this conveyance, a [NPRI] of one fourth (1/4) of the landowners' usual one eighth (1/8) royalty." The case centered on whether this reservation created a fixed 1/32 royalty or a floating 1/4 royalty that would adjust based on future leases.

Because the conveyance used a double fraction involving 1/8, the court began with the rebuttable presumption that the 1/8 was a placeholder for the standard royalty and not a set arithmetical value. The court concluded that the deed reserved a floating 1/4 NPRI in existing and future leases.

Appellees relied on six clauses in the deed that they argued rebutted the floating presumption because they established that the grantors were under no misconception about the extent of their ownership of the mineral estate. The court was not convinced. These exceptions were too far afield from the granting language for the conclusions based on the granting language to be rebutted.

Result

The deed reserved a floating 1/4 NPRI in existing and future leases. The court began with the rebuttable presumption that 1/8 was a placeholder for the standard royalty, not a set arithmetical value.

7 697 S.W.3d 397 (Tex. App. — El Paso 2024).

These "rules" remain the same even where the interests to be conveyed or reserved are described in two — or even more — seemingly different or even contradictory ways, often scattered throughout the instrument. The court then has to engage in the additional task of harmonizing the different clauses, which is not easy to accomplish in many cases.

AMMONITE OIL & GAS CORP. V. R.R. COMM'N OF TEXAS[8]

June 28, 2024

Issue

Were Ammonite's voluntary pooling offers prior to a Mineral Interest Pooling Act application fair and reasonable?

Facts

Ammonite held a Texas lease covering riverbed acreage in the Eagle Ford Shale. EOG Resources, Inc. drilled 16 wells on adjacent tracts on both sides of Ammonite's tract. Ammonite offered to voluntarily pool its acreage with EOG's, but EOG rejected the offer. Ammonite applied to the Railroad Commission of Texas to force-pool its tract pursuant to the MIPA.

The commission dismissed Ammonite's applications based on several findings of fact and conclusions of law, but the primary conclusion at issue was that Ammonite failed to make a "fair and reasonable offer" to voluntarily pool as required by the MIPA.

Result

The court held that the commission's conclusion that Ammonite failed to make a fair and reasonable offer to voluntarily pool was reasonable.

In Texas, the commission must dismiss a MIPA forced-pooling application if it finds that a fair and reasonable offer to pool voluntarily has not been made. The commission rejected the MIPA forced-pooling application because Ammonite failed to make a fair and reasonable offer and forced pooling would not prevent waste, protect correlative rights or require the drilling of unnecessary wells.

The MIPA does not define a fair and reasonable offer. A decision on whether an offer is "fair and reasonable" is left to the discretion of the commission and its decision must be supported only by substantial evidence. The court gives significant deference to the agency.

Here, the court concluded that the commission's rejection of the applications based on its decisions that Ammonite's offers were not fair and reasonable was properly supported by the fact that EOG's wells, as permitted, did not drain Ammonite's riverbed tract. All production would be from EOG's lease, rather than Ammonite's. Thus, proceeds from the pooling would not be allocated on the basis of the parties' respective contributions to production.

Further, Ammonite did not ask EOG to modify its drilling plans and made no effort to show that it was possible for EOG to revise its plans or extend the wells to reach the riverbed. The fact that Ammonite proposed to obtain a share of EOG production without Ammonite's contribution of any minerals of its own could justify the commission's considering the offer unfair on its face.

Additionally, the commission made no finding about whether Ammonite's riverbed minerals were stranded. EOG's expert testified that drilling a well to produce Ammonite's minerals might be viable in the future. Ammonite criticized that testimony as beyond speculative but did not put on expert testimony of its own. Thus, the commission assumed Ammonite's minerals are stranded but concluded that because the EOG wells were already completed and there was no drainage, granting Ammonite's applications would not prevent waste or protect correlative lights.

8 No. 21-1035, 2024 WL 3210180 (Tex. 2024).

"The commission's application of the statutory language to the facts was — at best — unexplained and thus unsustainable as a matter of law. Without knowing anything more than the bottom-line conclusion, the dissent argues that it was impossible to determine whether the commission's order was reasonable."

Dissent

Justices Young and Busby argued in their dissent that the Court of Appeals should have reviewed the commission's denial of Ammonite's applications on the merits. They concluded that Ammonite did make fair and reasonable voluntary pooling offers, such that the commission's failure to explain why Ammonite's offers were not fair and reasonable in and of itself required reversal and remand.

Upon remand, the dissent argued that the commission should decide whether the forced pooling of Ammonite's interest was proper under MIPA Section 102.011, which the commission did not do. The commission's explanation on that issue was conclusory at best based upon its mistaken understanding of the fair and reasonable offer point.

Further, the lack of drainage is the very thing that allegedly makes the minerals stranded. Stranded minerals constitute waste, and if there is waste, then pooling is on the table and is sometimes mandatory.

Finally, the commission's application of the statutory language to the facts was — at best — unexplained and thus unsustainable as a matter of law. Without knowing anything more than the bottom-line conclusion, the dissent argues that it was impossible to determine whether the commission's order was reasonable.

UNITEX WI LLC V. CT LAND & CATTLE CO. LLC[9]

June 28, 2024;
petition for review filed.

