Buyer Beware! Ohio's Seventh District Says DMA Claims Not for Sale

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If a severed mineral interest is abandoned of record under the Ohio Dormant Mineral Act (DMA),[1] but you believe that the procedure was ineffective, can you purchase that claim from the dispossessed heirs and prosecute in a lawsuit against the surface owners and their oil and gas lessee? In *Cardinal Minerals, LLC v. Menno D. Miller et al.*,[2] Ohio's Seventh District Court of Appeals said, "Not so fast." The heirs had nothing to convey, and therefore, the buyer has no stake (standing) to pursue a lawsuit.

Cardinal Minerals, LLC was formed in 2021, and its primary purpose was purchasing rights from mineral holders whose mineral interests were deemed abandoned under the DMA via notices of abandonment served by publication.[3] As to the 80.32 mineral acres at issue, after seeing a publication of a notice of abandonment, Cardinal located the heirs of the S.E. Palzgraf and Emma Pfalgraf, who conveyed the 80.32 mineral acres via a December 7, 1922 deed wherein they excepted and reserved all the oil and gas (the "Pfalzgraf Interest").[4] The surface estate was ultimately conveyed into the Miller's.[5] The Millers later implemented abandonment proceedings under the DMA as part of their efforts to cure title defects in connection with a 2012 oil and gas lease.[6] Notice of abandonment under the DMA was not served via certified mail but instead by publication.[7] No affidavits of preservation were filed, and the Pfalzgraf Interest was deemed abandoned under the DMA with a marginal notation made on the 1922 deed.[8] The Millers lease (including the former Pfalzgraf Interest) was pooled and unitized in 2015 and 2016, with producing wells shortly thereafter.[9]

Cardinal knew of the DMA abandonment, the oil and gas lease, and its unitization and current production when it approached the Pfalzgraf heirs and obtained quitclaim deeds of their interests and, later, assignments of their claims.[10] Cardinal advised the Pfalzgraf heirs of its intention to file suit.[11] Cardinal filed suit against the Millers and the oil and gas lessees, asserting six claims sounding in

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declaratory judgment (counts one and two), quiet title, ejectment/permanent injunction, trespass, and conversion.[12]

In ruling on cross-motions for summary judgment, the Court of Common Pleas of Monroe County, Ohio, rendered judgment in favor of the defendants and against Cardinal, holding, in summary, that Cardinal lacked standing to pursue its claims because the Pfalzgraf heirs had nothing to convey. Additionally, and alternatively, the trial court held that Cardinal's actions in acquiring an interest for the express purpose of pursuing a lawsuit violated the doctrines of champerty and maintenance.[13] Cardinal appealed.

In its June 4, 2024, Opinion and Judgment Entry, the Seventh District Court of Appeals affirmed. With regard to DMA, the Seventh District agreed that because the Pfalzgraf Interest had been formally abandoned of record—with no notices of preservation or affidavits setting forth savings events filed—the 1922 deed creating the Pfalzgraf Interest "ceas[ed] to be notice to the public of the existence of the mineral interest or of any rights under it."[14] Thus, the Pfalzgraf heirs had no interest to convey to Cardinal, and Cardinal had no basis on which to pursue its claims (i.e., no standing).[15] Notably, the Seventh District made clear that the Pfalzgraf heirs themselves could have pursued a judicial declaration that the DMA abandonment was invalid, but before such declaration, they had no interest to convey.[16]

The Seventh District also affirmed the trial court's alternative holding that, notwithstanding the determination that the Pfalzgraf Interest ceased to exist per the DMA, the purported transfers to Cardinal were also void under the Doctrines of Champerty and Maintenance.[17] Maintenance "is assistance to a litigant in pursuing or defending a lawsuit provided by someone who does not have a bona fide interest in the case."[18] Champerty is a subset of maintenance "in which a nonparty undertakes to further another's interest in a suit in exchange for a part of the litigated matter if a favorable result ensues."[19] As the Seventh District notes, the Ohio Supreme Court has held that assignment of rights to a lawsuit are void as champerty.[20] In this case, the Seventh District agreed with the trial court's findings of fact and conclusions of law that, in summary, Cardinal was formed for the purpose of acquiring

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lawsuits, which was the express purpose of acquiring the Pfalzgraf heirs' interests in the property.[21] The court rejected the argument that R.C.1349.55 eliminated the common-law prohibition of champerty and maintenance, noting that "at most, the statute carves out a limited exception involving a consumer who has a 'pending civil claim or action."[22]

The doctrines of champerty and maintenance are ancient and not familiar to oil and gas jurisprudence. Notwithstanding the peculiarity of the presentation, the opinion makes clear that the unique facts and application of the DMA led to the courts conclusion that the "acquisition" was void ab initio. Moreover, in clarifying that the Pfalzgraf heirs themselves did, in fact, have standing to challenge the abandonment, the court appears to limit the applicability of its holding to DMA abandonments and thereby avoids conflict with the Seventh District's line of cases beginning with *Gerrity*, in which a prior DMA abandonment was held ineffective for failure to comply with the DMA's diligence requirements for locating mineral holders.

What impact this decision will have on other transactions and cases in the basin remains unclear, as the specific facts are ever-so-critical to any analysis. Bet on this to be appealed to the Ohio Supreme Court. Stay tuned. For more information, please contact the author or any attorney with Frost Brown Todd's Oil, Gas and Minerals industry team.

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[1] R.C. 5301.56

[2] 2024-Ohio-2133. A copy of this opinion can be found here.

[3] *Cardinal Minerals, LLC*, ¶¶ 10-12.

[4] *Id.*, ¶ 5.

[5] *Id.*, ¶ 6.

[6] *Id.*

[7] *Id.*, ¶¶ 7-8.

[8] *Id.*, ¶ 8.

[9] *Id.*, ¶ 9.

[10] *Cardinal Minerals, LLC*, ¶ 13-15.

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[11] *Id.*, ¶ 14.

[12] *Id.*, ¶ 15.

[13] *Cardinal Minerals, LLC*, ¶¶ 17-18.

[14] *Id.*, ¶¶ 30-31.

[15] *Id.*, ¶¶ 22-23.

[16] *Id.* ¶ 23.

[17] *Id.* ¶¶ 35-39.

[18] *Cardinal Minerals, LLC*, ¶ 36 (quoting *Rancman v. Interim Settlement Funding Corp.*, 99 Ohio St.3d 121, 2003-Ohio-2721).

[19] *Id.*

[20] *Id.*, ¶ 37.

[21] *Id.*, ¶ 38.

[22] *Id.*, ¶ 40.

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