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Texas Supreme Court Weighs in on Who Is Required to Sign a Correction Instrument

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In a case that could be a watershed nightmare for subsequent purchasers and title insurers—or perhaps instead just a bump in the proverbial night—the Texas Supreme Court has recently addressed whether Section 5.029 of the Texas Property Code is satisfied when the original parties to a conveyance instrument execute a correction instrument, even if they no longer hold an interest to the property.

In *Broadway Nat'l Bank Trustee v. Yates Energy Corp*., the Court addressed Section 5.029 to a common fact pattern. In 2005, Broadway Bank, as trustee, conveyed certain mineral interests in DeWitt and Gonzales Counties to a decedent-settlor's four children. Although the property was divided into four equal shares, the trust provided that the share allocated to Eben John Evers was to be a life estate to be held in a separate, supplemental-needs trust. As the name implies, a "life estate" is an interest in property that only lasts during the lifetime of the owner. But the 2005 mineral deed executed by Broadway Bank granted John an undivided interest in fee simple, meaning that his interest would survive his death and pass to his heirs. After discovering its mistake, Broadway Bank filed a corrected mineral deed in 2006, explaining that John was entitled to distribution of only a life estate. The 2006 correction, like the original deed it was meant to replace, was signed only by Broadway Bank as trustee. John later executed a royalty deed in 2012, conveying his royalty interests to Yates Energy Corporation. In turn, Yates assigned 70 percent of these royalty interests to EOG Resources, Inc.

In response to concerns raised by EOG's title attorney over the validity of the 2006 correction deed, Broadway Bank executed and recorded an Amended Correction Deed in 2013. Similar to the 2006 correction deed, the Amended Correction Deed advised that the 2005 mineral deed made an incorrect conveyance of a fee simple estate to John, who was entitled to only a life estate. The Amended Correction Deed was signed by the Bank, John, and the other original grantees. The Amended Correction Deed was not, however, signed by Yates or EOG. Shortly after signing the Amended Correction Deed, John died and a dispute over the extent of the 2012 conveyance to Yates arose.

A probate court entered summary judgment in Broadway Bank's favor, declaring the Amended Correction Deed to be valid and that Yates received only a life estate from John. Yates appealed, and the Court of Appeals for the Fourth District of Texas reversed the probate court's summary judgment, holding that the Amended Correction Deed was not valid because the current title holders did not sign the correction instrument. Broadway Bank appealed.

The primary dispute before the Texas Supreme Court related to the interpretation and application of Section 5.029 of the Texas Property Code, which states in pertinent part "the parties to the original transaction or the parties heirs, successors, or assigns, as applicable may execute a correction instrument to make a material correction to the recorded original instrument of conveyance[.]" Yates argued, and the court of appeals agreed, the statute requires that if an heir, successor, or assign acquires an interest in the property before a correction instrument is properly executed and recorded, the new interest-holder must join in the instrument to validate a material correction. The Texas Supreme Court disagreed, reversing the court of appeals' judgment.

In a divided opinion over the meaning of Section 5.029's inclusion of the phrase "or, if applicable," the Court's majority agreed that the phrase conditionally introduced "heirs, successors, or assigns" and, accordingly, that an original party's "heirs, successors, or assigns" may execute a correction instrument when relevant and appropriate. But the majority disagreed that allowing an heir, successor, or assign to execute a correction instrument was required where, as here, the original parties were still available.

The majority also rejected the court of appeals' "common-sense" justification that a correction deed affecting the interest of current title holders should not be effective unless signed by the current owners. The majority looked to other provisions of the Property Code and stated that, when read as a whole, the Legislature addressed this concern in Sections 5.030 and 13.001. Specifically, these provisions protect bona fide purchasers who purchase property without notice of third-party claims or interests from later-filed correction instruments. The Court held that when taken together, these provisions indicate that original parties to a deed can effectuate a correction instrument under Section 5.029 without the signature of subsequent purchasers or current property owners.

Four justices dissented, arguing that the Court's interpretation of "if applicable" allows original parties to alter a deed without notice and therefore empowers former owners to strip current owners of their property without due process. For example, drawing an analogy to Texas case law governing assignments of insurance benefits, the dissent relies on the principle that an assignee stands in the shoes of the assignor, and that an assignor loses all control over the property assigned and can do nothing to defeat the rights of its assignee. Applying this principle to the facts of the case, the dissent argued that John, as assignor, could not retroactively alter the property rights he had already assigned in a manner that prejudiced the assignee, Yates. The dissent argued that when John assigned his interest to Yates, he kept nothing and therefor should have been precluded from executing any documents—including a correction instrument—that modified the interests he no longer controlled.

It remains to be seen whether this case foretells title instability or instead simply delays resolution of the subsequent purchasers' interests. If the majority's reasoning means that its ruling does not affect the rights of prior purchasers and thus that a corrective instrument executed by original parties after the underlying property was already conveyed to another party cannot prejudice the subsequent purchaser, then the dispute here seems to present not a mountain, but only a proverbial molehill. But the very existence of the dissent could be read to mean that the majority's opinion is not so benign.

So we must wait to see what happens on remand: will the courts ultimately recognize EOG as still holding a royalty interest that survived John's death, or will they instead construe EOG's interest as having terminated at John's death? Only time will tell. In the meanwhile, the outcome of this case underscores the need to be diligent when executing and recording conveyance instruments, and the heightened complexity related to properly, timely, and effectively correcting those instruments when necessary.

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