Issue

Can a surface owner force the mineral lessee to bury a pipeline below plow depth based upon deed provisions indicating an intent for a prior covenant for burial to cease running with the land?

Facts

A 1948 mineral lease provided: "When required by Lessor, Lessee will bury all pipelines below ordinary plow depth." CT Land acquired the surface from the Senns, who acquired it from the Andrew P. Fuller Revocable Trust.

The deed by which the Senns acquired the surface was made "subject to" all valid and subsisting oil and gas leases. Wells had been drilled and numerous pipelines existed when CT Land bought the surface in 2013. CT Land, thereafter, requested that Unitex bury the pipelines below plow depth pursuant to the lease provision. However, Unitex refused, and CT Land sued.

Result

CT Land asserted that "subject to" meant that the Senns — and subsequently CT Land — were assigned the lessor's rights, interests and obligations under the lease that pertained to the surface. The court ruled quite the opposite. Inasmuch as the deed did not affirmatively assign any rights in the lease to the Senns, the court declined to impose language evidencing an assignment where none existed. If the surface owner intended to transfer the lessor's rights under the lease, it could have memorialized that intent. Used in the ordinary sense, the words "subject to" mean subordinate or subservient to or limited by. That clause limits the estate and associated rights granted to a party. It does not create affirmative rights.

CT Land also argued that the duty to bury pipelines ran with the land. While this is generally correct, the subject-to clause limited the estate and associated rights that passed to the Senns. The lease identified the category of people entitled to require burial of the pipelines: the lessor and his assigns, successors and heirs. The provision did not include future surface owners. The parties could have included said future surface owners, but they did not.

Accordingly, the pipe burial provision did not pass or was otherwise detached from the conveyance. Regardless of whether this is viewed as a reservation or detachment, the words selected by the Fuller Trust clearly revealed the intent to prevent the Senns and their successors from gaining interests in or rights under the 1948 lease. The Fuller Trust reserved and excepted from the conveyance so much of the surface as may be required to permit the Fuller Trust to drill wells and transport production. This clearly reveals an intent to bar impediment to the development of minerals, along with anticipated use of the surface to further that purpose. It follows that the reservation revealed an intent to restrict potential impediments such as the burial covenant.

Therefore, CT Land was barred from requiring Unitex to bury pipelines below plow depth.

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9 No. 07-23-00390-CV, 2024 WL 3249338 (Tex. App. — Amarillo 2024, pet. filed).

JAMES V. THORNBERRY[10]
July 25, 2024

Issue

Can a suit for partition be pursued with less than all of the co-owning co-tenants as parties?

Facts

As to 59.79 acres in Walker County, Texas, Jonathan Thornberry — with a purported 70% interest — sued Anne Johnson James and Lois Johnson Warren — each with a purported 15% interest — seeking a partition by sale. The plaintiff also could have opted for the lesser-used alternative, partition by deed, in which the property is surveyed and divided up with each co-owner taking a portion having as close to their proportionate ownership percentage as possible with respect to the total value of the lands. The trial court appointed commissioners to partition the property and a surveyor to be used as the commissioners deemed necessary.

When Thornberry acquired the property from Charles L. Mack, Mack had reserved a 50% mineral interest in the lands. Thornberry failed to join Mack as a party to the suit.[11]

Result

The suit was sent back to the trial court so that Mack could be included. As previously set forth in *Chaffin v. Hall,*[12] the purpose of partition is to segregate ownership and to allow to each owner the free use, control and possession of the interest set apart to that owner to the exclusion of all other former joint owners. Additionally, a partition suit must seek a division of the whole of the common property.

The general rule is that before property can be partitioned, all joint owners must be made parties so that the trial court may determine the interest each and every party has and make a proper distribution of the property. Implicit in this rule is that all owners must be joined as owners of the property sought to be partitioned.

If any owner is not joined in the case, the trial court's judgment will be reversed, even if no objection was made, because the judgment is not only unenforceable against that owner, it also is unenforceable as to all other owners as well.[13]

Under Texas Rule of Civil Procedure 39, all parties who have an interest in the litigation are required to be joined, if feasible, so that any relief awarded will effectively and completely adjudicate the dispute.

The judgment ordering partition was reversed, and the case was sent back to the trial court so that Mack could be properly added to the proceedings as a necessary party. The Court of Appeals declined to consider several remaining issues raised by Thornberry, as those issues could not be fully resolved by a judgment without Mack.

This is a cautionary tale for those who are involved in litigation over property rights and exemplifies the importance of thorough title research before a suit is initiated. Incidentally, this further explains why all the recent NPRI cases to adjudicate fixed versus floating have so many "Rule 39 defendants."

CONCLUSION

We hope this article 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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10 No. 10-22-00266-CV, 2024 WL 3534011 (Tex. App. July 25, 2024).

11 See *Gilbreath v. Douglas,* 388 S.W.2d 279, 281 (Tex. Civ. App.— Amarillo 1965, writ ref'd n.r.e.).

12 210 S.W.2d 191, 193-94 (Tex. Civ. App. — Eastland 1948, writ ref'd n.r.e.) (op. on reh'g)

13 See *Partin v. Holden*, 663 S.W.2d 883, 885 (Tex. App. — Austin 1983, no writ); Long, 2016 Tex. App. LEXIS 2715, at *5.