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A Cautionary Note:
First Assignee of Oil and Gas Lease Loses Title to a Subsequent Assignee Under New Mexico's Recording Statute Due to a Defective Notary Acknowledgement

By Stephen M. Domas

The recent federal district court case of *Marathon Oil Permian, LLC v. Ozark Royalty Co., LLC, et al,* No. 1:18-cv-00548-JCH-SCY (D.N.M. Mar. 29, 2019), demonstrates the power of New Mexico's recording statute to potentially change the ownership interest in an oil and gas lease. This decision serves as a cautionary note to assignees of oil and gas leases and those that execute and review such instruments. The dispute over a 40-acre mineral estate lease in Lea County, New Mexico began with a notary's error in notarizing the wrong signature on a lease assignment.

Ozark Royalty Company ("Ozark") obtained a fee oil and gas lease in 2016 which was duly recorded and stamped "Please Return Recorded Originals to: Black Mountain." Ozark immediately assigned the lease to Black Mountain Oil and Gas, LLC ("Black Mountain"). While the assignment was properly executed by an authorized agent of Ozark, the certificate of acknowledgment was defective in that the notary acknowledged his own signature instead of the authorized agent's. When Black Mountain attempted to record the assignment in the Lea County records, the county clerk rejected the assignment due to the defective acknowledgement, thereby leaving it unrecorded.[1] Black Mountain then assigned the lease to Marathon Oil Permian, LLC ("Marathon"), which assignment was duly recorded, and Ozark assigned the same lease to Tap Rock Resources, LLC ("Tap Rock") which was also duly recorded. Marathon subsequently filed a quiet title action against Tap Rock claiming that its interest in the lease was superior to that of Tap Rock's.

The primary issue before the court in determining who had the superior claim to the lease was whether Tap Rock was on notice of, and therefore took subject to, Marathon's interest in the lease for one of two reasons. Either because the Black Rock/Marathon assignment was duly recorded; or due to the recorded lease being stamped "Please Return Recorded Originals to: Black Mountain," in which case, Tap Rock should have been alerted to the fact that Black Mountain had an interest in the lease and inquired further, resulting in Tap Rock's discovery of the Black Rock/Marathon assignment. Generally, under New Mexico law, a purchaser of an interest in land, including an oil and gas lease, takes subject to prior interests of which it had notice.[2]

A subsequent purchaser for value prevails if, at the time of the conveyance, the purchaser had no actual or constructive notice of the prior conveyance, regardless of when the competing

[1] N.M. Stat. Ann. § 14-8-4 states that any instrument of writing not duly acknowledged may not be filed and recorded or considered of record, though so entered.
[2] NMSA 14-9-3

conveyances were recorded.[3] A purchaser is charged with constructive notice of all recorded documents only within the purchaser's chain of title.[4]

A second form of constructive notice exists when circumstances would cause a reasonable person to make further inquiry into the possible existence of an adverse interest in the property. A purchaser is deemed to be on inquiry notice of any references or recitals to unrecorded instruments that are made in an instrument duly recorded in a purchaser's chain of title.[5]

The court reasoned that Tap Rock was not on actual or constructive notice of the Black Rock/Marathon assignment and, thus of Marathon's prior interest in the lease because a) the Ozark/Black Mountain assignment was improperly acknowledged and thus never recorded; and b) the Black Mountain/Marathon assignment was not within Tap Rock's chain of title and would not have been disclosed by Tap Rock's search of the grantor index.[6]

We note that, without stating it explicitly, the court narrowly construed and applied to the case N.M. Stat. Ann. § 14-10-3, which requires certain fields be included in a county's index of recorded documents. Under the court's ruling, instruments must be recorded in a grantor-grantee index to be entitled to constructive notice. There was no discussion of the practice of conducting title searches on numeric tract indexes, either at the office of the county records, or a private title or abstract company. In practice, it may reasonably be argued that an ordinary and reasonable purchaser would conduct a search of a numeric tract index, which would have disclosed the Black Mountain/Marathon assignment, thus imparting inquiry notice to Tap Rock, possibly leading to a different result in the case.

In finding for Tap Rock and dismissing Marathon's quiet title action, the court further held that the stamp bearing Black Mountain's name on the original recorded lease did not impart constructive or inquiry notice to Tap Rock because it did not qualify as a description, recital of fact, or reference to other documents.[7]

Please contact Stephen Domas with any questions about the decision or other title questions.

[3] Id.
[4] Id.
[5] *Marathon Oil Permian,* 2019 D.N.M. at 4.
[6] *Id* at 5.
[7] *Id* at 6.