

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 87-06-02-14 / NON-PRECEDENTIAL
ID: CR-86-034
DATE: JUNE 2, 1987
DISPOSITION: DENIED IN PART / SUSTAINED IN PART
TAX TYPE: UNCLAIMED PROPERTY
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled cause comes on for consideration pursuant to assignment regularly made to ALJ, Administrative Law Judge, by the Oklahoma Tax Commission. A hearing was had pursuant to 60 O.S. 1981, § 675. Neither the heirs of DECEDENT nor a representative of the heirs appeared at the hearing. PRESIDENT, President, and VICE PRESIDENT, Vice President, appeared on behalf of CLAIMANT. OTC ATTORNEY, an attorney with the General Counsel's Office appeared in an advisory capacity for the Estate and Unclaimed Property Division of the Oklahoma Tax Commission. Testimony was received from PRESIDENT, arguments were made and the case was submitted for a decision.

STATEMENT OF FACTS

On June 14, 1985, the Estate and Unclaimed Property Division received funds from OIL COMPANY, which had been set aside by them in the name of DECEDENT, a citizen of FOREIGN COUNTRY, and owner of certain mineral rights in land in COUNTY, Oklahoma, for which rights OIL COMPANY was obligated to pay to DECEDENT a royalty based on his increment of ownership in the mineral lease. DECEDENT had died on October 3, 1976, which was unknown to OIL COMPANY. In the report sent to the Estate and Unclaimed Property Division with the funds held by OIL COMPANY for DECEDENT, it was indicated that the funds due DECEDENT were held from December, 1976 through (or to) August, 1984, and from August, 1976, through (or to) August, 1984.

In April, 1980, PRESIDENT, of CLAIMANT, (whose letterhead describes his corporation as specialists in oil and royalty interests, real estate and land management), sent a letter to DECEDENT offering to buy the latter's above named mineral interest for Two Thousand Five Hundred Dollars (\$2,500.00). A letter dated March 18, 1983, from the attorney for WIFE (widow of decedent) and addressed to ASSOCIATES, indicates that WIFE had earlier responded to PRESIDENT'S offer in the negative. However, this same letter indicated that WIFE was now interested in selling and asked if PRESIDENT was interested in buying that same mineral interest mentioned in PRESIDENT'S letter of April, 1980. The record does not contain a copy of PRESIDENT'S presumed response reoffering to purchase the DECEDENT'S mineral interest. In fact, the record contains no indication of correspondence between buyer and seller in 1984.

An Oil Division Order under OIL COMPANY'S heading, dated December 12, 1984, indicates that, effective that date, the heirs of DECEDENT certified that they were the owners of a mineral interest described as: LEGAL DESCRIPTION ONE, in COUNTY, Oklahoma. Under

the "Division of Interest" credited to WIFE appears: 1/3 of .0008929RI (Royalty Interest). Beneath this appears: 2/3 of .0008929RI (No Title). Also, under the Oil Division Order, is the indication that this interest applied to oil produced from or allocated to the 'OIL COMPANY-UNIT, TRACT A'. Other documents in the record indicate that DECEDENT had also owned a mineral interest in TRACT B of this same UNIT, but nothing in the record indicates that an Oil Division or Transfer Order was executed to that effect. The legal description for TRACT B is:

LEGAL DESCRIPTION TWO

The Division Order of December 12, 1984 shows the heirs of DECEDENT as the owners of the mineral interests on the subject tracts.

On January 23, 1985, DAUGHTER-IN-LAW, daughter-in-law of the decedent, executed, individually and as administrator for her children, a mineral deed conveying her interest in the mineral rights described above to CLAIMANT. On August 23, 1985, ATTORNEY, with Power of Attorney for DECEDENT'S widow and children, executed a mineral deed conveying their interest in the above described mineral rights to CLAIMANT.

The mineral deed itself is a commercially printed "form deed" which contains the following clause inserted by grantee:

It is the intention of grantors to convey all their right, title and interest in the above described lands, formerly held in the name of DECEDENT. It is agreed and understood that this conveyance is effective with the date of last settlement. All accrued funds, if any, are to become the property of grantee. It is agreed that ASSOCIATES are to act as agents for grantors in completing this transaction only.

