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Ohio Supreme Court Decides Cases Interpreting the Ohio Dormant Mineral Act

On September 15, 2016, the Ohio Supreme Court issued three opinions and dispensed with 10 other related cases regarding the interpretation of the application of the Ohio Dormant Mineral Act (O.R.C. § 5301.56) (ODMA). The issues surrounding the ODMA resulted in all-or-nothing litigation regarding ownership of dormant mineral interests between surface owners and mineral owners, and oil and gas lessees claiming through both sides.

The Ohio Supreme Court determined that the 1989 version of the ODMA (1989 Act) was not self-executing in that title to abandoned mineral interests did not vest in surface owners automatically by operation of law, but that surface owners claiming that mineral interests were abandoned were required to seek a judicial determination as to abandonment by filing a quiet title action. Therefore, any surface owner claiming title to abandoned minerals under the 1989 Act was required to obtain a court order confirming that the interests were abandoned and vested in the surface owner under the law. The Court also determined that the 2006 version of the ODMA (2006 Act) displaced the 1989 Act, and that any surface owner claiming title to abandoned minerals after the enactment of the 2006 Act must follow the notice and recording procedures set forth in the 2006 Act. Finally, the Court held that the payment of delay rentals under an oil and gas lease are insufficient savings events under the ODMA.

The lead case of *Corban v. Chesapeake Exploration, L.L.C.*, Slip Opinion No, 2016-Ohio-5796, was an appeal from the United States District Court for the Southern District of Ohio, Eastern Division, which certified two questions to the Supreme Court: (1) whether the 2006 Act or the 1989 Act applies to claims asserted after 2006 alleging that oil and gas rights vested in the surface owner, and (2) whether the payment of delay rentals under an oil and gas lease constitutes a "title transaction" and therefore a "savings event" under the ODMA. The Ohio Supreme Court held that the procedures set forth under the 2006 Act must be followed as to all claims made after June 30, 2006, and that the payment of delay rentals is neither a title transaction nor a savings event.

The ODMA was enacted to facilitate the development of mineral interests by providing a method for the abandonment of dormant mineral interests and the vesting of their title in surface owners. The 1989 Act provided that a mineral interest was "deemed abandoned and vested in the owner of the surface" if none of the following applied: (1) the mineral interest was in coal, (2) the mineral interest was held by the United States or other political body, or (3) a "savings event" occurred within the statutorily prescribed 20-year period. The 2006 Act has the same requirements, and adds that the surface owner complete a non-judicial process that includes executing an Affidavit of Abandonment with notice served upon the mineral owners.

The *Corban* majority distinguished phrasing in the ODMA from that used in the Ohio Marketable Title Act (O.R.C. § 5301.47, *et seq.*, the "MTA"), which was enacted for the purpose of simplifying and facilitating land title transactions. The MTA uses the word "extinguish", and declares certain interests to be "null and void". The ODMA is part of the MTA, but instead provides that mineral interests are "deemed abandoned" and vested in the surface owner. The Court noted that at common law, a quiet title action would have failed absent proof of the property owner's subjective intent to abandon. The Court also cited to previous Ohio authority indicating that the word "deemed" when used in a statute creates a "conclusive presumption" in a civil action, but does not render the 1989 Act self-executing in nature or automatically transfer a mineral interest. The Court stated that this conclusive presumption remedied the difficulties in proving abandonment faced by surface owners when seeking to quiet title to dormant mineral interests. Therefore, by providing

for a conclusive presumption of abandonment as an evidentiary device in such an action, an effective method of terminating dormant mineral interests was created by the legislature under the 1989 Act.

The Court held that any surface owner seeking to merge the surface and mineral rights under the 1989 Act must file a quiet title action and obtain a decree that the dormant mineral interest was abandoned. The Court further elaborated that the procedures under the 2006 Act must be followed as to all claims made after June 30, 2006, regardless of whether the claim pertains to mineral interests that were abandoned prior to such date.

