



MASSIVE MINERALS

Adverse Possession

Presentation Overview

- Definition
- Elements
- Statutes of Limitation
- Severed Interests
- Mineral Interests
- Other Things to Note



What is Adverse Possession?

- Actual and visible appropriation of real property, commenced and continued under a claim of right that is inconsistent with, and hostile to, the claim of another.
 - Tex. Civ. Prac. & Rem. Code Ann. § 16.021(1)
- In sum: Claiming a right to real property by physical possession when someone else has record ownership
- A/K/A Title by Limitations or Title by Possession



Elements of Adverse Possession

Possession must be:

- Actual
 - Visible
 - Continuous for the applicable period
 - Notorious
 - Distinct
 - Hostile or Adverse
 - Peaceable
 - Exclusive
 - Of such character as to indicate unmistakably an assertion of claim of exclusive ownership in the occupant
- PLUS property owner must have actual or constructive notice of adverse claim



Statutes of Limitation

- 3 years Possession under title or color of title
 - Example: Unrecorded deed in chain of title
 - Tex. Civ. Prac. & Rem. Code Ann. § 16.024
- 5 years
 - Requires duly registered deed; cultivation, use, or enjoyment of the property; and payment of taxes
 - Tex. Civ. Prac. & Rem. Code Ann. § 16.025
- 10 years
 - Requires cultivation, use, or enjoyment of the property
 - Tex. Civ. Prac. & Rem. Code Ann. § 16.026



Statutes of Limitation, Cont.

- 15 years Combined
 - Cotenant heirs
 - Requires 10 years of peaceable and exclusive possession; cultivation, use, or enjoyment of the property; and payment of all taxes
 - After 10 years, must file Affidavit of Heirship and Affidavit of Adverse Possession, publish notice in newspaper, and provide written notice to cotenant
 - Cotenant has 5 years to answer
 - Tex. Civ. Prac. & Rem. Code Ann. § 16.0265



Statutes of Limitation, Cont.

- 25 years
 - Requires property to be held in good faith under recorded deed or other instrument purporting to convey title
 - Tex. Civ. Prac. & Rem. Code Ann. § 16.028
 - Or claim against record owner under legal disability
 - Includes claims under cultivation, use, or enjoyment without recorded deed
 - Tex. Civ. Prac. & Rem. Code Ann. § 16.027



Adverse Possession of Minerals

- Unsevered
 - Adverse possession of surface includes minerals
- Severed
 - Depends on timing of severance and actions taken during adverse possession



Severance

- Severance can occur by grant or reservation in deed, a will, judicial sale, or an oil and gas lease
- Can have partial severance or variety of interests
 - Each piece of the minerals analyzed separately for applicability of adverse possession
 - Portion owned by surface owners
 - Lessor
 - NPRI owner
 - MI owner



Timing of Severance

- Minerals Severed Before Adverse Possession of Surface
 - Adverse possession of surface will NOT lead to adverse possession of minerals
- Minerals Severed During Adverse Possession of Surface
 - Adverse possession of surface CAN lead to adverse possession of minerals



Severance of Minerals by Record Owner

- Broughton v. Humble Oil & Refining Co., 105 S.W. 2d 480 (Tex. Civ. App.- El Paso 1937, writ ref'd)
 - Timeline:
 - 1924: Trespasser possessed and claimed land
 - Adverse entry extended from surface to underlying minerals
 - 1930: Record owner executed lease severing minerals
 - Post-1930: Trespasser continued possession
 - Trespasser brings suit to try title
 - Then drilling operations commenced
 - Record owner had neither actual nor construction possession of property when she executed lease, so it did not interrupt adverse claimant's possession. Need ouster or suit.



