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I. Necessary Parties to Receivership Lease Proceedings

Mississippi has a statutory scheme that allows for the leasing of interests of unfound mineral owners and unfound or unknown heirs. Pursuant to section 11-17-33 of the Mississippi Code, upon the petition of a mineral owner or lessee, the chancery court may appoint the chancery clerk as receiver of any mineral interest claimed or owned by persons whose whereabouts or identity is unknown and authorize the receiver to lease the minerals.[2] The statute requires that "all interested parties" be joined in the receivership proceeding.[3]

In a rare reported decision involving the receivership leasing scheme, the Mississippi Court of Appeals has proposed its interpretation of the statutory language in determining the necessary parties to such a proceeding. In *Spectrum Oil, LLC v. West*, the court of appeals was faced with the issue of whether the chancery court correctly

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2. Miss. Code Ann. § 11-17-33(3) (2004).

3. *Id.*

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granted the request of certain mineral owners and mineral lessees by dissolving a receivership established earlier by the same court on behalf of certain purported heirs of a deceased mineral owner.[4] On the petition of Spectrum Oil, LLC ("Spectrum"), an existing mineral lessee, the chancellor had appointed the chancery clerk as the receiver for the mineral interests of the unknown descendants of Thomas (Bob) Davis and authorized the receiver to lease the interests to Spectrum.[5] Thomas (Bob) Davis, one of ten children of E.L. Davis, the original landowner, had been murdered in 1910, preceding in death his parents and siblings, but inheriting through them by representation if he left a child.[6] Two producing oil wells had been drilled on separate units that included the subject lands.[7]

In the receivership proceeding initiated by Spectrum, the summons by publication required by statute only noticed "the unknown heirs, administrators, legal representative, successors and assigns, if any" of Thomas (Bob) Davis.[8] No other "interested parties," as required by section 11-17-33(3), were joined.[9] The court's order authorizing the receivership lease recited that E.L. Davis, who died intestate in 1937, was preceded in death by Thomas (Bob) Davis; no one had been able to confirm whether Thomas (Bob) Davis had any descendants; and if any descendants of Thomas (Bob) Davis were alive at the time E.L. Davis died, they would own an interest in the property.[10]

Shortly thereafter, certain parties who had not been joined in the receivership proceeding attacked the receivership lease. A few months following the chancellor's order, the descendants of E.L. Davis and their lessees filed suit in the same court to remove the receivership as a cloud on their title and to dissolve the receivership lease.[11] These receivership opponents submitted affidavits from elderly children, grandchildren, and great grandchildren of E.L. Davis who swore that they had been told Thomas (Bob) Davis had died as a young man but that they had never heard that he had any children. The suit joined by publication the descendants of Thomas (Bob) Davis. In response, Spectrum filed a motion to dismiss for failure to join the State of Mississippi as a necessary and indispensable party.[12]

Despite the summons by publication, no one responded to the cloud on title suit claiming to be a descendant of Thomas (Bob) Davis.[13] Since there was no answer by the descendants of Thomas (Bob) Da-

4. Spectrum Oil, LLC v. West, 34 So. 3d 1213, 1215 (Miss. Ct. App. 2010).
5. *Id.* at 1216.
6. *Id.* at 1218.
7. *Id.* at 1216.
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.* at 1217.
12. *Id.*
13. *Id.*

vis, a default judgment was granted against them and summary judgment was granted as to all defendants.[14] In the default judgment, the chancellor found that Thomas (Bob) Davis died leaving no heirs or descendants, preceding his landowner father in death.[15] According to the court, the evidence at best showed that Thomas (Bob) Davis might have had a child, but that such evidence was inconclusive and that if a child had been born, it was either stillborn or died at birth and therefore, would not have survived the landowner, E.L. Davis.[16] The chancellor therefore ruled that Thomas (Bob) Davis and any purported descendants had no claim to the land.[17] Thereafter, upon motion of the receivership opponents, the court dissolved the receivership *ab initio*.[18]