In a letter dated October 2, 1985, PRESIDENT corresponded with OIL COMPANY'S Division Order office in Dallas, Texas, informing them that CLAIMANT had, "effective date of last settlement", purchased all the interests of DECEDENT. The letter also requested that OIL COMPANY send transfer orders. By letter dated October 28, 1985, OIL COMPANY responded with a request for a document giving ATTORNEY power of attorney for WIFE. Enclosed were the requested transfer orders and a request that each copy be signed by PRESIDENT and WIFE. Upon completion of these instructions, the letter stated, the interest would be placed in line for payment.

The oil transfer orders involved in this dispute are dated October 28, 1985, and state, in effect, that OIL COMPANY is, as of an effective date printed in the upper right hand part of the document, authorized to give credit for oil received on account of the interest transferred as listed, to CLAIMANT. In the place provided for transferee's signature appears the signature of WIFE and a notation that it is executed by PRESIDENT, President, ASSOCIATES [agent]. In the place provided for the new legal owner's signature appears the name CLAIMANT, By PRESIDENT, President.

The effective date of each transfer order was, as placed there by OIL COMPANY, stated as follows: Effective 7:00 A.M.-October 1, 1985. Under paragraph four (4) of the Transfer Order appears the following relevant provision:

4. Evidence of Title . . . [N]o change of interest shall be effective as to payments by OIL COMPANY until 7:00 a.m. of the first day of the calendar month in which OIL COMPANY is furnished the original or a certified copy of the recorded legal instrument evidencing such transfer of title.

The effective date of these Transfer Orders, October 1, 1985, were marked through and altered. In place of the original effective date were placed the words, "date of last settlement". Below the altered "date" appeared initials which, it is believed, are those of PRESIDENT.

On November 11, 1985, PRESIDENT sent a letter to OIL COMPANY, enclosed the transfer orders, noted that the change of effective date of the transfer orders was made by him to conform to the words placed by him in the mineral deed, and noted that he had executed the transfer orders as agent for WIFE. PRESIDENT then instructed OIL COMPANY to: "Be sure to check to see if there has been money that has escheated to the State of Oklahoma, and make application for this return of money to us."

On January 2, 1986, ATTORNEY, attorney for WIFE, sent a letter to PRESIDENT acknowledging receipt of PRESIDENT'S letter to ATTORNEY dated November 18, 1985, and containing a check for Five Thousand Five Hundred Dollars (\$5,500.00). ATTORNEY said he would deposit the check in a trust account pending completion of the transaction as stated in PRESIDENT'S letter. ATTORNEY then stated that WIFE was "...preparing for me a statement of funds received since the date of settlement to offset said payments against your check." ATTORNEY added: "Please let me know the exact date of registration of the deeds and transfer of title to you so that we can determine exactly when accrued funds became your property". para. "I am waiting to receive from you the transfer orders for signature..."

On January 22, 1986, PRESIDENT wrote to ATTORNEY, alluding to the correspondence between them going back to PRESIDENT'S first offer in 1980. He stated:

Our first correspondence was April, 1980, however, we put a stipulation in the deed that the effective date of settlement was the date of last settlement. This was to forgo [sic] your client's having to perfect title in Oklahoma, U.S.A.

There was [sic] very small amounts in suspense, that we understood would be ours, since there would be expenses necessary to perfect title in Oklahoma. I think some of these had accumulated to 1977, and amounted to about less than \$500.00, I believe, which will not pay 1/4th the amount needed to perfect title, that I had to do. Our expenses were 2767.43 [sic].

Your response to this is awaited, or if needed, you may call to get matters straight...

On March 11, 1986, an attorney associated with ATTORNEY'S New York office wrote to the Locator Unit, Unclaimed Property, Oklahoma Tax Commission:

Dear Mr. NAME ONE:

I have your February 12, 1986 note in response to my February 6, 1986 letter.

I emphasize the urgency of this matter and request your immediate attention to sending me a claim form. I wish to protect DECEDENT's rights and those of his Estate.

