GOGL Case Summary

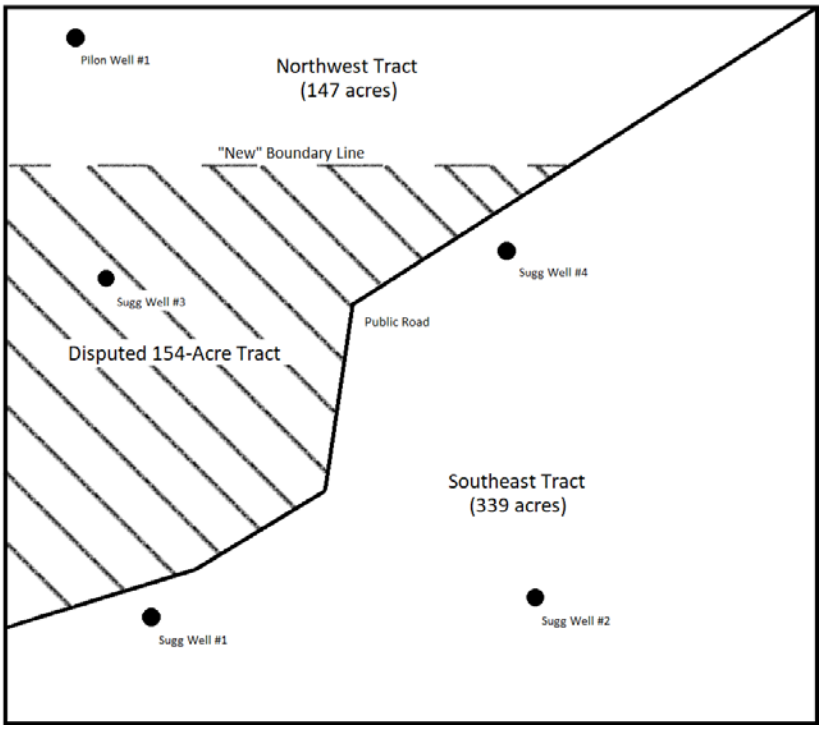
Oil & Gas Case Notice

A Stipulation of Interest Case

Marshal Ellison v. Three River Acquisition LLC et al. 13-17-00046-CV (Corpus Christi Court of Appeals, 2019).

On February 14, 2019, the Corpus Christi Court of Appeals opined on a Stipulation of Interest that should give pause to oil and gas practitioners. It held that a Stipulation of Interest is of no avail if there is not a pre-existing defect in title.

Suggs owned a 640 acre tract in Irion County, Texas (Section 1). A county road crosses the section near the SW corner of the tract and exits at the NE corner. As part of a 1927 land swap the owners conveyed the lands "located North and West of the public road … [containing 147 acres]" it was called the Northwest Tract. In 1930 a partition deed gave A.A. Sugg the remaining 493 acres (640 – 147 = 493). A survey in 1939 said the 1927 deed conveyed all of the land north and west of the public road, including what came to be the disputed 154 acres; it said the Northwest Tract contained 301 acres (147 + 154 = 301). By numerous conveyances the Northwest Tract came to be owned by the Pilon Family Trust. The Trust leased to Questa. Questa assigned to Ellison. Richey received the minerals in the Northwest Tract; Ellison continued as operator/lessee. Sugg leased the Southeast Tract to Samson.



In 2006, a title examiner said that the 1930 partition deed to Sugg provided no evidence of where the 493 acres was located on the ground. Samson wanted to drill on the 154 acre tract. The landman, Reece, drafted a boundary stipulation for execution by the mineral owners; it stated that "the Parties desire to declare, stipulate, acknowledge, and establish of record the location of the 147 acre tract and the 493 acre tract in the mineral estate in the Lands." The "Boundary Stipulation of Ownership of Mineral Interest" described the mineral tract owned by Richey as being 147 acres and the Sugg tract as being "the balance of Section 1, … less and except the Richey 147 acre tract …." Ellison, the lessee from Richey, was not joined because the stipulation was only as to mineral ownership. There followed:

> This Stipulation shall be deemed to contain adequate words of grant and conveyance as are necessary and proper to transfer and vest the ownership of the minerals estate in the Lands in each of the Parties in the amounts and proportions set out above."

In 2008, Samson sent a letter to Ellison (the mineral lessee of the Northwest Tract) describing the stipulation, noting that Samson planned to spud the Sugg #3 well and asking Ellison to "signify your acceptance of the description of the Richey 147 acre tract as set out in the

Stipulation … Upon your acceptance, a more formal and recordable document will be provided." Ellison signed. No more formal acceptance was ever tendered.

