Mineral Owner vs. Solar Company: New Texas Case Addresses Key Issue

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A recent Texas case, *Lyle v. Midway Solar*, S.W. 3d, 2020 WL 7769632 (Tex. App. Ct., El Paso 83rd Dist. 2020), addressed a challenge that many solar developers wrestle with: how to handle mineral owners. The El Paso Court of Appeals clarified this complex issue and demonstrated the importance of properly addressing the minerals on a site prior to developing a project.

Key Takeaways for Renewable Energy Developers:

This is an important case that renewable energy developers can look to in assessing the minerals on a project site. First, the court actually acknowledged that Texas was a leader in energy and produced the largest share of oil and gas, but that public policy favors adding renewable energy sources into the State's energy portfolio, which is a great development for renewable energy developers. This case focuses on the conflict between the surface/solar owner and mineral owner/developer, which is always an issue especially for solar developers. The opinion does not address any fact-specific analysis that must be performed when applying the accommodation doctrine, but it 1) does help confirm that the accommodation doctrine does apply when the deed/contract does not address the uses of the surface, 2) sets when the application of the accommodation doctrine

should be used, and 3) shows the importance of obtaining any agreements from the proper parties before filing them of record.

Basic Facts of the Case:

The Lyles own a portion (27.5%) of the mineral estate in a 315-acre tract in Pecos County, Texas where Midway Solar, LLC ("Midway") acquired a solar lease from Gary Drgac who owned 100% of the surface for the construction of a solar project on his land. The Lyles admittedly were not under any lease to develop the minerals, and they had no plans to develop. Further, they had not received any offers to lease their mineral interest. The solar lease acknowledged that Mr. Drgac did not own the mineral estate and the ownership of minerals in third parties constituted a title encumbrance. Midway amended the solar lease to designate an 80-acre tract at the north end of Section 14, and a 17-acre tract on the south end as drill site tracts.

Midway pursued surface waivers and ultimately acquired surface waivers from twenty individuals who owned a mineral interest on adjacent property, but some of those waivers purported to cover the 315-acre tract at issue. Midway amended some of the waivers and filed a "Disclaimer of Interest" of record in Pecos County, Texas, which disclaimed any interest that the waivers may have given Midway on the 315-acre tract. Midway did not acquire a surface waiver from the Lyles. Midway constructed the solar facility on 215 acres on the south half of Section 14, which constitutes approximately 70% of the survey, avoiding the drill site tracts.

The Lyles sued Midway, Mr. Drgac, and the mineral owners from the adjacent tract who signed the surface waivers discussed above. The Lyles claimed that: 1) they were entitled to a quiet title declaration in their mineral estate because the surface waiver agreements created a cloud on their title; 2) Midway and Mr. Drgac breached the 1948 deed,

from which the Lyles derived their mineral ownership (the "1948 Deed"), by denying them reasonable access to their minerals by covering 70% of the property with solar facilities; and 3) all parties trespassed on the Lyles' mineral estate by the solar lease and improperly executed surface waivers.

Midway and Mr. Drgac filed several summary judgment motions, which the trial court granted. These orders stated 1) that the "Disclaimer of Interest" filed in the Deed Records removed any purported cloud of title and required a certified copy of the court's order to be filed in the county records, 2) that the accommodation doctrine applies to the interpretations of the 1948 Deed, and 3) that Midway owed no duty to the Lyles to accommodate their right to use the surface because the Lyles had not developed their mineral estate and had no plans to do so. The Lyles filed an appeal arguing that the trial court erred in granting summary judgment.

Court of Appeals Decision:

1. **Trespass and Breach of Contract Claims:**

1. **Application of the Accommodation Doctrine:**

The accommodation doctrine is well-settled law that "mineral and surface estates

must exercise their respective rights with due regard for the other's," and has in general provided a "sound and workable basis" for resolving conflicts between ownership interests. *See Coyote Lake Ranch*, 498 S.W.3d at 61, 63 (*citing, inter alia*, *Brown v. Lundell*, 344 S.W.2d 863, 866 (Tex. 1961); *Warren Petrol. Corp. v. Martin*, 271 S.W.2d 410, 413 (Tex. 1954)).

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