NAME TWO, of OIL COMPANY, advised me by telephone that PRESIDENT of CLAIMANT is claiming from your agency the escheated funds above.

We contend that he is not entitled to the escheated funds and request that you make no payment of these funds until the question of ownership is determined.

Signed, NAME THREE

The Division thereupon agreed to hold in abeyance the payment of the claim to either party pending a determination as to the rightful owner of the funds held by it.

On April 9, 1986, ATTORNEY wrote to the Division affirming the claim by the Estate of DECEDENT to the funds held by the Division and relating the additional contention that he had been seeking those funds since January, 1983 from OIL COMPANY and SECOND OIL COMPANY. (The claim involving "SECOND OIL COMPANY" is related, but not considered herein) ATTORNEY further proposed to submit a memorandum in support of the position of the Estate and objecting to PRESIDENT'S claim to the funds held by the Division.

The Unclaimed Property Division requested an opinion from the General Counsel's Office of the Oklahoma Tax Commission as to the merits of the respective claimants. The General Counsel's Office suggested a hearing be held pursuant to 60 O.S. 1981, § 675. (Determination of Claims-Payment).

On September 8, 1986, PRESIDENT submitted a letter to the Division enclosing copies of his correspondence with the HEIRS. Paragraph five (5) states: 5. Copy of our Check No. 349 dated November 10, 1984, with the stipulation as per our agreement of April, 1980.

Typed on Check No. 349 immediately beneath the payee's name is the following:

Payment in full for mineral interests of DECEDENT, COUNTY, Oklahoma, as per agreement April, 1980.

The amount payable under Check No. 349 is Five Thousand Five Hundred Dollars (\$5,500.00).

Paragraph six (6) of the letter states:

Copy of our letter to ATTORNEY dated January 22, 1986, referring to our agreement to perfect title in Oklahoma, if needed. (Which is now being done-not completed)

The Mineral Deeds were filed and recorded with the Clerk of COUNTY, Oklahoma on September 18, 1985. The unclaimed property claim form submitted by PRESIDENT lists his claimant status as "successor in interest". He also indicated the Estate of the original owner had been administered in COUNTY, Oklahoma. A question mark appears after the space provided for the Probate Number.

On October 7, 1986, ATTORNEY submitted a claim form indicated the Heirs of DECEDENT were claimants, and attached a letter explaining that, under FOREIGN COUNTRY'S law, upon his death, DECEDENT'S assets vested in his heirs. He further stated that there is no "estate" as is known under common law, thereby explaining the failure to submit probate papers as requested on the Division's claim form.

The claim forms and protest of claim denial having been received, the matter was then set for hearing by the Administrative Law Judge.

ISSUES AND CONTENTIONS

The issue is, quite simply, who is the rightful owner of the funds held by the Unclaimed Property Division of the Oklahoma Tax Commission? More specifically, is CLAIMANT entitled to said funds from the date of delivery of the mineral deeds conveying the interests in the subject property or is CLAIMANT entitled to all funds based on the language of the mineral deed and the notation on the transfer order "effective date of last settlement"?

CLAIMANT argues that his claim to all funds held from December, 1976 is supported by the following language in the mineral deed:

It is the intention of grantors to convey all their right, title & interest in the above described lands, formerly held in the name of DECEDENT. It is agreed and understood that this conveyance is effective with the date of last settlement. All accrued funds, if any, are to become the property of grantee. It is agreed that ASSOCIATES are to act as agents for grantors in completing this transaction only.

PRESIDENT argues that the terminology, "date of last settlement" means the date on which OIL COMPANY last paid any money to DECEDENT as royalties on the subject property. PRESIDENT then argues that from that date forward he is entitled to said funds.

Although the heirs of DECEDENT did not appear at the hearing held in this matter, a brief was filed on their behalf by the law firm of ATTORNEY & ATTORNEY on May 20, 1986. In the brief, the heirs argue that the terminology, “date of last settlement” was never defined by the parties and that the various correspondence between the parties, set out in the Statement of Facts, indicate that the meaning attached to the terms of PRESIDENT was not the same as the heirs’ interpretation.

