

## SUPREME COURT OF TEXAS

# Tommy Yowell, Gail Yowell, Harry Graff, El Terico, LLC, and Casuarina Investments, LLC v. Granite Operating Co. and Apache Corp.

620 S.W.3d 335 (Tex. 2020) · No. No. 18-0841 · Decided October 9, 2020

### SUMMARY

The Texas Supreme Court considered whether an overriding royalty interest extending to future oil-and-gas leases violated the rule against perpetuities, whether Texas Property Code section 5.043 required reformation, whether an indemnity agreement covered the litigation, and whether appellate attorneys' fees were supported by the evidence. The Court held that the overriding royalty interest in future leases was a property interest subject to the rule against perpetuities and required reformation if possible under section 5.043. It reversed and remanded in part on the royalty-interest issues and affirmed in part on indemnity and attorneys' fees.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                    |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Texas                                                                                                                                                                                                                             |
| WRITING FOR THE COURT | Justice J. Brett Busby                                                                                                                                                                                                                             |
| JURISDICTION          | Texas                                                                                                                                                                                                                                              |
| DECIDED               | October 9, 2020                                                                                                                                                                                                                                    |
| DOCKET                | No. 18-0841                                                                                                                                                                                                                                        |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | Petition for review and conditional cross-petition from a divided decision of the Court of Appeals for the Seventh District of Texas affirming summary judgments concerning an overriding royalty interest, indemnity, and attorneys' fees.        |
| STANDARD OF REVIEW    | Summary judgment rulings are reviewed de novo; evidence favorable to the nonmoving party is taken as true, with reasonable inferences indulged in the nonmoving party's favor. Attorneys' fee awards are reviewed for legally sufficient evidence. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                     |
|                       |                                                                                                                                                                                                                                                    |

## PARTIES

Tommy Yowell, Gail Yowell, Harry Graff, El Terico, LLC, Casuarina Investments, LLC v. Granite Operating Company, Apache Corporation

## TOPICS

oil and gas mineral rights contracts appellate procedure standard of review

## PRACTICE AREAS

oil and gas mineral rights real estate contracts appellate procedure

## QUESTIONS PRESENTED

1. Whether the reserved overriding royalty interest in future new leases is a property interest subject to the rule against perpetuities.
2. Whether the ORRI violates the rule against perpetuities because it was not vested at creation and was not certain to vest within the prescribed period.
3. Whether Texas Property Code section 5.043 requires courts to reform a commercial instrument creating a property interest that violates the rule against perpetuities and whether reformation is subject to a four-year limitations period.
4. Whether the indemnity agreement required the Peyton Group to indemnify Granite for the Yowells' suit.
5. Whether sufficient evidence supported the award of contingent appellate attorneys' fees and fees for defending a contingent declaratory-judgment claim.

## HOLDINGS

1. An overriding royalty interest that extends to a future new lease covering the same property is a real property interest, even though its attachment to the future lease is contingent.
2. The Yowells' ORRI in future new leases violates the rule against perpetuities because it did not vest when created and was contingent on the termination of the 1986 lease, execution of a new lease by the mineral owner, and acquisition of that lease by a successor of the original lessee.
3. Section 5.043 requires courts to reform or construe, when possible, commercial instruments creating property interests that violate the rule against perpetuities, and the statutory reformation mandate is not subject to the residual four-year statute of limitations.
4. The Peyton Group was not required to indemnify Granite for the Yowells' suit because the indemnity agreement was limited to claims asserted against Granite in the separate Amarillo Production litigation.
5. The evidence sufficiently supported the award of contingent appellate attorneys' fees, and the Uniform Declaratory Judgments Act permits an award of fees for defending a contingent declaratory-judgment claim even without a merits judgment on that claim.

