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Faith Ranch and Farms Fund, Inc. v. PNC Bank: Ohio's Seventh District Uses Faith to Divine the Meaning of "Other Minerals"

On April 16, 2021, we [wrote](#) about *O'Bradovich et al. v. Hess Ohio Developments, LLC*. There, Ohio's Seventh District Court of Appeals determined that a 1940 deed's exception and reservation of "all the coal and other minerals" included oil and gas, meaning the grantors kept that interest. In *O'Bradovich*, the Seventh District concluded that for a 1940 deed, the proper starting point is to *presume* oil and gas is included in the term "other minerals" and to then determine whether the language of the deed compelled otherwise. On this question, the *O'Bradovich* court found that the inclusion of easement rights "to use, occupy, and possess any of the surface of the above described premises necessary, convenient or required for the exploring, drilling, testing, mining and removal of said coal or other minerals" in the 1940 deed proved that oil and gas was intended to be included in "other minerals."

The Seventh District faced this question again in [Faith Ranch and Farms Fund, Inc. v. PNC Bank, National Association et al.](#), 7th Dist. Harrison No. 23 HA 0001, 2023-Ohio-3608 (Oct. 3, 2023). This time, a 1953 deed sits at the center of the dispute with this exception and reservation language:

EXCEPTING AND RESERVING to the Grantor from the lands herein conveyed all the coal below the horizon of the No. 8 coal, if any under vein exists thereunder, *and other minerals*, with the right to mine and remove such coal *or other minerals* of any vein, using any convenient underground mining methods, and to transport coal *and minerals* from other premises through and under the surface of said lands; and particularly reserving the seam of coal, if any, now being mined at the Nelm's mine of the Y.&O. Coal Company, near Unionvale, Ohio, with all mining rights necessary or convenient for the mining and removal thereof, and the right to transport

other coal of the same vein under said lands.^[1]

The Plaintiff, Faith Ranch and Farms Fund, Inc., the successor in interest to the grantee (Judson Rosebush), argued that this exception and reservation did *not* include oil and gas. Defendants claimed through the grantors (C.C. Fay and Agnes B. Fay) and argued the opposite.^[2]

Initially, in denying a motion to dismiss, the trial court found the language to be ambiguous as to whether oil and gas was included.^[3] On summary judgment, however, the trial court held the 1953 deed unambiguously reserved only “coal and other minerals” that could be obtained by mining; that it did *not* include oil and gas.^[4] The absence of any reference to surface reservation or drilling sealed the conclusion that “other minerals” did not include oil and gas.^[5]

On appeal, the Seventh District affirmed, agreeing that the 1953 deed’s reference to “other minerals” did not include oil and gas. Citing *O’Bradovich* and starting with the same presumption that “other minerals” includes oil and gas unless the deed compels otherwise, the Seventh District noted the lack of any words related to oil and gas development, such as were found in the 1940 deed in *O’Bradovich*.^[6] Interestingly, the Seventh District disagreed with the trial court, finding ambiguity and basing this conclusion (seemingly) on the term “mine.”^[7] This meant evidence of intent outside the 1953 deed itself could be considered to divine what C.C. and Agnes Fay—presumably deceased—meant. The court discussed several deeds in the 10 years prior to the 1953 deed wherein C.C. Fay had specifically reserved oil and gas by name and concluded that this was manifest of the grantors’ intent to not include oil and gas in “other minerals” in the 1953 deed.^[8]

The *outcome* here tracks the rule established in *O’Bradovich*. With nothing in the 1953 deed referencing anything other than coal mining and development, the necessary conclusion is that oil and gas was not included in the reservation. The Seventh District’s *methodology* is slightly less clear—particularly the finding of ambiguity. The term “mine” is not ambiguous, especially as used in the 1953 deed. Compared to the 1940 deed in *O’Bradovich*, the 1953 deed contains no language approaching the broad surface and

extraction rights and terms (e.g. “drilling”). This alone could have ended the inquiry. Did the 1953 deed being 13 years after the 1940 deed in *O’Bradovich* strengthen the presumption that “other minerals” included oil and gas? This is not clear from the opinion.

Ultimately, the ability to find ambiguity from the word “mine” introduces unnecessary uncertainty into the title review and opinion process. Must prudent title reviewers now check other deeds by the same grantor to confirm the grantor’s intent? Can a reviewer not just rely on the four corners of the deed? Must we rely solely on *Faith*?

For more information, please contact any attorney with Frost Brown Todd’s [Oil, Gas & Minerals](#) industry team.

[1] *Faith Ranch and Farms Fund, Inc.*, ¶ 3 (italics in original).

[2] *Id.*, ¶ 2.

[3] *Id.*, ¶ 4.

[4] *Id.*, ¶ 5.

[5] *Id.*

[6] *Faith Ranch and Farms Fund, Inc.*, ¶ 16.

[7] *Id.*, ¶ 17–18.

[8] *Id.*, ¶¶ 19–24

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