



Ohio Supreme Court decides lease is "title transaction" under DMA

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Additional clarity is slowly coming to the often disputed Ohio Dormant Minerals Act, R.C. 5301.56 (DMA). On the morning of November 5, 2015, the Ohio Supreme Court issued its long-awaited decision in *Chesapeake Exploration, LLC v. Buell*, Slip Opinion No. 2015-Ohio-4551. Written by Chief Justice O'Connor, the lengthy majority opinion confirms that a "recorded oil and gas lease is a title transaction" for purposes of the DMA, "but the expiration of such a lease is not." A copy of the full ruling can be found [here](#).

The case itself arrived before the Court in the context of two certified questions from Judge Watson in the United States District Court for the Southern District of Ohio:

1. Whether the recorded lease of a severed subsurface mineral estate is a title transaction under the DMA, R.C. §5301.56(B)(3)(a).
2. Whether the expiration of a recorded lease and the reversion of the rights granted under that lease is a title transaction that restarts the twenty-year forfeiture clock under the DMA at the time of the reversion.

Although the federal court recognized that the DMA would be determinative of the case, it declined to answer these questions based on the "lack of available authority from Ohio courts."



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The Court's forty-page ruling analyzed each of the two certified questions separately. First, it determined that a recorded oil and gas lease is a title transaction and, thus, a savings event under the DMA. Interestingly, however, the Chief Justice's majority opinion was joined by only four other justices (Lanzinger, French, O'Neill and Kennedy) with Justice Kennedy concurring as to the judgment but disagreeing as to the analysis. Justice Pfeiffer wrote a dissenting opinion which was joined by Justice O'Donnell.

For the majority of the Court, the answer to the first certified question proved to be in the clear and unambiguous language of two statutes: the DMA and R.C. 5301.47 (part of the Ohio Marketable Title Act). First, the Court focused on the phrase "title transaction" as used in R.C. 5301.56(B)(3)(A). Because the phrase "title transaction" is not defined in the DMA, the Court turned to the definition set forth in the Ohio Marketable Title Act. Specifically, R.C. 5301.47(F) defines a title transaction as "any transaction affecting title to any interest in land," and includes a non-exhaustive list of examples (e.g., a deed or mortgage). When that definition is inserted into the language in R.C. 5301.56(B)(3)(a), the statutory savings reads as follows:

The "mineral interest has been the subject of [any transaction affecting title to any interest in land, including title by will or descent] that has been filed or recorded in the office of the county recorder of the county in which the lands are located."

Based on this language, the Court determined that a recorded oil and gas lease was a transaction affecting title to any interest in land – namely both the surface and the mineral estates. Specifically, the Court concluded in Paragraph 60 of its opinion that:

The rights and privileges granted under an oil and gas lease, although limited to the purposes of the lease, are sufficiently vast to affect the possession and custody of the mineral estate, even if not its ownership. As this court recognized in *Harris*, the oil and gas lease grants the lessee a "vested right to the possession of the land" for the purposes of the lease. *Id.*, 57 Ohio St. at 130, 48 N.E. 502. Because the lessee also enjoys reasonable use of the surface estate to accomplish the purposes of the lease, the lease also similarly affects the surface estate. Thus, the lease affects the possession and custody of both the mineral and surface estates.

The Court went on to explain that, under an oil and gas lease, "the lessor effectively relinquishes his or her ownership interest in the oil and gas underlying the property in favor of the lessee's exclusive right to those resources." Therefore, the lease is a "title transaction" under the DMA, because "it affects title to the surface and mineral owners' interests in land." Justice Kennedy concurred in the ruling but took it a step further, concluding: "I would hold that any transaction that must be recorded must be a 'title transaction.'" On the other hand, Justice Pfeiffer's dissenting opinion argued, among other things, that a recorded oil and gas lease should not be a

savings event because the originally introduced version of the DMA included a lease as a savings event but the as-enacted version did not.

Turning to the second issues, the Court unanimously concluded that the “mere unrecorded expiration of an oil and gas lease” is not a savings event under R.C. 5301.56(B)(3)(A). Differentiating between the unrecorded expiration of an oil and gas lease as a matter of law, and the recordation of a release of an oil and gas lease, the Court noted that expiration merely returns the parties to the “status quo prior to the lease.” And, more importantly, such expiration is not a recorded transaction as required by the DMA: “When an oil and gas lease expires by its own terms or by operation of law . . . there is no record notice on the chain of title that the mineral rights have reverted to the lessor[.]” This runs counter to the purpose of the DMA, which is to simplify and facilitate title transactions by allowing the public to rely on the record chain of title. Interestingly, the Court suggested (but did not decide) that a recorded release of an oil and gas lease would qualify as a “title transaction.”

With *Chesapeake v. Buell* decided, Ohio's oil and gas law continue to move forward slowly. Practitioners, oil and gas companies, and lower courts, however, anxiously await decisions in the 13 other undecided DMA cases pending before the Court. A brief summary of those cases and the relevant issues is included in Bricker's [Dormant Mineral Act \(DMA\) cases pending before the Ohio Supreme Court](#) chart.

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