



## **Supreme Court Analyzes Whether Assignee Must Sign Material Correction Instrument Where Original Parties Still Exist**

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The Texas Property Code authorizes the correction of a material error in a recorded original instrument of conveyance by agreement. See TEX. PROP. CODE § 5.029. To be effective, the instrument correcting the error must be executed by each party to the original instrument “or, if applicable, a party’s heirs, successors, or assigns.” *Id.* § 5.029(b)(1). In *Broadway Nat’l Bank v. Yates Energy Corp.*, 2021 Tex. Lexis 396 (Tex. May 14, 2021), the Texas Supreme Court addressed when an original party’s heir, successors, or assigns is “applicable” such that their execution of the instrument is necessary to make the correction instrument effective.

The property at issue was once part of an inter vivos trust established for Mary Evers’ children. Broadway National Bank served as the trustee. In 2005, the Bank, acting as trustee of Mary’s trust, executed a mineral deed that conveyed the trust’s mineral interest to her children per an earlier trust amendment. In the 2005 Mineral Deed, one of the children John received an undivided 25 percent interest in fee simple, which was a mistake. John was only supposed to be conveyed a life estate. To correct the error, the Bank filed a Corrected Mineral Deed in 2006, explaining that John was only entitled to a distribution of a life estate in the minerals conveyed in the 2005 Mineral Deed. The 2006 Corrected Mineral Deed was, however, only signed by the Bank. After recording, the Bank sent it to Yates Energy Corporation, who was already leasing the mineral interests.

Several years later, John conveyed his royalty interests to Yates, who subsequently assigned 70% to EOG. EOG’s title attorney notified the Bank that the 2006 Corrected Mineral Deed was invalid because it was only signed by the Bank. In 2013, the Bank executed and recorded an Amended Correction Deed, which was signed by all of the parties to the original 2005 Mineral Deed. It made the same change—changing the conveyance to John from a fee estate to a life estate. John died a few months later.

The Bank, the remaindermen, Yates and EOG disputed the effectiveness of the 2013 Amended Correction Deed. The Bank sought a declaratory judgment that at John's death title to the mineral interests passed to the remaindermen. The probate court granted summary judgment for the Bank. On appeal to the court of appeals, the appellate court held that the 2013 Amended Correction Deed was invalid because the original parties to the 2005 Mineral Deed could not by themselves correct it, since John's interests had already been assigned.

On appeal to the Texas Supreme Court, the Bank argued that "a party's heirs, successors, or assigns" are merely substitutes whose signatures are unnecessary unless an original party is unavailable to execute the correction instrument. Yates responded that it is not the agreement of the original parties to the mistake that controls who must sign, but rather who controls the property at the time of the proposed correction. Thus, if an heir, successor, or assign acquires an interest in the property before a correction instrument is properly executed and recorded, as Yates contends, such an acquiring third party must join in the instrument to validate a material correction. Yates argued that the court of appeals' interpretation was properly founded on "the common-sense notion that a correction deed that affects the interests of current title holders should not be effective unless signed by the current owners" and reflects an appropriate concern about protecting the interest of subsequent purchasers.

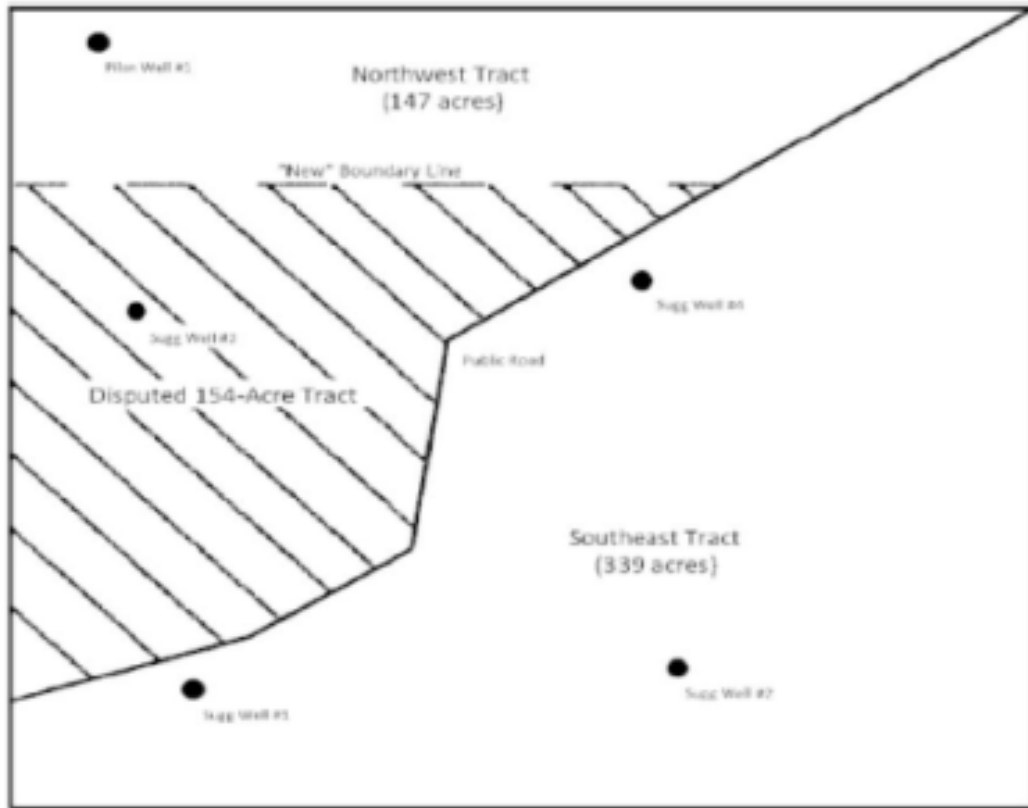
The Texas Supreme Court sided with the Bank: "when read along with the disjunctive "or," "if applicable" simply emphasizes that the phrase "party's heirs, successors, or assigns" may be relevant when the original party is unavailable and, in that case, may serve as a substitute." *Id.* at 22-23 (internal citations omitted). Therefore, the requirements for a material correction instrument are satisfied when all the original parties sign the correction instrument. The need to protect subsequent purchasers was unnecessary because those interests are already protected by the statute in section 5.030, which makes a material correction instrument subject to the property interest of a bona fide purchaser that was acquired on or after the date of the original instrument and before the correction instrument was recorded. *Id.* at 25.