The heirs argue that there could be no “settlement” until the deeds were conveyed and recorded on September 18, 1985. To support this interpretation, the heirs point out that OIL COMPANY would not permit a change of interest until the recorded legal instrument evidencing a transfer of title was received.

The heirs of DECEDENT argue that the “accumulated funds” mentioned in the mineral deeds referred only to the funds from the date of recordation of the deeds to the time OIL COMPANY actually changed the ownership interest as evidenced by the following language of a January 2, 1986, from ATTORNEY to PRESIDENT:

“Please let me know the exact date of registration of the deeds and transfer of title to you, so that we can determine exactly when accrued funds became your property.”

The heirs of DECEDENT argued that from September 18, 1985 forward, CLAIMANT is indeed entitled to all royalties from the subject tracts. However, as to the funds held prior to that time, the heirs of DECEDENT are the rightful owners.

APPLICABLE LAW

(1) This action arises under the Uniform Disposition of Unclaimed Property Act (60 O.S. 1981, § 651 et seq.), and the Oklahoma Tax Commission has jurisdiction under § 675 of the Act.

(2) Section 658 of Title 60 O.S. 1986 Supp., provides as follows:

§ 658. Miscellaneous personal property held for another

All intangible personal property, not otherwise covered by the Uniform Disposition of Unclaimed Property Act, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of business of the holder and has remained unclaimed by the owner for more than seven (7) years after it became payable or distributable is presumed abandoned; provided, that no travelers’ check shall be presumed abandoned until it has been outstanding for fifteen (15) years from its date of issuance.

The funds held in escrow by OIL COMPANY and forwarded to the State of Oklahoma for possible retrieval by the persons entitled to the money were forwarded pursuant to statute.

The mineral interest from which the funds were derived did not escheat to the State under Title 60 O.S. 1986 Supp., § 658.1.

(3) Section 669 provides for control and management of monies in the Unclaimed Property Funds and reads as follows:

The Oklahoma Tax Commission is hereby vested with authority and the responsibility for the control and management of all monies in the Unclaimed Property Fund as provided for in the Uniform Disposition of Unclaimed Property Act. It shall be the duty of said Commission to take such steps as may be necessary to preserve the principal of monies accruing to the Unclaimed Property Fund as a trust for persons claiming any interest in any property delivered to the state pursuant to the provisions of the Uniform Disposition of Unclaimed Property Act.

Section 670 provides for a determination of amount of reserve and payment of excesses. It reads, in pertinent part:

The Oklahoma Tax Commission shall determine from time to time, what amount of unclaimed property in its custody should be retained as a reserve in order to ensure that all claims presented by persons legally establishing a right to any such unclaimed property shall be paid promptly.

...

The Commission, after having found and determined the reserve necessary as stated in this section, shall pay all amounts in its custody in excess of said necessary reserve into the State Treasury to the credit of the General Revenue Fund.

When monies are deposited to the credit of the General Revenue Fund, all rights of any owner of unclaimed property to resort against the money so paid into the General Revenue Fund shall terminate, but the right of any person legally establishing his claim to any property right which has been taken into the custody of the Commission shall be preserved and the value thereof shall be paid from such reserve.

Section 672 provides for the investment of the reserve fund and states in pertinent part:

The Commission shall have the care, custody, and management of the reserve fund, and may invest it, at the best realizable rate... The income from such investments shall be paid into the State Treasury to the credit of the General Revenue Fund.

The above referenced sections clearly establish that the Oklahoma Act is purely custodial. Section 668 refers to the Unclaimed Property Fund as a trust fund and requires that public records be kept of the names and last-known addresses of each person entitled to the

abandoned property. Section 669 also refers to the Fund as a trust and Section 672 plainly gives the Tax Commission only the care, custody and management of the reserve fund. Section 670 spells out the custodial nature of the statute by stating that the true owner's property rights shall always be preserved and when a valid legal claim is established to the property, said claim shall be promptly paid.

