Oil and Gas Alert: Supreme Court of Ohio Issues Sweeping Decision Interpreting the Ohio Dormant Mineral Act - Holds That 1989 DMA is Not Self-Executing

Related Attorneys

Gregory D. Russell

Webb I. Vorys

James A. Carr II

Ilya Batikov

Related Industries

Energy, Utilities, Oil and Gas

CLIENT ALERT | 9.15.2016

On September 15, 2016, the Supreme Court of Ohio issued numerous decisions concerning the application of the Ohio Dormant Mineral Act (R.C. 5301.56) (DMA). In the lead case, *Corban v. Chesapeake Exploration, L.L.C., et al*., 2016-Ohio-5796, the Court held that:

- the 1989 version of the DMA (1989 DMA) was not self-executing (i.e., did not automatically transfer ownership of dormant mineral rights to the surface owner of the property by operation of law). Rather, the surface owner must have filed a quiet title action seeking a decree that the dormant mineral interest had been abandoned in order to merge those rights into the surface estate;
- the 2006 version of the DMA (2006 DMA) applies to claims to abandon dormant mineral rights asserted after its effective date (June 30, 2006) and specifies the procedure that a surface owner is required to follow in order to have dormant mineral rights abandoned and merged with the surface estate; and
- the payment of a delay rental during the primary term of an oil and gas lease does not qualify as a "savings event" under the DMA.

BACKGROUND

The oil, gas, and mineral rights under certain property located in Harrison County, Ohio were severed in 1959. Petitioner is the current surface owner of the property (Surface Owner). Respondents are the current owner and lessees of the oil and gas rights underlying the property (Severed Mineral Owners). In 2013, Surface Owner filed a complaint against Severed Mineral Owners seeking, among other relief, declaratory judgment and quiet title in his favor as to the oil and gas rights under the property by virtue of the 1989 DMA. Severed Mineral Owners counterclaimed for declaratory judgment and quiet title in their favor. The parties filed competing motions for summary judgment, and the U.S. District Court for the Southern District of Ohio, concluding that its ruling on the motions required a clarification of Ohio law, certified the following two questions to the Supreme Court of

Ohio: (1) whether the 1989 DMA or the 2006 DMA should be applied to a quiet title action filed after the 2006 DMA became effective when the complaint asserts that the dormant mineral rights vested in the surface owner as a result of abandonment occurring prior to 2006; and (2) whether the payment of a delay rental during the primary term of an oil and gas lease qualifies as a savings event under the DMA.

HOLDING

Before answering the two certified questions, the Court first analyzed whether the 1989 DMA was self-executing. Surface Owner, submitting that the 1989 DMA was self-executing, argued that the 1989 DMA contains nothing requiring any affirmative action or judicial confirmation establishing that the dormant mineral rights had been abandoned and vested in the surface owner. In support of his argument, Surface Owner cited to the fact that the Ohio General Assembly largely adopted the Uniform Dormant Mineral Interests Act when enacting the 1989 DMA, but rejected the uniform act's requirement that the surface owner file a quiet title/declaratory judgment action to abandon dormant mineral rights. In rebuttal, Severed Mineral Owners, submitting that the 1989 DMA was not self-executing, argued that the 1989 DMA *deemed* dormant mineral rights abandoned and vested in the surface owner without expressly extinguishing them or declaring them null and void, and the legislature therefore intended the surface owner to take legal action to obtain ownership of the mineral interest. In support of their argument, Severed Mineral Owners highlighted the fact that the DMA is a supplement to the Ohio Marketable Title Act, R.C. § 5301.47 *et seq*. (MTA), which was enacted to simplify and facilitate land title transactions by allowing persons to rely on a record chain of title to determine ownership. If the 1989 DMA were held to be self-executing, dormant mineral rights would automatically vest in the surface owner outside the record chain of title. Such a result would be in contravention of the MTA's legislative purpose as well as in derogation of the common law presumption against forfeiture.

