LEGISLATIVE & REGULATORY UPDATE

By Nikolas Tysiak, Legislative and Regulatory Chairman

Hello MLBC friends and family! As we survive the freezing cold of winter, there are only a few things to report to you. This time of year, with its proximity to the holidays, tends to be a judicial legislative "slow time." As always, the Legislative and Regulatory Committee looks forward to hearing from anyone with an idea or suggestion of something to include in our newsletter updates.

OHIO

Hein Bros., LLC v. Reynolds, 2021-Ohio-4633 (7th Dist. Ct. App.). Owners of severed mineral interest brought an action to have a prior judgment divesting them of such severed minerals deemed void for failure of notice. In 2013, the surface owners of this property in Belmont County brought an action to have previously-severed minerals under their lands declared vested with the surface estate. Service of notice of the lawsuit was attempted by certified mail, with the surface owners' attorney stating that various methods were attempted to locate the severed mineral owners. Certified mail having failed, notice was served by publication in accordance with Ohio law. In 2020, the same severed mineral owners sought the judgment overturned due to failure of notice, claiming that no reasonable person would not have been able to locate their addresses for service by certified mail if applying due diligence in 2013. Under Ohio law, there is a rebuttable presumption that the reasonable diligence exercised in issuing notice by mail has been followed, and to counterbalance the presumption evidence of a substantial nature must be presented. The severed mineral owners presented evidence from an identity investigator, working in 2021, to prove that they were locatable with reasonable diligence in 2013. The trial court was not swayed by this evidence, and the Court of Appeals followed the lead of the trial court and affirmed their judgment, denying the claims by the severed mineral owners in favor of the surface owners.

Pernick v. Dallas, 2021-Ohio-4635 (7th Dist. Ct. App.). Case involves the Ohio Marketable Title Act. Severed mineral owners sued claiming that an oil and gas lease executed by the surface owners effectively preserved their severed oil and gas interest, among other things. Losing at trial, the severed mineral owners appealed. The severed mineral owners claimed that the execution of successive oil and gas leases by the surface owners starting in 2008 saved the severed mineral interests. The court concluded that, while the factual matters cited by the severed mineral owners are correct (an oil and gas lease is a title transaction under the Marketable Title Act), for a title transaction to be legally meaningful under the MTA, it must also effectively notify other parties that the severed mineral interest remains in effect. A lease from the surface owners does not accomplish that goal. The severed mineral owners then alleged that the root of the title deed contained a specific reference to the severed oil and gas interest. To this, the court pointed out that the root of title deed made no reference to oil and gas at all, only to a prior deed in the chain of title and deemed the reference language insufficiently specific to preserve the severed minerals. Finally, the severed mineral owners claimed that the root of title deed cannot be a "proper" root of title as it did not indicate that oil and gas interests were being conveyed. The court found this assertion to be meritless and discounted it out of hand. The Court of Appeals accordingly upheld the trial court's decision vesting title to the oil and gas with the surface owners under the marketable title act.

PENNSYLVANIA

Allison v. Rice Drilling B, LLC, 2021 WL 6140828 (Sup. Ct. Pa., December 30, 2021). Land in question was subject to a 1913 oil and gas lease that paid only $100 per well on the property and free gas to a home on the property. The lease had reported production until 1991, when reporting stopped. In 2016, EQT Corporation, as successor lessee under the 1913 lease, created a Marcellus unit and started paying the lessors the $100 again, which was refused by the successor landowners. In 2017, the surface owners executed new leases with Rice Drilling B, LLC, with an 18.5% royalty.

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After Rice merged with EQT, payments continued to be made to the landowners at $100 per well, and not at 18.5%. EQT/Rice won at trial on summary judgment, but the Superior Court overturned that ruling, remanding it to trial. The Superior Court looked at the cross-filed motions for summary judgment and applied a rule of civil procedure to review the evidence supplied in the light most beneficial to the non-moving party to determine whether summary judgment was appropriate in either case. When reviewing the landowners' denied motion for summary judgment, the court reviewed the evidence that most supported EQT/Rice's position. The court found that only EQT/Rice provided any evidence of continuous production (despite a lack of reporting) from 1991 through 2016 under the 1913 lease. Consequently, the 1913 lease could not have expired in this light. Nevertheless, the Court felt the factual basis as to the continuous production issue needed further development in the record, so summary judgment would have been inappropriate as to the landowners. In reviewing the EQT/Rice's successful motion for summary judgment, the court reviewed the evidence in the light most favorable to the landowners. Here, it found that the summary judgment depended solely on the factual issue of continuous production – if there was no continuous production, then the lease was effectively terminated when the lessors refused payment in 2016. Therefore, the Court overturned the prior motion for summary judgment and remanded the case for further trial on the issue of whether there was continuous production from the wells drilled pursuant to the 1913 lease between 1991 and 2016.

With warmest regards –
MLBC Legislative and Regulatory Committee
Nik Tysiak - Chair