In affirming the judgments of the chancery court on appeal, the Mississippi Court of Appeals found that the records contained no evidence that Thomas (Bob) Davis had any surviving descendants at the time of E.L. Davis's death.[19] It found that Spectrum and the reputed descendants of Thomas (Bob) Davis could have no interest in the property simply because Spectrum had completely failed to prove that Thomas (Bob) Davis had any descendants.[20]

> What was proven was that Thomas (Bob) Davis died in 1910 and did not have any descendants in 1937, when his father died and the land was divided. It is elementary property law that only a descendant of Thomas (Bob) Davis who was alive in 1937 when the landowner E.L. Davis died could be an heir to E.L. Davis and, thus, have an interest to be protected by a receivership.[21]

It was clear to the court that Spectrum had failed to establish the first element necessary for the appointment of a receivership—that it had a clear right to the property at issue. Upon entry of the default judgment against the descendants of Thomas (Bob) Davis, there was no valid legal claim left for the receivership to protect.

The court agreed that the receivership proceeding was defective from the beginning since "all interested parties" were not joined.

> As we read the statute, "all interested parties" would include not only descendants of Thomas (Bob) Davis, who might have benefitted by the proceeding, *but also the other descendants of E.L. Davis (and their successors) who would be detrimentally affected by the receivership*. Had this subsection of the statute [SECTION 11-17-33(3)] been followed, the receivership would most probably not have been granted as the twenty-nine mineral owners and lessees [the receiver-

14. *Id.*
15. *Id.*
16. *Id.* at 1219.
17. *Id.* at 1217.
18. *Id.*
19. *Id.* at 1220–21.
20. *Id.*
21. *Id.* at 1221.

> ship opponents] would have presented their proof as to the lack of the existence of any descendants of Thomas (Bob) Davis.[22]

The court of appeals also addressed Spectrum's argument that the State of Mississippi was a necessary party to the proceedings.[23] The basis for this argument was Mississippi Code section 11-17-34, which provides that unclaimed royalties in a receivership escheat to the State after remaining unclaimed for ten years. The court held that the decision that the receivership was void *ab initio* made this argument moot.[24]

The Mississippi receivership statute is routinely used to lease interests of unfound mineral owners and unfound or unknown heirs. By its decision in the *Spectrum Oil* case, the court of appeals now suggests that the term "all interested parties" includes collateral heirs whose interests may be affected by the receivership. This construction is contrary to what has been the common practice by attorneys utilizing the receivership leasing scheme. The court is, for all practical purposes, requiring that a determination of heirship be conducted whenever a receivership lease is sought. In Mississippi, section 91-1-27 through section 91-1-31 of the Mississippi Code provide for the only method for a conclusive determination of heirship.[25] This heirship procedure requires publication for the heirs of the intestate. Regardless, the ruling in *Spectrum Oil* should only impact an unknown heir situation, such as the one addressed, and not known but unfound record mineral owners.

II. Mississippi Geologic Sequestration of Carbon Dioxide Act

In 2011, Mississippi enacted the Mississippi Geologic Sequestration of Carbon Dioxide Act ("Act").[26] The Act declares to be in the public interest and state policy, among other matters, that the geologic sequestration of carbon dioxide will benefit Mississippi's citizens and environment by allowing carbon dioxide to be available for commercial and industrial uses, including its use for enhanced oil and gas recovery, allowing the maximum amount of reserves to be produced, and that carbon dioxide should therefore be injected and stored in oil and gas reservoirs.[27]

Under the Act, the Mississippi Environmental Permit Board and the Mississippi Commission on Environmental Quality retain jurisdic-

22. *Id.* (emphasis and explanatory brackets added).
23. *Id.* at 1221.
24. *Id.* at 1222.
25. Miss. Code Ann. §§ 91-1-27 to -31 (1972).
26. S.B. 2723, 2011 Leg., Reg. Sess. (Miss. 2011) (codified at Miss. Code Ann. §§ 53-11-1 to -33 (Supp. 2011)), *available at* billstatus.ls.state.ms.us/2011/pdf/history/SB/SB2723.xml.
27. § 53-11-3.

