

# DEED REFORMATION



## *COUNSEL'S CORNER*

Michael and Billie Cade sold Barbara Cosgrove over two acres of land in 2006. The Special Provisions clause stated “Sellers to retain all mineral rights.” But the Deed did not contain any reservations and instead conveyed the property to Cosgrove in fee simple.

The Cades had leased the mineral estate to Dale Resources, which was succeeded by Chesapeake Energy. In 2009 and 2010, Chesapeake sent the Cades lease payments. In late 2010, Chesapeake advised Michael Cade that there was a problem with the Deed’s mineral reservation.

So the Cades investigated, then sent a demand letter to Cosgrove asking her to issue a correction deed. Cosgrove refused, and replied instead that the statute of limitations had expired and barred any claims the Cades might have over the 2006 Deed.

In February 2011, the Cades sued Cosgrove claiming that Cades owned the mineral interests and Cosgrove breached the 2006 Contract by failure to execute a correction deed. Cosgrove defended by claiming that the statute of limitations had expired and the merger doctrine applied to this situation. And as a consequence, the Cades had no lawful claim against Cosgrove.

The trial court ruled that the statute of limitations did indeed apply, and denied the request to reform the Deed by adding a mineral reservation in favor of the Cades. Cosgrove then sought attorney’s fees from the trial court, which the trial court denied.

Both parties appealed. Cosgrove wanted attorney’s fees. The Cades wanted the Deed they signed to be judicially corrected to include a mineral reservation.

The Court of Appeals reversed the trial court’s judgment for Cosgrove and continued to deny her reimbursement for attorney’s fees. Cosgrove appealed to the Texas Supreme Court.

At this juncture there were two primary issues before the Supreme Court: (1) Should the Deed be corrected to reserve mineral rights; and if so (2) Is Cosgrove entitled to reimbursement for attorneys fees?

The Texas Supreme Court started their analysis with a presumption that every grantor (seller) knows of defects in a Deed that result from mutual mistake, because grantors are the ones who sign the Deed. In our Texas land conveyancing custom, grantees (buyers) very rarely sign or approve deeds. Only grantors do so.

Indeed (*pun strictly intended*), some grantees do not even see the Deed until months after closing and recordation while others never see it.

The Supremes then decided that “Parties are charged as a matter of law with knowledge of an unambiguous deed’s material omissions from the date of its execution, and the statute of limitations runs from that date.” The Cades had actual knowledge of the deed’s omissions at the time of execution. They were charged with knowledge of what was included and excluded.

When a mineral reservation is completely omitted from a deed, the error is obvious. As such, it is irrefutable because “. . . *the conspicuousness of the mistake shatters any argument to the contrary* [emphasis added].”

The Supremes left open the possibility that a fraud claim might yield a different result. However – in this case anyway – there was no claim of fraud.

Cosgrove owns fee simple title without a mineral reservation, and the opportunity for deed correction by a Texas Court expired with the statute of limitations. Cosgrove wins; Cades lose.

See *Barbara Cosgrove v. Michael Cade and Billie Cade*; Cause No. 14-0346; Texas Supreme Court; July 20, 2015.

#### Lessons learned:

1. Practice Point: The party signing the Deed is charged with knowledge of its contents. If the Grantor has a problem, then the Grantor better raise it quickly. Although not stated in this decision, presumably the same logic applies with other docs that are signed by only one party (like Bills of Sale, Estoppels, Assignments and Bonds, for examples).
2. Practice Point: Before closing, critically compare the proposed Deed to the Purchase and Sale Agreement, all Amendments, title commitment and vesting deed. If you are even 1% unsure, get a real estate lawyer to assist. Deed challenges in Texas just became much more difficult after the date of this decision – July 20, 2015.

3. Find Me: The NTCAR Expo is September 2 this year. Look for me there under the banner “**IPSE DIXIT.**”

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