

## Are Recorded Oil and Gas Leases Title Transactions Under Ohio's Dormant Mineral Act?

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In a decision issued November 5, 2015 in the matter of *Chesapeake Exploration, L.L.C. v. Buell*, the Ohio Supreme Court ruled that a recorded oil and gas lease is a title transaction under Ohio's Dormant Mineral Act ("ODMA"), while the unrecorded expiration of an oil and gas lease is not.

Under the original 1989 version of the ODMA, any oil and gas interest held by any person other than the surface owner shall be deemed abandoned and vested in the surface owner unless, within the previous 20 year period, the oil and gas interest has been the subject of a title transaction filed or recorded in the county in which the lands are located, the interest has been subject to production or exploration activities, a separate tax parcel number has been created for the interest, or the interest is owned by a government entity. The ODMA was subsequently amended in 2006 to require that notice be served on the owner of the severed oil and gas giving them a chance to preserve their interest before abandonment may occur.

The ODMA does not define "title transaction." To fill the gap, the Court looked to Ohio's Marketable Title Act, which encompasses the ODMA and defines a "title transaction" as "any transaction affecting title to any interest in land..." The Court went on to hold that, under the language of a typical oil and gas lease, "[t]he mineral interest has been the subject of a title transaction because the oil and gas lease affects title to the surface and mineral interests in land in a number of ways."

The Court declined, however, to interpret the unrecorded expiration of an oil and gas lease as a "title transaction" under the ODMA. In making its determination, the Court reasoned that "[t]he Dormant Mineral Act requires a title transaction to be filed or recorded in the county recorder's office in order to constitute a saving event...[W]hen an oil and gas lease expires by its terms or by operation of law, however, there is no record notice on the chain of title that mineral rights have reverted to the lessor unless the lessee takes the additional step of recording a formal release."

Thus, although the Court did not explicitly rule a recorded release or surrender of an oil and gas lease to constitute a "title transaction", they strongly imply that it would, noting that, in the case at hand, "we are not presented with a *recorded* termination or expiration of a lease."

The decision in *Chesapeake Exploration, L.L.C. v. Buell*

is one of a series of ODMA cases currently before the Ohio Supreme Court which, once decided, should help clarify ownership of valuable oil and gas interests throughout the state of Ohio.