

FAULK BARCHUS PLLC

New Oil & Gas Case Update

Prior Restrictive Covenants Do Not Reserve Minerals, not
“Subject To” Debate



On May 17, 2012, the Fort Worth Appellate Court case of

FARM & RANCH INVESTORS, LTD. v. TITAN OPERATING, L.L.C., et al., the Court affirmed the trial court's decision that prior restrictive covenants do not reserve mineral interests. In deciding the case, the Court focused on the following:

(For ease of reading - the actual parties to the case are referred to as X, Y & Z)

X was the owner of roughly sixty acres of land. In 1994, X **recorded** a dedication and restrictions for the land in the deed records. One of the restrictions stated, "No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or on any lot. **All mineral rights shall belong and shall continue to belong to X.**"

After the restrictive covenants were recorded, X divided the land into lots and sold the lots to individual owners. The warranty deeds that conveyed the property to the individual owners stated, "This conveyance is **made subject to** any and all easements, **restrictions**, and mineral reservations affecting said property that are filed for record..." The deeds did not contain a separate reservation of the mineral interest. Subsequently, X purported to convey all of the oil, gas, and mineral rights to Y by special mineral deed.



Z, the oil and gas company decided that Y did not hold the mineral rights to the lots and refused to sign a lease with Y. Instead, Z contracted with the nine lot owners individually. Z then filed suit against Y seeking a declaratory judgment that it owns the mineral rights to the nine lots.

On appeal, Y argued that the deed restrictions reserved the mineral rights to X and that the statement in the lot owners' deeds that conveyed the property subject to any recorded restrictions means that X conveyed only the surface estate to the lot owners.

At the time that X filed the restrictions, it owned both the mineral and surface rights to the land. The trial court held that an owner cannot reserve to himself an interest in property that he already owns, and the restrictions did not convey any surface or mineral estates to another party.

Y argued that the restrictions and the deeds “must be read as an integrated instrument of conveyance....” by pointing out that the “**subject to**” language imports the language of the restrictions into the deed and is constructive notice of the restrictions.

The Court held that a statement that does not rise to a reservation cannot retroactively transmute into a reservation when referenced in a later deed and that a reservation must be made at the time of the conveyance or lease.

The “subject to” language is not null, but merely served to protect X's warranty. Even though X may have intended to reserve the mineral rights, it did not effectively do so because the restrictions were insufficient to reserve the mineral interests.

Brandon M. Barchus is a Board Certified Attorney in Oil, Gas & Mineral Law by the Texas Board of Legal Specialization. If you wish to sign up for upcoming direct case updates or wish to discuss this case further, he can be reached directly at (713) 239.4000 or via email at bbarchus@faulkbarchus.com

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