LEGISLATIVE & REGULATORY UPDATE

By Nikolas Tysiak, Legislative and Regulatory Chairman

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There are not a lot of relevant cases to report this period. Here are what the courts have been up to this month:

The West Virginia Intermediate Court of Appeals handled another important case regarding tax sales of oil and gas interests recently. In Northeast Natural Energy, LLC v. LT Realty Unlimited, LLC (--- S.E.2d ---; 2024 WL 338948 (July 12, 2024). The case arises from competing claims of title to oil and gas rights under approximately 119 acres of land in Clay District, Monongalia County. George Tennant owned interests in the Surface, Sewickley Coal, and the oil and gas associated with the 119 acres when he died in 1938. Two assessments were entered from 1938 through 1941 – the first covering 3/8 of the surface oil and gas under the land, and the second covering the Sewickley Coal interests under the land. In 1940, the lands of George Tennant were partitioned, as part of which all oil and gas and coal rights were reserved to the estate. The assessments for the surface dropped the oil and gas label, and only described "SUR" or surface as being the interest being assessed, entered in the name of the surface purchaser. George Tennant and his heirs continued to be assessed for the Sewickley Coal interests.

The Sewickley Coal rights and Oil and Gas rights descended to various heirs of George Tennant, but only the Sewickley Coal rights were separately assessed. Eventually, the successors to George Tennant executed deeds and leases with Northeast Natural Energy LLC and other parties, in 2015. However, in 1992, Shuman Inc. acquired a tax deed for the Sewickley Coal assessment for non-payment of taxes. The same "Sewickley Coal" assessed interest eventually became vested in LT Realty Unlimited LLC, which successfully argued at trial that the oil and gas rights associated with the land were included with the Sewickley Coal assessment, thereby resulting in LT Realty owning such oil and gas rights, and NOT Northeast.

The Intermediate court disagreed with the trial court, finding that there was a presumption that the oil and gas rights, while severed in title, remained assessed with the surface estate under West Virginia law. As such, the burden of proof lied with LT Realty to overcome the legal presumption. Factually, there was evidence from 1938-1941 that the surface and oil and gas were assessed together under the name of George Tennant, and only after the partition deed from his estate did the subsequent surface assessment drop the "oil and gas" description words. Additionally, the valuation of land from the 1940 assessment to the 1941 assessment (where the assessment changed from "surface, oil and gas" to "surface" remained the same, indicating that the value of the oil and gas rights were never deducted from the "surface" assessment, and therefore remained assessed with the surface. Based on these factors, the court concluded that LT Realty had not provided sufficient factual evidence to overcome the presumption and reversed the lower court's holding.

The Seventh Circuit Court of Appeals has made several Marketable Title Act/Dormant Mineral Act decisions in the past couple of months:

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- Cardinal Minerals, LLC v. Miller, 2024-Ohio-2133 (7th Dist.). This is a case where Cardinal Minerals LLC brought suit claiming that a severed mineral interest had been preserved in contradiction to a Dormant Mineral Act claim by the surface owners, the Millers. Cardinal Minerals purchased the severed mineral interests from the Pfalzgrafs, heirs of the original severing parties, and claimed that the DMA action of the surface owners was improper for failing to serve notice on the Pfalzgraf heirs. The Court of Appeals sidestepped the claim of Cardinal Minerals that the notice requirement under the Dormant Mineral Act was not properly adhered to, instead determining that Cardinal Minerals unlawfully "purchased a lawsuit" under the Doctrine of Champerty (Champerty being defined as "assistance to a litigant by a nonparty, where the nonparty undertakes to further a party's interest in a suit in exchange for a part of the litigated matter if a favorable result ensues . . ."). The court further stated that the assignment of rights to a lawsuit is void as champerty. For these reasons, Cardinal Minerals' claims were denied; the Court of Appeals effectively ignored the question of whether the surface owners followed the Dormant Mineral Act requirements by providing notice to the known successors to a reserving title interest holder pursuant to wills and intestate succession. This seems like a possible case for further appeal to the Ohio Supreme Court, as reconsideration of the suit was denied on July 2.

- Wolfe v. Bounty Minerals LLC, 2024-Ohio-2460 (7th Dist.). A claim of ownership by the surface owners against a reserved interest by the Holms heirs under the Marketable Title Act. The key question being whether the Holmes' interest was preserved in connection with the Marketable Title Act. The District Court of appeals found that the preservation documents of the Holmes' heirs was sufficient to preserve their interests.

That's it for this time. As always, let us know if you hear of anything interesting to report on.

Regards,

Nik Tysiak
Chair – MLBC legislative and regulatory committee