

Supreme Court of Texas Holds that an Operator Can Drill Through an Adjacent Mineral Estate

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PRACTICES Oil and Gas Litigation

In a recent decision concerning off-site drilling, the Texas Supreme Court affirmed the San Antonio Court of Appeals¹ and held that an oil and gas operator could drill through the mineral estate underlying an adjacent tract of land without the adjacent mineral lessee's permission. *Lightning Oil Co. v. Anadarko E&P Onshore LLC*, No. 15-0910, 2017 Tex. LEXIS 463, --- S.W.3d --- (Tex. May 19, 2017). This holding permits an operator to locate its drill sites on the surface above an adjacent lease as long as the surface owner grants permission and the interference with the adjacent mineral estate is no more burdensome than was shown in this opinion. The decision is important because it clarifies when an operator can use an adjacent lease to drill the curved portion of a horizontal well when transitioning from vertical to horizontal, which can result in greater recovery of hydrocarbons and more efficient lease development.

Background Facts. Anadarko leased the minerals under the Chaparral Wildlife Management Area (“WMA”), a tract controlled by the Texas Parks and Wildlife Department. The state lease required Anadarko to locate its drill sites on other tracts whenever possible. Anadarko contracted with adjacent surface owner Briscoe Ranch, Inc. for the right to place wells on the Ranch's surface. Under that agreement, Anadarko could also drill through the mineral estate beneath the Ranch so that Anadarko's horizontal wells could then reach the minerals underlying the adjacent WMA. Lightning Oil Co. The lessee of the minerals underlying the Ranch was not a party to the Anadarko-Briscoe Ranch agreement and objected to Anadarko's plans to drill through Lightning's mineral estate.

Procedural History. Lightning brought suit against Anadarko for underground trespass and tortious interference with its mineral lease, seeking a temporary restraining order and an injunction against drilling on the Ranch's surface. The trial court granted partial summary judgment in favor of Anadarko, and the San Antonio Court of Appeals affirmed.² Lightning appealed to the Texas Supreme Court.

Supreme Court Analysis. The Supreme Court divided Lightning's trespass claim into two inquiries: (1) whether Anadarko's drilling would impermissibly interfere with Lightning's use of the surface and subsurface terrain under its lease; and (2) whether Anadarko's drilling would impermissibly interfere with the minerals themselves.

As to the first inquiry, Lightning argued that Anadarko's drill sites would interfere with Lightning's right to develop by limiting its access to the surface and subsurface of its leased tract. Noting that Lightning's speculation that this could occur was not enough, the Court found that Lightning had not demonstrated an unauthorized interference for two reasons. First, Lightning had presented no evidence that the Texas Railroad Commission's drilling regulations were insufficient to protect its rights to use the surface. Second, because Anadarko's rights under the contract were no greater than those of the surface owner, the accommodation doctrine still afforded Lightning's dominant mineral estate with sufficient protections.

In conducting the second inquiry, the Court weighed the interests of society and the oil and gas industry against Lightning's individual interest in its leased minerals. Even though it acknowledged that Anadarko's drilling would inevitably destroy some of Lightning's leased minerals, the Court recognized that the loss would be relatively small. The drilling process would only extract "fifteen cubic yards of dirt and rock for each thousand linear feet drilled with an eight-inch wellbore," and Lightning only had a right to the even smaller quantity of minerals contained within that volume of drilled-out subsurface.

Additionally, the off-lease drilling strategy would likely avoid some of the waste associated with horizontal drilling. Drilling from an adjacent tract would help eliminate the unproduced volumes of reservoir below the kick off point (the "blind spots"), before the wellbore reaches its horizontal plane. Starting drilling operations on an adjacent tract would instead allow the wellbore to enter the formation completely horizontally. Thus, given the "longstanding policy of this state to encourage maximum recovery of minerals and to minimize waste," the industry and societal interests in recovering oil and gas outweighed Lightning's individual right to extract all of its leased minerals.

The Supreme Court then dispatched Lightning's remaining arguments and affirmed the San Antonio Court of Appeals' decision granting summary judgment in favor of Anadarko.

¹ For a discussion of the court of appeals' opinion, see [San Antonio Court of Appeals Holds that Lessor Can Allow Third-Party to Drill through Lessee's Mineral Estate to Reach Adjacent Lease](#).

² See *Lightning Oil Co. v. Anadarko E&P Onshore LCC*, 480 S.W.3d 628 (Tex. App.—San Antonio 2015).