



Ohio Supreme Court Holds 21-Year Statute of Limitations Applies to Lease Busting Claims

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On November 26, 2019, in *Browne v. Artex Oil Company*, 2019-Ohio-4809, — N.E.3d — (Ohio 2019), the Ohio Supreme Court answered the question of which statute of limitations applies to a claim for declaratory judgment that a lease has expired for failure to produce in paying quantities: the 21-year period as set forth in R.C. 2305.04 for actions to recover title or possession of real property. View a copy of the full opinion [here](#).

Browne involved an 86-acre tract of land located in Guernsey County, Ohio, that was subject to an oil and gas lease in 1975. *Browne* at ¶ 2. The lease contained a typical habendum clause setting forth a secondary term for as “long thereafter as oil or gas, or either of them, is produced by lessee from said land.” One well was drilled on the property. *Id.* Artex Oil operated the well from 1999 to 2014. *Id.* at ¶ 3. The Brownes acquired the property in 2012. They sued two years later asserting a declaratory judgment action, quiet title action, conversion, and unjust enrichment claims all on the grounds that 1975 lease expired for failure to produce in paying quantities prior to 1999. *Id.* at ¶ 4.

Deciding cross-motions for summary judgment, the trial court initially denied both parties’ motions, but later granted the defendants’ summary judgment motion on reconsideration. *Browne* at ¶ 6. This grant was premised on the Brownes’ lack of evidence of defendants’ alleged failure to produce in paying quantities as well as the application of the 15-year statute of limitations set forth in former R.C. 2305.06 (pursuant to R.C. 2305.041), which barred any evidence of non-production prior to 1999. *Id.* Notably, R.C. 2305.06 was amended in 2012 to reduce this limitations period from 15 years to 8 years. R.C. 2305.06.

The Brownes appealed, arguing that the 21-year limitations period for recovery of title or possession to property in R.C. 2305.04 applied. However, the Fifth District Court of Appeals disagreed and

affirmed the trial court's grant of summary judgment. *Id.* at ¶ 7; *Browne v. Artex Oil Co.*, 5th Dist. No. 17 CA 20, 2018-Ohio-3746, 116 N.E.3d 687, *cause dismissed*, 153 Ohio St.3d 1483, 2018-Ohio-3867, 108 N.E.3d 81 (2018), *and appeal allowed*, 153 Ohio St.3d 1485, 2018-Ohio-3867, 108 N.E.3d 82 (2018), *reconsideration denied*, 154 Ohio St.3d 1425, 2018-Ohio-4543, 111 N.E.3d 22 (2018), *and rev'd and remanded*, 2019-Ohio-4809 (Ohio).

The Supreme Court of Ohio granted allowance of appeal and reversed, holding that the 21-year limitations period applies. *Browne* at ¶ 8. The Court based its decision on the following:

- Ohio is an ownership-in-place jurisdiction with respect to mineral ownership, meaning minerals and the surface may be separately owned and conveyed;
- Oil and gas leases convey a real property interest (a fee simple determinable) that affects possession and custody of both the surface and minerals; and
- Even though leases may expire by their terms, lessors must often bring civil actions to enforce termination and removal of clouds from the record.

Id. at ¶¶ 20-25.

In rejecting the 15-year limitations period in former R.C. 2305.06 (pursuant to R.C. 2305.041) as applicable, the Court recognized that the habendum clause of an oil and gas lease does not create an obligation on the lessee to produce oil and gas, but instead constitutes a condition upon which continued validity of the lease depends. Thus, a claim for "breach" of the habendum clause which seeks termination of the lease for failure to produce in paying quantities is not a breach of contract claim, but an action for recovery of real property. *Id.* at ¶ 36. Hence, the limitations period for an action alleging a breach of a lease or license to sink or drill wells for gas or oil (other than for calculation or payment of royalties) would not apply. See R.C. 2305.041. The 21-year limitations period in R.C. 2305.04 for action to recovery property fits better. *Browne* at ¶ 38. The Court refused to go so far as to hold there was no limitations period, as argued by the Brownes. *Id.* at ¶¶ 29-30. In summary, because there is a catch-all limitations period

in R.C. 2305.14, the Legislature intended that all civil actions are subject to limitations periods. Thus, there cannot be no limitations period.

Justice Sharon Kennedy authored a dissenting opinion, which was joined by Justice Melody Stewart, pointing out four problems with the majority's opinion:

- It is an advisory opinion. Even with a 21-year statute of limitations, the Brownes cannot prevail on their claims because they still cannot prove the 1975 lease expired for lack of production in paying quantities.
- It relies on dicta from *Chesapeake Exploration, L.L.C. v. Buell*, 144 Ohio St.3d, 2015-Ohio-4551, 45 N.E.3d 185 to establish that oil and gas leases are fee simple determinable interests.
- The dicta in *Buell* is wrong because Ohio has adopted the incorporeal-hereditament theory of mineral ownership, not the ownership-in-place theory. This means the landowner owns the minerals in place, but those become the property of the owner of the well once produced, and an oil and gas lease is a profit a prendre (a license coupled with an interest, not a bare license).
- Its statute-of limitations analysis is incorrect because a lease expires automatically—not via court order. An action for declaration of the same is therefore not subject to a limitations period. The 21-year limitations period would only arise, for instance, if the lessee relies on adverse possession to claim an interest.

Browne at ¶¶ 56–83.

Despite its flaws, the majority opinion in *Browne* settles an important question for landowners and producers and provides certainty. Of course, like all opinions, the facts and context here are critical. Just because a 21-year limitations period is applied to claims for lease termination for failure to produce in paying quantities, one should not presume this rule will apply to other claims for breach of lease agreements. For instance, a claim for failure to properly calculate and/or pay royalties would almost

certainly fall under R.C. 2305.041, which prescribes the 4-year limitations period set forth in R.C. 1302.98 to such actions. Time and further cases will add nuance and help define the limits of this holding, especially where termination of the lease is sought for claims that are not purely based on the habendum (i.e. closer to traditional breach of contract claims).

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