## KEY QUOTATIONS

*"We review the trial court's summary judgment rulings de novo."* (5)

*“We disagree that the parties may avoid a Rule violation by including automatic attachment language.” (11)*

*“This interest therefore violates the Rule.” (17)*

*“The provision’s language shows it is an instruction to courts on how to remedy a violation of the Rule, not a cause of action subject to a statute of limitations.” (22)*

*“Because the Yowells’ claims against Granite are not connected to claims asserted against Granite in the Amarillo Production litigation, we affirm the court of appeals’ judgment that the Peyton Group was not obligated to indemnify Granite for the Yowells’ suit against Granite.” (24)*

## FACTUAL BACKGROUND

In 1986, Aikman Oil Corporation assigned an oil-and-gas lease while reserving an overriding royalty interest subject to an anti-washout provision covering extensions, renewals, and new leases. After a 2007 top lease and settlement terminated the 1986 lease and transferred a new leasehold interest, Granite refused to pay the Yowells royalties, asserting that the ORRI did not attach to the 2007 lease. Granite also sought indemnity under a sales agreement with the Peyton Group, while the Peyton Group sought attorneys' fees in defending against Granite's claims.

## PROCEDURAL HISTORY

The Yowells sued Granite to establish ownership of an overriding royalty interest under a 2007 oil-and-gas lease and to recover unpaid royalties. Granite sought indemnity from the Peyton Group and PAC Group, and the PAC Group sought declaratory relief and attorneys' fees. The trial court granted summary judgment against the Yowells, rejected Granite's indemnity claim, and awarded the Peyton Group attorneys' fees. The court of appeals affirmed. The Supreme Court of Texas reversed in part and remanded for consideration of reformation and other summary-judgment grounds not previously reached, while affirming the indemnity and attorneys' fees rulings.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The court of appeals must consider whether the Yowells' ORRI in new leases can be reformed under Texas Property Code section 5.043 to comply with the rule against perpetuities and must consider any other grounds for summary judgment it did not reach. The indemnity and attorneys' fees rulings are affirmed.

## CASES CITED

- Provident Life & Accident Ins. Co. v. Knott, 128 S.W.3d 211, 215 (Tex. 2003)
- City of Garland v. Dallas Morning News, 22 S.W.3d 351, 356 (Tex. 2000)
- ConocoPhillips Co. v. Koopmann, 547 S.W.3d 858, 866-73 (Tex. 2018)
- Peveto v. Starkey, 645 S.W.2d 770, 772 (Tex. 1982)
- BP Am. Prod. Co. v. Laddex, Ltd., 513 S.W.3d 476, 480-82 (Tex. 2017)

- State v. Quintana Petroleum Co., 133 S.W.2d 112, 114-15 (Tex. 1939)
- Apache Deepwater, LLC v. McDaniel Partners, Ltd., 485 S.W.3d 900, 905 (Tex. 2016)
- Sunac Petroleum Corp. v. Parkes, 416 S.W.2d 798, 802-04 (Tex. 1967)
- El Dorado Land Co. v. City of McKinney, 395 S.W.3d 798, 800-01 (Tex. 2013)
- Luckel v. White, 819 S.W.2d 459, 464 (Tex. 1991)
- Wenske v. Ealy, 521 S.W.3d 791, 797 (Tex. 2017)
- Independent Gas & Oil Producers, Inc. v. Union Oil Co. of Cal., 669 F.2d 624, 628 (10th Cir. 1981)
- Luecke v. Wallace, 951 S.W.2d 267, 270-74 (Tex. App.—Austin 1997, no writ)
- Kettler v. Atkinson, 383 S.W.2d 557, 560 (Tex. 1964)
- Gulf Ins. Co. v. Burns Motors, Inc., 22 S.W.3d 417, 423 (Tex. 2000)
- Ideal Lease Serv., Inc. v. Amoco Prod. Co., 662 S.W.2d 951, 953 (Tex. 1983)
- Rohrmoos Venture v. UTSW DVA Healthcare, LLP, 578 S.W.3d 469, 498, 505 (Tex. 2019)
- El Apple I, Ltd. v. Olivas, 370 S.W.3d 757, 762-64 (Tex. 2012)
- Ventling v. Johnson, 466 S.W.3d 143, 156 (Tex. 2015)
- Castro v. McNabb, 319 S.W.3d 721, 735 (Tex. App.—El Paso 2009, no pet.)
- EOG Resources, Inc. v. Wagner & Brown, Ltd., 202 S.W.3d 338, 347-48 (Tex. App.—Corpus Christi-Edinburg 2006, pet. denied)