In 2013 Ellison sued the then Operator of the Southeast Tract (Concho) and Samson in trespass-to-try-title. The Jury said the 2008 letter was a binding agreement and found against Ellison.

Starting with the general rule that "the specification of acreage is the least reliable data point in descriptions", the court argued that the 1927 deed description controlled over the acreage designation:

> All of Survey 1, Block 6, H&T.C. Ry. Co. lands located North and West of the public road which now runs across the corner of said Survey, containing 147 acres, more or less.

and held that the 1927 deed was unambiguous and conveyed the disputed 154 acres as part of the Northwest Tract. As to the Stipulation, the court stated that where "there is uncertainty … as to where the true division line between the lands of the parties may be, they may fix it by parol agreement … but *the existence of uncertainty, doubt or dispute is essential to the validity of such agreement* [emphasis in original]". Since there was no ambiguity in the 1927 deed, any attempt to fix it was invalid. In addition, the court said "the Boundary Stipulation does not identify a grantor or grantee; and there are no operative words of grant showing an intention by a grantor to convey the disputed 154-acres to anyone else … Thus, the Boundary Stipulation was not a legally effective conveyance."

Likening the Stipulation to a correction deed, the court cited §§5.027-.031 of the Texas Property Code to *require* an ambiguity or error in the underlying deed in order to correct it.

The Stipulation, the court held, was "void and ineffective as a conveyance because (1) the Boundary Stipulation did not identify a grantor, a grantee, or clear words of conveyance; and (2) there was never any ambiguity or uncertainty in the 1927 Deed, which is a requirement for a correction deed to be valid."

Like most stipulations of interest, this one did not try to say that "John gets 3% more and Carol gets 2% more while Jake and George each lost 2.5%". It simply said that the stipulation "shall be deemed to contain adequate words of grant … to transfer … the ownership of the mineral estate … in the proportions set out above …." It listed the parties who were to own the minerals under the 493 acre tract and those who were to own the minerals under the 147 acre tract.

The court's finding relies on cases relating to parol evidence of boundary agreements – that is where there is no written boundary agreement – and, first, morphs a requirement of a dispute into a requirement for a legal ambiguity and, second, imposes a canon of construction (metes and bounds prevails over acreage calls) to deny the ambiguity. To this practitioner a disagreement over whether a tract contains 147 acres or 301 acres is ample evidence of a dispute sufficient to satisfy the parol evidence requirement and where the parties actually enter into a boundary agreement, replete with words of grant, there is no reason not to give that agreement validity even if the parties were wrong about what the underlying documents said.

Assuming this case is, indeed, Texas law, how does the practitioner respond? First, the failure to include the mineral lessees in the stipulation is what caused the problem so all parties owning interests need to be included. Second, there must be a real ambiguity in the documents; if this case is correct, you cannot do a stipulation just because one family member claims a bigger or different interest or because they disagree over acreage, or just cannot get along. Third, you should be prepared to try the dispute that gave rise to the stipulation of interest; according to this court of appeals the parties to the stipulation will be given the opportunity to re-argue what was settled in the stipulation and if the court thinks the underlying docs are without ambiguity, the stipulation, which is an agreement of conveyance by all of the owners, fails. Fourth, create a separate granting clause that says what this one said but looks more like a traditional granting clause; here one might have said that the Sugg group grants all of its rights in the minerals under the 147 acres to Richey while Richey grants all of its rights in the minerals under the 493 acres to the Sugg group.

What about that paper Ellison signed in 2008? This is especially troublesome because Ellison had taken steps to claim the disputed 154 acres including placing signage on it and making filings with the RRC. Could Ellison really have been bound by signing a paper accepting the description of the 147-acre tract as being the entire interest without signing the underlying stipulation? That's difficult but it sure seems like a waiver defense arose for Sugg and Richey, but what did it do? Most stipulations are effective from the date they are signed forward but, in this case, production from the Suggs #3 pre-dated the date the boundary agreement was signed. Ellison argued that giving it retroactive effect made it into a correction deed and subject to §5.027 of the Property Code which requires some error to correct. The Boundary Agreement was signed in 2008 but was made effective July 8, 1987 (the date of the Richy/Pilon lease), but there seems to be no reason why any boundary agreement or stipulation of interest cannot be made effective whenever all of the affected parties agree to make it effective and, since it is a cross conveyance, the effective date cannot make it into a correction deed.