LEGISLATIVE & REGULATORY UPDATE

By Nikolas Tysiak, Legislative and Regulatory Chairman

A few cases to report on this month.

Griffin v. Toland, 2024 WL 2269941 (W. Va. S. Ct. May 20, 2024). In a memorandum decision (i.e. – without oral arguments), the West Virginia Supreme Court sought to interpret intentions of the parties to a 1976 deed containing oil and gas reservation language. Hazel L. White acquired all the surface and ½ the oil and gas under a tract of 82 acres during her lifetime, one-half the oil and gas having been properly and effectively reserved by a predecessor in title pursuant to a 1943 deed. By deed dated June 29, 1976, Hazel White conveyed the 82 acres to Timmie and Vickie McMillan, with an exception of ½ the oil and gas. The exception language in the June 29, 1976 was reportedly identical to the reservation language used by Hazel White's predecessor in title to retain the "other" ½ of the oil and gas via the 1943 deed. The 82 acres was purportedly conveyed multiple times following the June 29, 1976 deed, all containing language nearly identical to both the 1943 deed and the June 29, 1976 deed. Griffin, as successor to Hazel White, filed a declaratory judgment action claiming rightful ownership of the ½ oil and gas interest purportedly reserved under the June 29, 1976 deed, as against the current surface owners (Toland). The trial court found in favor of Toland, stating that the June 29, 1976 deed was ambiguous as to Hazel White's intent – the language does not indicate whether Hazel indicated to retain the "remaining" one half of the oil and gas associated with the 82 acres, ½ of the ½ interest, or none of the oil and gas. After allowing parol evidence, the trial court found that none of the parol evidence regarding Hazel White's intent at the time of the June 29, 1976 deed was enough to overcome the legal holding that ambiguity in a deed must be construed most strongly against the grantor. The Supreme Court agreed that the June 29, 1976 was ambiguous but further held that the ambiguity presented a material issue of fact, so sustaining a motion for summary judgment regarding the situation was inappropriate. The case was remanded to the trial court for further proceedings.

Callen v. Foertsch, 2024 WL 2176673 (Pa. Super. Ct. May 15, 2024). Also in a memorandum decision (non-precedential), the court was confronted with a question of whether a joint tenant with right of survivorship effectively broke the joint tenancy and created a tenancy in common before her death. Dan Callen and Elaine Callen-Foertsch inherited a tract of land as joint tenants with the right of survivorship in 1990. They jointly leased the land in 2009, each receiving ½ the royalties. After Elaine's death in November 2021, her daughter, Mae Foertsch, recorded a "Pennsylvania Gift Deed" whereby Elaine purports to convey all her interest in land in Butler County (including the land at issue) to Mae. Dan maintained that, as the surviving joint tenant, all title to the land, and therefore the oil and gas royalties, passed to him by operation of law. Rather than deciding on the facts, the Superior Court issued an order based on the most technical of technicalities, holding that the appeal from the trial court was not appropriate because the appeal occurred before the trial court issued a true final order. The trial court had only quieted title in favor of Dan Callen, but failed to dispose of a counter claim for monetary damages by Mae Foertsch. Consequently, the case was remanded back to the trial court for further proceedings.

In Tera, L.L.C. v. Rice Drilling D, L.L.C. (2024-Ohio-1945), the Ohio Supreme Court faced a "bad-faith" trespass claim by the landowners (Tera) against Rice, claiming that operations in the Point Pleasant formation was a violation of the terms of the executed leases, which only specified the Utica and Marcellus formations as being affected. Both the trial court and intermediate appeals court (Ohio 7th district) agreed with this reasoning, granting and affirming a motion for summary judgment on the issue of trespass, respectively – stating that there was no triable issue of fact based on the language of the leases. The Supreme Court of Ohio disagreed on procedural grounds, finding that a triable issue of fact did exist, as the meaning of the phrase "the formation commonly known as the Utica Shale" could be, and clearly has been, construed to include more than the literal Utica Shale formations. In a great win for the oil and gas industry in Ohio, the motions for summary judgment arising from the bad faith trespass claims were reversed and remanded back to trial to determine what that phrase actually means in Ohio.

Regards,
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