tion of Class VI underground injection control ("UIC") wells pursuant to Mississippi Code Annotated section 49-17-28 (air and water permits) and section 49-17-29 (solid and hazardous waste permits).[28] However, the State Oil and Gas Board ("Board") retains jurisdiction over Class II UIC Wells and is given jurisdiction of Class II UIC Wells converted to Class VI UIC Wells and Class VI UIC Wells in "reservoirs." As defined in the Act:

> "[r]eservoir" means oil and gas reservoirs and formations above and below oil and gas reservoirs suitable for or capable of being made suitable for the injection and storage of carbon dioxide therein, but only those formations for which the boundaries have been or can be delineated as provided in this chapter.[29]

The Board will regulate sequestration of carbon dioxide and underground injection wells within reservoirs. Those rules and regulations governing injection wells for sequestration not regulated under the Board's authority for Class II Wells will be subject to approval of the Commission on Environmental Quality.[30]

The Act contains provisions intended to protect the title of an owner of injected carbon dioxide.[31] Operation of a reservoir as a unit for a geologic sequestration facility ("Facility") will be authorized upon certain findings, including the protection of the correlative rights of all owners of the surface, minerals, and the carbon dioxide to be injected.[32] An order by the Board requiring unit operation of a Facility will be effective only upon the written consent of a majority interest of the surface interest and, if separately owned, a majority interest of all rights of the subsurface reservoir on the basis of and in proportion to the surface acreage content of the unit area.[33] In its proceedings on a petition to unitize for a Facility, the Board will determine whether the predominant result of the injection operations will be carbon dioxide storage or enhanced oil or gas recovery, or both, from the proposed Facility.

The Board's order will include a provision for payment of the reasonable costs of compensable damages to the surface and reasonable consideration for the use of the surface area.[34] If oil or gas will be produced in connection with operating a unit area as a Facility and the reservoir is being operated under a field-wide unit in accordance with Mississippi's Compulsory Field-Wide Unitization Act,[35] the Facility may be operated under the existing plan of unitization.[36] However, if

28. MISS. CODE ANN. § 49-17-29(3)(a), (c) (2003).
29. § 53-11-5(p).
30. *Id.* § 53-11-7(1).
31. *Id.* § 53-11-9.
32. *Id.* § 53-11-13.
33. *Id.* § 53-11-11(3).
34. *Id.* § 53-11-15(1)(c).
35. MISS. CODE ANN. § 53-3-101 to -119 (2003).
36. § 53-11-15(1)(d).

the reservoir has not been so unitized, the Board's order must include provisions and requirements similar to those set forth in the Compulsory Field-Wide Unitization Act,[37] including a formula for allocation among the separately owned tracts (tract factors); a provision for adjustment among the unit area owners of investment, equipment, and services attributable to unit operations; and a provision that costs and expenses of unit operations will be borne by the working interest owners of each tract in the same proportion that such tracts share in unit production.[38]

The Act includes financial assurance provisions. It provides that the Facility operator's bond will be returned three years after closure, with provisions for partial return in three years and the remainder later if the Board determines this to be the prudent course.[39] The Act creates the Carbon Dioxide Storage Fund, a special fund of the Board to be funded by sequestration fees and to be used for oversight of Facilities after cessation of injection and release of the Facility's bond or other assurance of performance in the event that funds from the responsible parties (including financial assurance funds) are inadequate.[40] Satisfying financial assurance requirements under federal regulations will still be necessary.

The Act provides for additional rules and regulations to be promulgated for its implementation. It is anticipated that issues involving valuation and takings will eventually be addressed through litigation or appeal of a Board order under the Act.

37. *See* § 53-3-105.
38. § 53-11-15(1)(e)(i)–(iii).
39. *Id.* § 53-11-27(1), (3).
40. *Id.* § 53-11-23(1)(f).