(4) Pursuant to Oklahoma law, the funds held by OIL COMPANY in escrow in the name of DECEDENT, were no longer subject to adjustment or settlement between OIL COMPANY and the heirs of DECEDENT.

The word "settle" means:

Settle. A word of equivocal meaning; meaning different things in different connections, and the particular sense in which it is used may be explained by the context or the surrounding circumstances. Accordingly, the term may be employed as meaning to agree, to approve, to arrange, to ascertain, to liquidate, to come to or reach an agreement, to determine, to establish, to fix, to free from uncertainty, to place, or to regulate.

Parties are said to settle an account when they go over its items and ascertain and agree upon the balance due from one to the other. And, when the party indebted pays such balance, his is also said to settle it.

Black's Law Dictionary, 1230 (5th Ed. 1979).

The account involving funds held in escrow by OIL COMPANY in the name of DECEDENT was settled on the date required by statute, and the funds became the responsibility of the State of Oklahoma.

(5) "...oil and gas leases, and deeds, are to be construed and interpreted as other contracts; and . . . all rights claimed by the lessee (grantee) which are not conferred in direct terms or by fair implication are to be considered withheld." Hammett Oil Company v. Gypsy Oil Company, 95 Okl. 235, 218 P. 501 (1921); George v. Curtain, 108 Okl. 281, 236 P. 876 (1925); Cronkhite v. Falkenstein, 352 P.2d 396, 398 (1960); accord Houston v. Moore Investment Company, 559 SW.2d 850, 852 (Tex. Civ. App. 1977).

(6) With reference to the transfer or conveyance of a mineral estate or interest, the rule in this state is that all rights not specifically granted in a mineral conveyance are deemed to have been reserved in the absence of specific grant. 1 Kuntz, Oil and Gas, § 15.1; accord, Hemingway, The Law of Oil and Gas, § 2.7 (2d Ed. 1983).

(7) Whether in this case there was a conveyance of the funds held by the State of Oklahoma is determined by interpretation of the legally relevant words used in the conveyance (Mineral Deed) from the heirs of DECEDENT through their attorney and the grantee, CLAIMANT, in the context of this transaction.

The words which are the subject of interpretation are:

It is the intention of grantors to convey all their right, title & interest in the above described lands, formerly held in the name of DECEDENT. It is agreed and understood that this conveyance is effective with the date of last settlement. All accrued funds, if any, are to become the property of grantee. It is agreed that ASSOCIATES are to act as agents for grantors in completing this transaction only.

(8) The issue is whether these words, placed by the grantee, appearing in the Mineral Deeds signed by the heirs of grantor, when taken together with the respective knowledge and experience of the parties, along with the correspondence related to the conveyance, created a conveyance of funds held by the State of Oklahoma, or whether the conveyance of funds was effective at the time of the change of ownership.

(9) Restatement (Second) of Contracts § 20 (1979) states in pertinent part:

§ 20. Effect of Misunderstanding

(1) There is no manifestation of mutual assent to an exchange if the parties attach materially different meanings to their manifestations and

(a) neither party knows or has reason to know the meaning attached by the other; . . .

...

(2) The manifestations of the parties are operative in accordance with meaning attached to them by one of the parties if

(a) that party does not know of any different meaning attached by the other, and the other knows the meaning attached by the first party; or

(b) that party has no reason to know of any different meaning attached by the other, and the other has reason to know the meaning attached by the first party.

These principles would not apply if the parties had either an identical or reasonably close understanding of the meaning of the operative terms. Here, however, grantee claims funds sent by OIL COMPANY to the State as well as those held in suspense or forwarded to grantor after the transfer of title. Grantor claims it understood the grantee would receive those funds received by grantee after the effective date of transfer.

This clearly indicates a misunderstanding.

(10) Restatement (Second) of Contracts

§ 201 states in pertinent part:

§ 201. Whose Meaning Prevails

(1) Where the parties have attached the same meaning to a promise or agreement or a term thereof, it is interpreted in accordance with that meaning.

