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Douglas Equipment, Inc. v. EQT Production Company: Bundle Your Sticks Carefully!

If you convey property that is currently subject to a producing oil and gas lease but except and reserve to yourself “all rights, title, and interest” in that oil and gas lease, what did you keep? What do you have if that existing lease stops producing and terminates? In *Douglas Equipment, Inc. et al. v. EQT Production Company*,^[1] the Superior Court of Pennsylvania said it is the right to royalties and, once expired, nothing.

Background

In 1994, the Willisons granted a lease to Douglas Equipment, which specified it would continue so long as oil or gas was produced in paying quantities, or for a maximum of three years so long as shut-in royalty payments were made (the “Douglas Lease”).^[2] A single vertical well was drilled on the Douglas Lease and was producing in paying quantities when, in 1999, the Willisons conveyed their property to William E. and Nira W. Holt (as to one-half) and Robert Lee (as to the other half).^[3] That 1999 deed included a total of five exceptions—two relating to coal, two carving out smaller tracts, and another excepting and reserving “all rights, title, and interest” in the Douglas Lease.^[4] It included the standard “TOGETHER with all and singular the rights, liberties, privileges...and **the reversions....**” (emphasis added).^[5]

In 2008, production on the vertical well ceased.^[6] Shut-in payments were made to the Willisons for the three years, plus several years after.^[7] In 2016, the Holts and Robert Lee granted a lease to EQT Production Company.^[8] Around that same time, Douglas Equipment granted a term assignment of the Douglas Lease to LOLA Drilling LLC.^[9] In 2017, Douglas Equipment and others filed suit to enforce the validity of the Douglas Lease.^[10]

The Greene County Court of Common Pleas granted judgment in favor of EQT on summary judgment, holding that the Douglas Lease

expired when production ceased and three years elapsed. And, because the Holts and Robert Lee owned the reverter via the 1999 deed, their lease to EQT was valid and operative.^[11] The Pennsylvania Superior Court agreed, focusing on (1) what rights the Douglas Lease created, and (2) what rights the Willisons kept (or more accurately, did not keep) as a result of the 1999 deed.^[12]

Here, the Court examined Pennsylvania jurisprudence on the nature of oil and gas leases, noting that despite being called “leases,” oil and gas leases have the potential to convey property rights:

The title conveyed in an oil and gas lease is inchoate, and is initially for the purpose of exploration and development.... If development during the agreed upon primary term is unsuccessful, no estate vests in the lessee. If, however, oil or gas is produced, a fee simple determinable is created in the lessee, and the lessee’s right to extract the oil or gas [becomes vested]. A fee simple determinable is an estate in fee that automatically reverts to the grantor upon the occurrence of a specific event.^[13]

Having determined that, upon production from the vertical well, the Douglas Lease became a “fee simple determinable,”^[14] the Court in *Douglas Equipment* addressed the ownership of this possibility of reverter of the fee oil and gas interest.^[15] It focused on the fact that the 1999 deed excepted and reserved *only* the right, title and interest in the Douglas Lease and nothing greater (i.e., not the possibility of reverter/fee oil and gas estate) despite the fact that the 1999 deed did contain this type of exception and reservation vis-à-vis coal veins.^[16] This fact, in light of 21 P.S. § 3’s statutory presumption that a deed grants *all* the grantor’s estate and the 1999 deed’s explicit transfer of “reversions” in the conveyance, left no question that the reverter/fee oil and gas interest was conveyed to the Holts and Robert Lee. In the words of the Court, if the Willisons had intended to keep the reversionary rights to the fee oil and gas estate, the 1999 deed would have stated so.^[17] This meant that after the 1999 deed, the Willisons had only contractual rights to receive royalties from the Douglas Lease. Upon the Douglas Lease’s expiration, the royalty rights expired, and the fee oil and gas estate automatically reverted to the Holts and Robert Lee. Thus, the 2016 lease the Holts and Robert Lee granted to EQT was valid and

operative.

Takeaways

Douglas Equipment is hardly groundbreaking, but it serves as a reminder that oil and gas leases are rather strange creatures—morphing from something akin to a traditional surface lease to a mineral property conveyance the moment oil and gas is produced—and leaving the lessor with a contractual right to royalties and the possibility of reverter. If this change and resulting division of interest are not clearly understood, a subsequent conveyance of the property is unlikely to have language sufficiently precise to articulate what the grantor/lessor intends to convey and, more importantly, what he or she intends to keep.

Further, *Douglas Equipment* demonstrates that when called upon to intervene, a court will invariably construe a deed in favor of as large a grant as possible—Pennsylvania law compels this. The lesson learned is that when conveying property that is subject to an active oil and gas lease, a well-versed oil and gas attorney is worth their weight in black gold.

For more information, contact the author or any attorney with Frost Brown Todd's [Oil, Gas & Minerals](#) team.

[1] 674 WDA 2022, 2023 WL 5239153 (Pa. Super. Ct. Aug. 15, 2023). A full copy of this opinion can be found [here](#). It is noted that “[n]on-precedential decisions filed after May 1, 2019, may be cited for their persuasive value, pursuant to Pa.R.A.P. 126(b).” PA ST SUPER CT IOP § 65.37.

[2] *Douglas Equipment, Inc.* at *1.

[3] *Id.* at *1–2.

[4] *Id.* at *2.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Douglas Equipment, Inc.* at *2.

[\[9\]](#) *Id.*

[\[10\]](#) *Id.*

[\[11\]](#) *Id.* at *3.

[\[12\]](#) *Id.*, generally.

[\[13\]](#) *Douglas Equipment, Inc.* at *4 (internal citations omitted).

[\[14\]](#) For those not versed in the often archaic-sounding language of property interests, a fee simple determinable is an ownership interest in real property where ownership lasts only so long as a specific condition does not occur. If that condition occurs, ownership automatically reverts back to the original grantor. The future interest of the grantor is called a possibility of reverter.

[\[15\]](#) *Id.* at *5–6.

[\[16\]](#) *Id.*

[\[17\]](#) *Id.* at *6.

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