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The Docket: The Marketable Title Act and the Dormant Minerals Act

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The Docket is a monthly TitleNews Online feature provided by ALTA's Title Counsel Committee which reviews significant court rulings and other legal developments and explains the relevance to the title insurance industry.

Note: This is an updated version of the article that originally was posted Aug. 22, 2019.

Lance Pomerantz, a New York-based sole practitioner who provides expert testimony, litigation consulting and strategic advice in land title disputes, reviews a recent Ohio case that holds the Marketable Title Act does not extinguish mineral interests that were not properly extinguished under the Dormant Minerals Act. Pomerantz can be reached at **lance@landtitlelaw.com**.

Citation: *Miller v. Mellott,* 2019-Ohio-504 (Ct. of Appeals, 7th Dist., 2019)

Facts: In 1947, Elbert Mellott and his wife, Anna Mellott, sold the surface of 69 acres of described land to Knowlton, but reserved all the oil and gas underlying the premises. Elbert died in 1963; Anna in 1982. Neither estate mentioned the reserved mineral interest and there were no transfers of the oil and gas interest recorded in the land records subsequent to the original reservation in 1947. Over the years, title to the surface devolved from Knowlton, by a series of transfers, to Miller, the present-day owner of the surface estate. Miller claimed the "root of title" deed under the Marketable Title Act (MTA) is a warranty deed recorded in 1959. The 1959 deed specifically conveyed the 69-acre parcel "except all the oil and gas in and under said real estate." All deeds from 1959 through and including the 2010 deed to Miller include this exception. Beginning in 2011, Miller attempted to employ the process for abandoning the reserved oil and gas interest pursuant to the requirements of the Dormant Mineral Act (DMA). Miller subsequently filed suit seeking relief under both the DMA and the MTA, claiming that the root of title deed "did not specifically refer to or identify" the reserved oil and gas interest, and since the Mellott heirs failed to record any preserving notices, the reserved interest was extinguished under the Marketable Title Act. The trial court held that since the DMA was expressly intended to deal with severed mineral interests, "the DMA, not the MTA, is the [exclusive] remedy available to a surface owner attempting to quiet title to a severed mineral interest" [bracketed word added by author].

Holding: The Court of Appeals noted that in Ohio, *a royalty interest is subject to both the MTA and DMA*. Mellotts' oil and gas interest was not extinguished because the Miller chain did not comply with the MTA. Because the purported root of title contains an exception for oil and gas, it is not a proper root of title "because it does not contain a fee simple title, free of any such oil and gas exception and reservation" [citations omitted].

Relevance to the Title Industry: In jurisdictions with both a “marketable title act” and a “dormant mineral act,” underwriting personnel must be vigilant in evaluating risks posed by the interplay of these acts, not only according to the decisions of the particular state in which the property is located but, perhaps more important, where that particular state has not yet ruled on these questions and may well look to the holdings of sister states. Many cases will depend on the specific facts and statutory provisions at issue. This is a rapidly developing area of the law; indeed, several of the cases cited in *Miller* were decided in the last two years.

Contact ALTA at 202-296-3671 or ***communications@alta.org****.*

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