(2) Where the parties have attached different meanings to a promise or agreement or a term thereof, it is interpreted in accordance with the meaning attached by one of them if at the time the agreement was made

(a) that party did not know of any different meaning attached by the other, and the other knew the meaning attached by the first party; or

(b) that party had no reason to know of any different meaning attached by the other, and the other had reason to know the meaning attached by the first party.

(3) Except as stated in this Section, neither party is bound by the meaning attached by the other, even though the result may be a failure of mutual assent.

Subsection (2)(b) is applicable to the facts of this case and Comment b of the Restatement is instructive:

b. The problem of context. Uncertainties in the meaning of words are ordinarily greatly reduced by the context in which they are used. The same is true of other conventional symbols, and the meaning of conduct not used as a conventional symbol is even more dependent on its setting. But the context of words and other conduct is seldom exactly the same for two different people, since connotations depend on the entire past experience and the attitudes and expectations of the person whose understanding is in question. In general, the context relevant to interpretation of a bargain is the context common to both parties. More precisely, the question of meaning in cases of misunderstanding depends on an inquiry into what each party knew or had reason to know, as stated in Subsections (2) and (3). See § 20 and Illustrations. Ordinarily a party has reason to know of meanings in general usage.

(11) There is no reason to believe that the contract for the title to mineral rights was misunderstood by either party, but a strong inference can be made that the grantee had reason to know of the meaning attached by the grantor or at least that the terms grantee placed in the clause conveying the personal property would likely suggest a meaning other than his own. The terms chosen by grantee are at best equivocal. No communication provided by the parties

indicates a natural understanding. In fact, following the signing of the conveyance by the grantor, grantor's attorney wrote to grantee and indicated his understanding. The return letter to grantor's attorney by grantee suggests an entirely different understanding.

In this instance, then, the meaning attached to the clause must be construed in favor of the grantor for several reasons. First, the grantee is experienced in the purchase of mineral rights. Grantor, a citizen of FOREIGN COUNTRY and widow of the original mineral rights owner, is, by all accounts, not. Second, the words used by grantee in the clause in question are not standardized in the oil and gas industry and subject to common understanding except as to the word "settlement", and, as to its general usage in the industry, "settlement" as used in the phrase "date of last settlement", is meaningless without reference to the specific understanding of the grantor and grantee. It is not a term of art, therefore, in the industry, and is dependent for its meaning on the intent of the parties. This same rationale likewise applies to the use of the term "all accrued funds, if any".

Third. The rule of strict construction against the drafter of the instrument is particularly applicable in the case of a contract prepared by an expert or experienced party, and it has special force where it is sought to create and impose an obligation where none would otherwise appear. Continental Federal Savings and Loan Association v. Fetler, 564 P.2d 1013 (Okla. 1977); and, the party which drafted finder's fee agreement would be subject to the rule that ambiguities are to be resolved against the drafter. Williams Petroleum Company v. Midland Cooperatives, 679 F.2d 815 (1982).

Finally, it is apparent that the grantee had reason to know that grantor did not intend to convey funds held by the State of Oklahoma which had been accruing from 1976 through 1984 and amounted to more than Eleven Thousand Five Hundred Dollars (\$11,500.00).

(12) Claimant, CLAIMANT, has failed to provide a reasonable or legal basis for its claim to the monies held by the State of Oklahoma in the name of DECEDENT. CLAIMANT is entitled to the royalty interest from the subject property from the date of delivery of the deed from grantor to grantee. (See May v. Archer, 302 P.2d 769 (Okla. 1956) Thus, the only accrued funds that CLAIMANT is entitled to are the funds from the date of delivery to the date OIL COMPANY actually changed the interest on its records to CLAIMANT.

(13) The heirs of DECEDENT are entitled to all accrued funds from 1976 until the date of delivery of the deed to CLAIMANT.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that CLAIMANT is entitled to the royalty interest from the subject property from the date of delivery of the deed from grantor to grantee. Thus, the only accrued funds that CLAIMANT is entitled to are the funds from the date of delivery to the date OIL COMPANY actually changed the interest on its records to CLAIMANT.

IT IS FURTHER ORDERED that the heirs of DECEDENT are entitled to all accrued funds from 1976 until the date of delivery of the deed to CLAIMANT.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.