TEXAS CASE LAW UPDATE

covering 2023 and early 2024 cases

50TH ANNUAL ERNEST E. SMITH
OIL, GAS AND MINERAL LAW INSTITUTE
THE UNIVERSITY OF TEXAS SCHOOL OF LAW
THE OIL, GAS AND ENERGY RESOURCES LAW SECTION (OGERL) SBOT
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Part II, April 5, 8:30 to 9:00 a.m.

- Note: Pet histories as of February 2023

KBH Energy Center
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- My opinions are my own and not necessarily the opinion of the KBH Energy Center

Apache Corp. v. Apollo Expl., LLC, *670 S.W.3d 319 (Tex. 2023)*

- Purchase and Sale Agreement (PSA) required Apache to provide seller by November 1 of each year a *"written budgeted drilling commitment"* for the *"upcoming calendar year"*
- If the budgeted drilling commitment would lead to the loss any part of any OGLs, Apache had to offer *"all of [its] interest in the affected Leases (or parts thereof) to Seller at no cost to Seller"*
- At the end of 2015, the budgeted drilling commitments led to the loss of about 38,000 acres from the 115,000-acre Bivens Ranch OGL plus another 100 OGLs covering smaller acreages
- The Bivens Ranch OGL was ***"effective the 1st day of January 1, 2007 (the Effective Date), "from which date the anniversary dates of this Lease shall be computed"***
- A recorded Memorandum of OGL stated that ***"December 31"*** was the expiration date of the Bivens OGL
- If the termination date was December 31, 2015, Apache breached because it notified Seller on November 1, 2015
- If the termination date was January 1, 2016, then Apache's notice to Seller was timely.
- **When did the Bivins Ranch OGL expire? Did Apache breach the PSA?**
- **Held: January 1, 2016**

Apache Corp. v. Apollo Expl., LLC, (cont.)

Comments:

- In recent years, the SCOT has eschewed resort to arbitrary and mechanical rules of construction. *Wenske v. Ealy*, 521 S.W.3d 791 (Tex. 2017) (*"[W]e can ascertain the parties' intent here by careful examination of the entire deed…. **Applying default rules or other mechanical rules of construction to determine the deed's meaning is, therefore, both unnecessary and improper**."*); *Hysaw v. Dawkins*, 483 S.W.3d 1, 16 (Tex. 2016) (*"[i]ntent must be determined by a careful and detailed examination of the document in its entirety**, rather than by application of mechanical rules of construction that offer certainty at the expense of effectuating intent***."*)
- In *Piranha Partners v. Neuhoff*, 596 S.W.3d 740 (Tex. 2020), the SCOT conceded, "***We have not yet endeavored to clearly distinguish between the "arbitrary," "mechanical," "default" rules we have "cast off" and the "well-settled contract-construction principles" on which we continue to rely…."***
- So, in *Piranha*, the court offered up two lists:

Apache Corp. v. Apollo Expl., LLC, (cont.)

- Cast-off rules:
  - *"'default rule'" requiring that a royalty interest to 'be carved proportionately from the two mineral ownerships'"*
  - *"'a mechanical approach requiring rote multiplication of double fractions whenever they exist'"*
  - *"a rule giving certain clauses—like a 'granting' clause, 'warranty' clause, or 'habendum' clause—absolute priority over other clauses"*
- Well-settled principles…on which the court continues to rely:
  - *"the rule requiring that courts construe language according to its 'plain, ordinary, and generally accepted meaning' unless the instrument directs otherwise"*
  - *"the rule requiring that courts construe words 'in the context in which they are used'"*
  - *"the rule requiring that courts avoid any construction that renders any provisions meaningless"*
  - *"the rule requiring courts to consider and construe all of a contract's provisions together 'so that the effect or meaning of one part on any other part may be determined'"*
  - One more rule can now be added to this list: ***"…the measuring date—the date "from" or "after" a period is to be measured—is excluded in calculating time periods"***

Title search: Case Law Update: Part Two

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