OHIO SUPREME COURT TO RULE
Additional MTA Questions Involving Severed Oil and Gas Rights

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On April 28, 2020, the Supreme Court of Ohio accepted jurisdiction to hear an appeal in a case known as *Erickson v. Morrison*, Case No. 2020-0244, where the Court will decide more important issues involving the Marketable Title Act's ("MTA") application to severed oil and gas interests in Ohio. This appeal was accepted on the heels of the Ohio Supreme Court accepting an appeal on January 28, 2020 in *West v. Bode*, in which the Court will decide whether the MTA may be used to extinguish severed oil and gas interests or whether the Dormant Mineral Act ("DMA") provides the exclusive remedy.

These MTA cases are being closely followed due to a recent surge in MTA lawsuits filed by surface owners seeking to terminate severed oil and gas interests. In general, the MTA automatically extinguishes property interests created prior to a landowner's marketable record title to property if the landowner has an unbroken chain of title for more than forty (40) years after the prior interest was created and there is no "specific" reference to the prior interest in the landowner's chain of title. In the context of an oil and gas interest, surface owners have been attempting to utilize the MTA to extinguish severed oil and gas interests, rather than relying on the DMA. The DMA requires surface owners to first notify mineral owners before seeking an abandonment of their minerals, and

MTA continued on page 14

MTA continued from page 13
also allows mineral owners to permanently preserve the interest.

Erickson v. Morrison involved a fact pattern that is typical of most MTA cases involving severed oil and gas interests. In 1926, the Logans signed a warranty deed to convey a 139-acre parcel of property in Guernsey County, Ohio. This deed contained the following language, by which the Logans reserved the oil and gas rights to the property: ***"excepting and reserving therefrom coal, gas, and oil with the right of said first parties, their heirs and assigns, at any time to drill and operate for oil and gas and to mine all coal."***

In 1941, the Logans sold this oil and gas interest to C.L. Ogle by mineral deed. The Ericksons are the heirs of C.L. Ogle. Between 1926 and 1975, the property was conveyed several times and each conveyance contained the above-quoted reservation language, without the Logans' names being mentioned.

The surface owners are the Morrisons. They took title to the property in 1978, and thereafter conveyed the property to themselves as joint tenants and then into a trust, and for each of these transfers, the Morrisons acknowledged that they did not own the oil and gas rights.

In 2017, the Ericksons filed suit against the Morrisons, seeking to quiet their title to these severed oil and gas rights. The issue before the trial court was whether the language of this reservation was a "specific reference" to the original reservation, using the three-part test set forth in *Blackstone v. Moore*, 2018-Ohio-4959. *Blackstone held* that a "specific" reference in the chain of title to a prior reserved interest will preserve it from being extinguished under the MTA. *Blackstone* used a dictionary definition of a word "specific" to mean "characterized by precise formulation or accurate restriction (as in stating, describing, defining, reserving): free from such ambiguity as results from careless lack of precision or from omission of pertinent matter."

The trial court ruled in favor of the Ericksons, holding that the reserved mineral interest was specific and that the Morrisons had no interest in the oil and gas rights underlying the property. On appeal, the Fifth District Court of Appeals reversed the ruling of the trial court, holding that despite the fact that the reservation language was repeated throughout the chain of title to the Morrisons' property, the Ericksons' interest in the minerals was extinguished under the MTA because the reservation was not specific using the test set forth in *Blackstone*. The Court of Appeals specifically concluded that the interest was not specific because the name of the original reservists, the Logans, was not included or repeated in the references to the reservation within the deeds in the Morrisons' chain of title.

In *Erickson v. Morrison*, the Ohio Supreme Court accepted two propositions of law:

1. "The Marketable Title Act does not require that a reservation set forth the name of the person holding the interest in order to be specific and preserve the interest."

2. "A property holder's fee simple interest is preserved under the Marketable Title Act where the party seeking relief under the Marketable Title Act had actual knowledge of the interest."

Unless the Court reverses *West v. Bode* and rules that the MTA does not apply to extinguish severed oil and gas interests, the Ohio Supreme Court will decide these important issues in *Erikson v. Morrison*. A ruling in favor of the Eriksons will be beneficial to holders of severed oil and gas interests in that these severed interests will be more likely to be preserved and not extinguished. Conversely, a ruling in favor of the Morrisons will better enable surface owners to extinguish severed oil and gas interests where the reservists' names were not included in the repetition of the interest in the chain of title. Either way, there will be intense interest in the outcome of this case as the Court's ruling will undoubtedly result in a large shift in ownership of valuable mineral rights.

In short, surface owners and severed mineral owners in Ohio continue to face significant hurdles under the MTA and the DMA when seeking to terminate or preserve ownership of valuable oil and gas interests. The two cases currently before the Supreme Court of Ohio, *West v. Bode* and *Erickson v. Morrison*, will impact the surface and mineral owners' competing claims over these interests. Ohio law in this area is in flux and is evolving seemingly every day. This uncertainty highlights the importance of retaining an experienced oil and gas attorney to advise clients with regard to the extinguishment, preservation, and the ownership of severed oil and gas interests.

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