Severance of Minerals by Adverse Possessor

- Once adverse possession begins, adverse possessor can sever mineral estate before title perfected and still have minerals adversely possessed
- Can be done by:
 - Conveying minerals
 - Kilpatrick v. Gulf Production Co., 139 S.W.2d 653 (Tex. Civ. App.-Beaumont 1940, writ dismissed judgment corrected.)
 - Conveying surface and reserving minerals
 - Houston Oil Co. v. Moss, 155 Tex. 157 S.W.2d 131, 134 (1955)
 - Executing oil & gas lease
 - Clements v. Tex. Co., 273 S.W. 993 (Tex. Civ. App.-Galveston 1925, writ refused).
- Requires continued adverse possession of surface by them or third party
- Remember: Can combine subsequent adverse possessors to meet statute of limitations



Adverse Possession of Severed Mineral Estate

- Possession of surface after presence doesn't lead to adverse possession of minerals
- Occupancy of surface generally not inconsistent or adverse to rights of mineral owner
 - *Adams v. Duncan*, 147 Tex. 332, 340, 215 S.W.2d 599, 604 (1948)
- Requires "dominion" exercised over minerals
 - Must engage in activity expected of someone asserting and enjoying mineral ownership
 - Must be continuous and exclusive
 - *Hunt Oil Co. v. Moore*, 656 S.W.2d 634, 640 (Tex. App.-Tyler 1983, writ ref'd n.r.e.)
 - Must be actual possession which = drilling and production
 - *Natural Gas Pipeline Co. of Am. vs. Pool*, 124 S.W.3d 193 (Tex. 2003)



Various Mineral Interests

- Royalty Interests: Cannot be adversely possessed
 - Non-possessory interests. No way to exert ownership. Nothing to possess until production. No rights to drill themselves.
 - Includes:
 - Lease royalties, e.g. Lessor paying royalties to A when should be paid to B. A cannot claim ownership of B's royalty through adverse possession.
 - Non-Participating Royalty Interests
 - Sun Oil Co. v. Madeley, 626 S.W.2d 726 n.6 (Tex. 1982); Coates Energy Trust v. Frost Nat'l Bank, 2012 Tex. App. LEXIS 9718 (Tex. App.—San Antonio Nov. 28, 2012, pet. denied); Saunders v. Hornsby, 173 S.W.2d 795 (Tex. App.—Amarillo 1943, no writ).



Various Mineral Interests

- Leasehold Interest/Operating Working Interest: Can adversely possess
 - E.g. Lessor continues drilling after lease expires.
 - Natural Gas Pipeline Co. of Am. v. Pool, 124 S.W.3d 188 (Tex. 2003)
- Non-Operating Working Interest: Unclear
 - No case law on point
 - E.g. Under JOA, a non-operator is receiving revenue and paying costs based on 10% WI. Later find out owns only 8%.
 - Arguments on both sides: Can adversely possess working interest, but not taking oil and gas out of the ground. Not possessing anything until production, similar to royalty interest. They are, however, paying share of costs unlike a royalty owner.



Various Mineral Interests

- Overriding Royalty Interest: Unclear
 - No case law on point. See generally *Portwood v. Buckalew*, 521 S.W.2d 904, 919 (Tex. Civ. App.—Tyler 1975, writ ref'd n.r.e.)
 - Probably doesn't apply. No right to possession. Cannot drill themselves.
 - *Connaghan v. Eighty-Eight Oil Co.*, 750 P.2d 1321, 1324 (Wyo. 1988)
 - No adverse possession. Cites Texas cases including *Portwood*.



Other things to Note

- Not subject to recording statutes
 - Not rendered void to a subsequent purchaser or lienholder without notice
 - Thus, bona fide purchaser not protected
 - *Houston Oil v. Olive Sternenberg & Co.*, 222 S.W. 534 (Tex. Comm'n App. 1920, judgment adopted); *Heard v. Bowen*, 184 S.W. 234 (Tex. Civ. App. - San Antonio 1916, writ refused); *MacGregor v. Thompson*, 26 S.W. 649 (Tex. Civ. App. 1894, no writ).
- Cannot adversely possess real property dedicated to public use
 - Tex. Civ. Prac. & Rem. Code § 16.030



QUESTIONS?

YOUR PARTNER IN CREATING MASSIVE, OUTSIZED VALUE