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A Discussion of Concho v. Ellison and Broadway National Bank v. Yates

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In 2021, the Texas Supreme Court considered two different title disputes wherein the parties attempted “self-help” remedies prior to landing in court. In *Concho Res., Inc. v. Ellison*, 627 S.W.3d 226, 230 (Tex. 2021), *as corrected on denial of reh’g* (Sept. 3, 2021), the parties disputed the validity of a boundary stipulation. In *Broadway Nat’l Bank, Tr. of Mary Frances Evers Tr. v. Yates Energy Corp.*, 631 S.W.3d 16 (Tex. 2021), *reh’g denied* (Sept. 24, 2021), a correction deed formed the basis of the dispute. In both cases, the Texas Supreme Court enforced the private resolution of the disputes, holding the boundary stipulation in *Concho* and the correction deed in *Broadway National Bank* to be valid.

Concho Resources, Inc. v. Ellison

In 2006, Samson Resources Company, an oil-and-gas operator, obtained a drilling title opinion that identified issues with the boundaries of a tract of land located in Irion County. The boundary dispute arose out of a 1930 deed, which allegedly did not adequately describe the location of the tract in issue. This failure to adequately describe the tract led to confusion as to who owned it.

Sampson prepared a boundary stipulation to identify the location and owner of the disputed tract. The Farmars, owner of the southeast tract mineral estate and Sampson’s lessors, and Carol Richey, owner of the northwest tract mineral estate, signed the boundary stipulation. Richey had previously leased her minerals to Ellison Lease Operating. The stipulation acknowledged the title dispute and stated that the disputed tract was part of the southeast tract. In other words, the stipulation establishes the Farmars, and therefore Sampson through its oil-and-gas lease, as the owners of the disputed tract.

Ellison Lease Operating did not execute the stipulation. However, after the Farmars and Richey executed the stipulation, Sampson sent a letter to Ellison, enclosing the stipulation and

requesting that Ellison acknowledge its acceptance of the land description set forth in the stipulation by counter-signing Sampson's letter. Ellison did so and returned the counter-signed letter to Sampson.

In 2013, Ellison brought a trespass-to-try-title suit against Concho Resources, Inc., the assignee of Sampson. Ellison claimed that it was not bound by the stipulation and that it owned the disputed tract through its oil-and-gas lease with Richey. Ellison also brought causes of action for conversion, unlawful drainage, gross negligence, and nonpayment of oil and gas proceeds. The trial court found the boundary stipulation to be valid and binding upon Ellison. The court determined Ellison ratified the stipulation by executing the letter agreement. 627 S.W.3d at 230.

The Corpus Christi court of appeals reversed. *Ellison v. Three Rivers Acquisition LLC*, 609 S.W.3d 549 (Tex. App.—Corpus Christi 2019), *rev'd sub nom. Concho Res., Inc. v. Ellison*, 627 S.W.3d 226 (Tex. 2021), *as corrected on denial of reh'g* (Sept. 3, 2021).¹ The court determined that the boundary stipulation was “void and legally ineffective because there was never any reasonable doubt or uncertainty as to the location of the boundary between the Northwest and Southeast Tracts.” *Id.* at 560. According to the court, the 1930 deed clearly described the boundaries of the tract at issue, meaning there was no need for a stipulation. After declaring the stipulation void, the court of appeals held that Ellison did not ratify the stipulation, as a void instrument cannot be ratified. *Id.* at 563.

The Texas Supreme Court reversed the court of appeals. The Court held the boundary stipulation was valid, and it determined that Ellison ratified the stipulation by counter-signing Sampson's letter. *Concho Res.*, 627 S.W.3d at 229. The Court acknowledged the appellate court's

¹ The Corpus Christ court of appeals heard this appeal on transfer from the Austin court of appeals pursuant to a docket-equalization order issued by the Supreme Court of Texas. *Ellison v. Three Rivers Acquisition LLC*, 609 S.W.3d 549, 553 n.1 (Tex. App.—Corpus Christi 2019), *rev'd sub nom. Concho Res., Inc. v. Ellison*, 627 S.W.3d 226 (Tex. 2021), *as corrected on denial of reh'g* (Sept. 3, 2021).

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