With regard to the second certified question, the *Corban* Court held that the payment of delay rentals is not a "savings event" under the ODMA because it is not a title transaction that must be filed of record in the county recorder's office. Further, the Court stated that the payment of delay rentals is not a "title transaction" because it does not affect title to any interest in land pursuant to the definition set forth in O.R.C. § 5301.47(F).

In the second opinion issued by the Ohio Supreme Court, *Walker v. Shondrick-Nau*, Slip Opinion No. 2016-Ohio-5793, the surface owner served notice and filed an Affidavit of Abandonment of the subject mineral interest in 2012 pursuant to the requirements set forth in the 2006 Act, which prompted the mineral owner to file an Affidavit and Claim to Preserve its mineral interest. As a result of this dispute, the surface owner filed a declaratory judgment action seeking to quiet title to the mineral interest and claimed that it had been automatically abandoned pursuant to the 1989 Act, prior to even filing the Affidavit of Abandonment.

The issues presented in *Walker* were largely decided by virtue of the Court's decision in *Corban*. Specifically, the Court in *Walker* reiterated that the 2006 Act is the only version of the ODMA applied to claims made after June 30, 2006, when the 2006 Act was enacted, and that the surface owner must have taken affirmative action in order to establish abandonment pursuant to the 1989 Act. Since the mineral owner in *Walker* had timely filed an Affidavit and Claim to Preserve pursuant to the 2006 Act, the Court held that the mineral interest was not abandoned. Because the Court found that the 1989 Act did not apply in this case, the Court did not address several remaining questions presented on appeal, including questions regarding the application of the 20-year "look-back" period in the 1989 Act, and the circumstances under which a mineral interest is the "subject of" a title transaction.

Finally, the Court's opinion in *Albanese v. Batman*, Slip Opinion No. 2016-Ohio-5814, affirmed the decisions of two cases from the Seventh District Court of Appeals for Belmont County, holding that mineral interests were preserved in favor of their holder, but for different reasons than those set forth in the court of appeals' decisions. Instead of finding that savings events had occurred under the 1989 Act, thereby preserving the mineral interests, the Supreme Court held that the mineral interests were not abandoned because the surface owners had filed their claim after June 30, 2006 and did not follow the necessary procedures under the 2006 Act. Specifically, the Court held that for all claims made after June 30, 2006, mineral rights cannot be deemed abandoned unless the owner of the minerals had been served with notice and the surface owner had filed an Affidavit of Abandonment, which are mandatory pursuant to the 2006 Act.

Citing to the above cases, the Ohio Supreme Court decided 10 additional cases (listed below) consistent with the three written opinions.

Carney v. Shockley, (Slip Opinion No. 2016-Ohio-5824)
Dahlgren v. Brown Farm Prop. L.L.C., (Slip Opinion No. 2016-Ohio-5818)
Eisenbarth v. Reusser, (Slip Opinion No. 2016-Ohio-5819)
Farnsworth v. Burkhart, (Slip Opinion No. 2016-Ohio-5816)
Swartz v. Householder, (Slip Opinion No. 2016-Ohio-5817)
Shannon v. Householder, (Slip Opinion No. 2016-Ohio-5817)
Taylor v. Crosby, (Slip Opinion No. 2016-Ohio-5820)
Thompson v. Custer, (Slip Opinion No. 2016-Ohio-5823)
Tribett v. Shepherd, (Slip Opinion No. 2016-Ohio-5821)
Wendt v. Dickerson, (Slip Opinion No. 2016-Ohio-5822)

If you have questions on how these decisions affect your interest, please contact Scott K. McKernan at (412) 253-8819 or smckernan@babstcalland.com, Sarah M. Rambin at (412) 253-8847 or srambin@babstcalland.com, or Bruce F. Rudoy, chair of Babst Calland's Mineral Title Services practice group, at (412) 253-8815 or brudoy@babstcalland.com.