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Ohio Supreme Court Decides *West v. Bode*, Holding that Both the Dormant Mineral Act and the Marketable Title Act May Apply to Severed Oil and Gas Interests

In a highly anticipated decision, the Ohio Supreme Court held today (December 2, 2020) that both the Marketable Title Act (“MTA”) and the Dormant Mineral Act (“DMA”) may be deployed as statutory mechanisms to solve disputes concerning severed oil and gas interests. *West v. Bode*, 2020-Ohio-5473 (December 2, 2020). In *West*, all parties agreed on a baseline statutory construction premise that where an irreconcilable conflict exists between two statutes, the more specific statute will prevail over the more general. Appellants argued that the more general MTA applied to variety of real property interests as a cure to irregular title defects but was no longer applicable with respect to severed oil and gas interests with the implementation of the DMA, a more specific statute designed to address only that narrower subset of oil and gas property interests. The Court disagreed, holding that the MTA provides guidelines for extinguishment of all real property interests as a matter of law, while the DMA creates a procedural regime to deem an oil and or gas severance abandoned in an effort to allow owners to bypass judicial involvement. The Court further held that “abandonment” under the DMA and “extinguishment” under the MTA are two separate concepts; and consequently, the statutes are distinct and not in conflict. Ironically, while the *Corban* decision from 2016 specifically rejected the concept of “automatic abandonment” of severed oil and gas interests under the DMA, the Ohio Supreme Court has held that automatic extinguishment under the MTA is entirely permissible if the criteria is met and proven by the title record. *Corban v. Chesapeake Exploration, LLC*, 149 Ohio St.3d 512, 2016-Ohio-5796, 76 N.E.3d 1089 (2016).

Regardless of the anticipation leading up to today’s decision, the result was not altogether unexpected. The Court had shown a willingness to continue to apply the MTA to severed oil and gas interests in *Blackstone v. Moore*, decided two years ago. 155 Ohio St.3d 448, 2018-Ohio-4959, 122 N.E.3d 132 (2018). *Blackstone*, however, did not address the question of whether a conflict existed between the two statutes. Appellants in *West* rightly cited to Justice DeGenaro’s concurring opinion in *Blackstone*, who provided compelling arguments that the DMA should be the exclusive statutory remedy based on statutory construction. Today’s decision puts an end to that debate: “A more reasonable explanation is that the legislature intended the [DMA] to provide surface owners an *additional* mechanism to accomplish reunification of dormant mineral interests with the surface estate in order to promote the use of natural resources when those interests could not be extinguished under the [MTA].”

While *West* clarifies usage of the MTA and DMA, exploration and production companies operating in Ohio are likely not ready to abandon a cautious approach when securing rights to develop an oil and gas property. Operators are likely to continue to engage in protective strategies such as leasing all potential owners, suspending the payment of royalties where appropriate until ownership is confirmed, seeking statutory unit orders from the Ohio Department of Natural Resources when necessary, and seeking final non-appealable orders in quiet title or declaratory judgment actions. Importantly, all parties should keep in mind that outcomes will vary based on the unique timing and factual differences present in each scenario. While we can now say that both statutes remain applicable, the result of that application is dependent on many other factors.

For more information about *West*, or for a copy of the decision, contact the Energy Group at Dickie, McCamey & Chilcote, P.C.



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