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Recent Developments in Deed Interpretation Issues in Mineral Conveyancing

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I. Introduction

This article examines recent trends in deed interpretation issues from recent mineral conveyancing cases. The article is limited to discussing the interpretation of unambiguous instruments, and discussion of the interpretation of ambiguous documents is outside the scope of this article.

Part II briefly summarizes Texas's general approach to deed interpretation. Part III discusses some of Texas courts' recent cases evidencing an even stronger commitment to the holistic interpretation of mineral deeds while Part IV examines cases involving analysis of the preference for use of the plain and ordinary meaning of words and the construction of those words in context.

Part V examines the current use of surrounding circumstance evidence in construing an unambiguous instrument and Part VI analyzes some specific mineral conveyancing issues, including the *Duhig* doctrine and conveyances involving double fractions.

This article is not a case law update; no attempt is made to include or summarize an exhaustive list of recent deed interpretation cases. Rather, I have compiled here a summary of Texas courts' latest approach to the interpretation of mineral deeds using some cases to illustrate recent trends.

II. General Deed Interpretation Framework

For unambiguous deeds, the primary goal of a Texas court in questions of deed interpretation is to discern the intent of the parties to the instrument as such intent is expressed within the four corners of the deed.[1] A court does not attempt to discern the subjective intent of the parties but rather the objective intent of the parties—that is, their intent as expressed in the written document.[2] In doing so, a Texas court will look to the entire deed and "to the extent possible, resolve any conflicts by harmonizing the agreement's provisions, rather than by applying arbitrary or mechanical default rules."[3]

In the past several years, Texas courts have continued to use this general framework for questions of deed interpretation with some expansion and clarification.

III. Holistic interpretation

In recent years, Texas courts have emphasized the importance of reading the entire instrument to discern the intent of the parties rather than examining narrow subsets of an instrument. This trend is well illustrated by a series of cases each involving the interpretation of an instrument with an attached exhibit.

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[1] *Piranha Partners v. Neuhoff*, 596 S.W.3d 740, 743-44 (Tex. 2020); *Perryman v. Spartan Tex. Six Capital Partners, Ltd.*, 546 S.W.3d 110, 117-18 (Tex. 2018).
[2] *Piranha Partners*, 596 S.W.3d at 744.
[3] *Id.* (citing *Wenske v. Ealy*, 521 S.W.3d 791, 792, 796 (Tex. 2017).

a. *Piranha Partners v. Neuhoff*

In *Piranha Partners v. Neuhoff*, the Texas Supreme Court analyzed an assignment of an overriding royalty interest to determine whether the assignment applied to a wellbore, a part of a lease or an entire oil and gas lease.[4] Despite the fact that the trial court, the appellate court and two dissenting Supreme Court justices differed as to the interpretation of the assignment, the majority of the Supreme Court found that there was only one reasonable interpretation of the assignment such that the assignment unambiguously conveyed an interest in the entire lease rather than some smaller part of the lease.[5]

In reaching this conclusion, the Supreme Court analyzed a number of canons of construction that it found to be inapplicable: the greatest estate canon, the canon against implied reservations, the canon to resolve doubts against the drafter of the document.[6]

The Supreme Court acknowledged that its jurisprudence rejects the use of some canons of construction as "rigid, mechanical rules" in favor of "conducting a careful and detailed examination of a deed in its entirety, rather than applying some default rule that appears nowhere in the deed's text."[7] But the Court also recognized that it also relies on "well-settled contract-construction principles" to determine whether a contract is ambiguous and to aid in interpretation of unambiguous instruments.[8]

The Court characterized the following as arbitrary rules that it has previously "cast off:" (i) a default rule requiring a royalty interest to be carved proportionately from two mineral interests; (ii) a mechanical approach requiring rote multiplication of double fractions whenever they exist; and (iii) a rule giving certain clauses absolute priority over other clauses.[9] On the other hand, the Court characterized the following principles as "well-settled contract-construction principles:" (i) using the plain, ordinary and generally accepted meaning of words to construe instruments unless the instrument directs otherwise; (ii) the rule requiring courts to construe words in the context in which they are used; (iii) the rule requiring courts to consider and construe all of an instrument's provisions together; and (iv) the rule requiring that courts avoid any construction which renders any provision meaningless.[10]

In discussing the "greatest estate" cannon, the Court cautioned first that the rule of construction is not that a deed conveys the greatest estate *possible* but the "greatest estate '*permissible under its language*.'"[11] Thus, the Court is constrained to "determine whether the language of Exhibit A,

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[4] 596 S.W.3d 740, 742 (Tex. 2020).
[5] *Id*. at 755.
[6] *Id*. at 746.
[7] *Id*. (quoting *Wenske v. Ealy*, 521 S.W.3d 369, 792 (Tex. 2017)).
[8] *Id*. at 747.
[9] *Id*. (citing *Wenske*, 521 S.W.3d at 795; *Hysaw v. Dawkins*, 483 S.W.3d 1, 4 (Tex. 2016); and *Luckel v. White*, 819 S.W.2d 459, 462-63 (Tex. 1991)).
[10] *Id*. (citing *URI*, 543 S.W.3d at 764; *Coker v. Coker*, 650 S.W.2d 391 (Tex. 1983); *Citizens Nat'l Bank in Abilene v. Texas & P. Ry. Co.*, 150 S.W.2d 1003 (Tex. 1941).
[11] *Id*. (quoting *Garrett v. Dils*, 299 S.W.2d 904, 906 (Tex. 1957) (emphasis added).

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