The court also held that no statute of limitations applies to correction instruments. *Id.* at 31-32. This creates a strange conflict in that the four-year statute of limitations applies to a suit for reformation but it does not apply to a correction instrument. *Cosgrove v. Cade*, 468 S.W.3d 32, 35 (Tex. 2015) (applying the residual limitations period to deed-reformation claims).

### **Boundary Stipulation Effective Amongst the Parties, Regardless of Whether Objective Uncertainty Existed and Despite Lack of Conveyance Language**

In *Concho Resources, Inc. v. Ellison*, No. 19-0233, 2021 Tex. LEXIS 776, at \*16 (Apr. 16, 2021), the Texas Supreme Court addressed the effect of a boundary stipulation between mineral owners and a subsequent letter signed by the lessee that agreed with the stipulation. A 1927 deed described the northwest tract as "All of Survey 1, Bk 6, H&T.C. Ry. Co. lands [i.e.,

Section 1] N and W of public road, containing 147 acres, more or less.” A public road ran SW to NE, effectively dividing the section in two parcels, each a little over 300 acres, much more than the 147 acres referenced in the deed. Different oil and gas leases covered each of the two parcels. The SE lessee argued its lease covered 493 acres and had a plat drawn to include 154 acres north of the public road, as reflected in this drawing:



In 2008, the SE lessee prepared a Boundary Stipulation of Ownership of Mineral Interest that was signed by the owners of both mineral estates to set boundaries of mineral estates at 493 acres and 147 acres, inconsistent with the original boundary from the 1927 deed. This boundary stipulation did not include any conveyancing language and stated that it was “to be effective as of 7/8/1987.” The stipulation was not recorded. The NW lessee later signed a letter agreeing with the boundary set forth in the Boundary Stipulation, which was also never recorded. After this agreement was signed, the SE lessee drilled north of the public road in the disputed area above. After the NW lessee died, his surviving spouse filed a trespass to try title lawsuit against the SW lessee arguing that the Boundary Stipulation and letter had no effect on the NW lessee’s title.

The trial court ruled that the Boundary Stipulation was enforceable and effective to set the boundary line between the parties that signed it. The court of appeals reversed. In the court’s view, before a valid boundary stipulation can be entered, an objective uncertainty or ambiguity as to the boundary must exist. Here, the court of appeals concluded, there was no

ambiguity in the 1927 deed because the acreage language could be disregarded and there was never any dispute as to the location of the public road. Because there was no uncertainty or ambiguity, the Boundary Stipulation was void. And the letter agreement could not ratify the Boundary Stipulation because a void instrument cannot be ratified.

The Texas Supreme Court rejected the court of appeals' requirement that for the agreement to be effective, there must have been an objective uncertainty. It agreed with the SW lessee that if that was required "parties will never know whether their informal settlement of a boundary dispute is effective until it is declared so by a court." *Id.* at 17. The court relied on an 1891 opinion from the court stating that "settlements of boundary are common, approved, and encouraged by the courts, and ought not to be disturbed," regardless of whether "it was afterwards shown that they had been erroneously settled. *Id.* at 16 (quoting *Levy v. Maddux*, 16 S.W. 877, 878 (Tex. 1891)). The court therefore held that the Boundary Stipulation was valid and effective against the signatories and that the NW lessee ratified the Boundary Stipulation when he signed the letter agreement. *Id.* at 18-19. The court stated that it declined to address whether the Boundary Stipulation was effective as a conveyance, nor did it decide whether the Boundary Stipulation affected nonparties.

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