The Court held that the 1989 DMA is not self-executing. In reaching its decision, the Court focused on the contrasting language found in certain statutes comprising the larger MTA, which is focused on extinguishing ancient interests in land, and the language found in 1989 DMA, which is focused on the abandonment of certain minerals. Those statutes comprising the larger MTA, in fact, use the word "extinguish" and "null and void" to describe what happens to ancient interests existing prior to the claimant's "root of title." The 1989 DMA, on the other hand, uses the phrase "shall be deemed abandoned and vested" to describe what happens to dormant mineral rights. The Court found the difference in language to be material. By using the word "deemed" in the 1989 DMA, the Court found that the Ohio General Assembly created a *conclusive presumption* that a holder of mineral rights had abandoned his mineral rights if the 20 year statutory period under the DMA passed without a savings event. Without this conclusive presumption, the owner of the surface estate would be required to prove at trial that the holder of mineral rights had the intent to abandon those rights. Such intent would be difficult, if not impossible, to prove if the owner of the surface estate was unable to locate or identify the holder of the minerals from a review of the public records. However, the Court described the conclusive presumption of abandonment as only an *evidentiary tool* that applied to litigation seeking to quiet title to a dormant mineral interest. Thus, it held the 1989 DMA was not self-executing. Surface owners were required to commence a quiet title action seeking a decree that the dormant mineral rights were abandoned under the 1989 DMA.

After holding that the 1989 DMA was not self-executing, the Court then turned to directly answer the two questions certified to it by the U.S. District Court for the Southern District of Ohio. The first question was whether the 1989 DMA or the 2006 DMA should be applied to a quiet title action filed after the 2006 DMA became effective when the complaint alleges that the dormant mineral rights vested in the surface owner as a result of abandonment occurring prior to 2006. The Court held that the 2006 DMA applies to claims to abandon dormant mineral rights asserted after the effective date of the 2006 DMA (June 30, 2006) even if such claims accrued before the effective date of the 2006 DMA. Because the 1989 DMA does not abandon and vest dormant mineral rights in the surface owner by operation of law, the surface owner is obligated to follow the abandonment procedure set forth in the 2006 DMA for claims asserted after the 2006 DMA became operative.

Surface Owner argued that application of the 2006 DMA to claims of abandonment accruing prior to June 30, 2006 violates the Retroactivity Clause under Article II, Section 28, of the Ohio Constitution. However, the Court found this argument unpersuasive. A statute violates the Retroactivity Clause if it is substantive in nature (i.e., "affects an accrued substantive right, or imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction") and is applied retroactively. The Court found both of these elements to be absent. First, the 2006 DMA is not expressly retroactive. As such, it applies only prospectively to claims for abandonment of dormant mineral rights. Second, the 2006 DMA does not deprive the surface owner of a right to a dormant mineral interest that accrued prior to the effective date of the 2006 DMA. The 2006 DMA "modified only the method and procedure by which the right is recognized and protected."

The second question was whether the payment of a delay rental during the primary term of an oil and gas lease qualifies as a savings event under the DMA. Delay rental "represent[s] sums paid by the lessee to the lessor on an annual, quarterly or other basis for the privilege of postponing drilling or other operations under an oil and gas lease." The Court held that payment of a delay rental is not a savings event for purposes of the DMA. There are six (6) savings events under the DMA. One of those savings events occurs when "[t]he mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder in which the lands are located" (Title Transaction Savings Event). R.C. § 5301.56(B)(3)(a). Payment of delay rentals does not qualify as a Title Transaction Saving Event because no record of payment is filed in the office of the county recorder. Moreover, a delay rental payment alone does not "affect title" to the dormant mineral interest. For these two reasons, the Court found that delay rental payments do not qualify as a Title Transaction Savings Event.

Questions relating to this decision may be addressed to Greg Russell (gdrussell@vorys.com), Webb Vorys (wivorys@vorys.com), Jay Carr (jacarr@vorys.com), or Ilya Batikov (ibatikov@vorys.com).