COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

POSSE ENERGY, LTD.,	§	
Appellant/Cross-Appellee,	§	No. 08-20-00061-CV
v.	§	Appeal from the
PARSLEY ENERGY, LP,	§	112th District Court
Appellee/Cross-Appellant,	§	of Upton County, Texas
and	§	(TC# 18-06-U4639-OTH-A)
PACER ENERGY, LTD.	§	
Appellee.	§	

O P I N I O N

This case involves a dispute over ownership of working interest rights in the deep rights of an oil and gas lease known as the Morgan Lease. Appellant, Posse Energy, appeals summary judgment entered against it in a declaratory judgment action. The trial court entered summary judgment in favor of Appellee Pacer Energy. Appellee and Cross-Appellant, Parsley Energy, also filed a summary judgment motion, which the trial court denied.[1]

[1] We refer to Pacer and Parsley collectively herein as "Appellees." Where further distinction is required, we reference "Appellee Pacer" or "Appellee Parsley." In our discussion of Parsley's cross-appeal, we refer to Parsley as "Cross-Appellant" and Posse as "Cross-Appellee."

Appellant appeals the trial court's declaration conveyance of mineral rights within certain tracts of land were limited to the Shallow Rights within the subject lease. Appellant also contends the trial court erred in making its decision when it considered an expert report offered by Appellee Pacer, which Appellant contends is "extraneous and conclusory."

We disagree with Appellant and affirm the trial court's judgment declaring the conveyance of certain leasehold rights within a portion of the Morgan Lease were limited to the shallow depths.

FACTUAL BACKGROUND

The facts of the case are undisputed; only interpretation of the documents and the relevant law is in question.

The Parties

To understand the parties and property involved in this case, preliminary introductions are necessary before setting out the facts. Appellant, Posse Energy, filed the initial declaratory judgment action. Appellant is the successor in interest to Petro-Tide, which received an interest in portions of the Morgan Lease pursuant to a 1992 Acquisition Agreement between Petro-Tide[2] and Westland Oil Development Corporation (hereafter, "Westland"). Appellant also filed the initial motion for summary judgment in the case.

Appellee, Pacer Energy, subsequently acquired the interest owned by Westland in the Morgan Lease. Appellee and Cross-Appellant, Parsley Energy, later acquired its interest from Appellee Pacer. Appellees were defendants in the declaratory judgment action and filed cross-motions for summary judgment.

[2] Peter Paul Petroleum Co. is Petro-Tide's general partner, and obtained the subject quarter sections on behalf of PetroTide.

In the following statement of facts, when Westland's interests are described, they generally align with the interests subsequently acquired by Appellees. Petro-Tide's interests align with Appellant's.

The Morgan Lease

In early 1974, W.R. Morgan and Prebble Durham Morgan leased the mineral estate of a tract of land in Upton County, reserving a one-eighth royalty interest (the "Morgan Lease"). Later that year, D.E. Billings, Trustee, assigned the Morgan Lease to Victory Petroleum Company.

In 1977, through assignments from Victory Petroleum Company, Westland acquired a 71.95 percent interest of the Morgan Lease **at all depths**. In the next few years, several individual recipients of Victory Petroleum Company's interest assigned their interest to Westland, leaving Westland with a 72.7 percent interest in the Morgan Lease **at all depths**.

Westland Conveys Shallow Rights in Morgan Lease

In 1979, Westland conveyed a portion of its interest in specific quarter sections of the Morgan Lease to Howard W. Parker and Joe M. Parsley for shallow drilling, reserving an overriding royalty interest which it later converted to a working interest. The quarter sections conveyed were the southeast quarter (SE/4) of Section 33 (Morgan 1), the southwest quarter (SW/4) of Section 25 (Morgan A), the northwest quarter (NW/4) of Section 25 (Morgan B), the NE/4 of Section 25 (Morgan C), and the SW/4 of Section 26 (Morgan D) (referred to generally throughout this opinion as the quarter sections). In each of these conveyances, Westland conveyed only the rights within the interval of 7,194 and 8,900 feet in each quarter section (collectively, the "Shallow Rights").

Each conveyance to Parker and Parsley contained the following granting language, in pertinent part:

> the undersigned parties, hereinafter called "Assignors," hereby Grant, Sell, Convey and Assign to Howard W. Parker and Joe H. Parsley, hereinafter called "Assignee," subject to the depth limitations and reservations hereinafter made, all of their right, title and interest in and to the oil, gas and mineral lease described in Exhibit "A" attached hereto and made a part hereof, INSOFAR and ONLY INSOFAR as said lease covers and applies to the Northeast Quarter (NE/4) of Section Twenty-Five (25), Block "B", C.C.S.D. & R.G.N.G. RR. Co. Survey, Upton County, Texas, and further INSOFAR and ONLY INSOFAR as said lease covers the interval below the stratigraphic equivalent of 7,194 feet, as found in the Parker and Parsley Morgan No. 1 Well located in Section 33, Block "B", C.C.S.D. & R.G.N.G. RR. Co. Survey, and above the vertical depth of 8,900 feet.

The assignments for each quarter section also explicitly reference the well name on the property. For example, the following describes the Morgan C quarter section:

> Payout shall be deemed to have occurred at such time as Assignee has recovered from the proceeds from production from the Parker and Parsley Morgan 'C", Well No. 1, located in the Northeast Quarter (NE/4) of Section 25, Block "B," C.C.S.D. & R.G.N.G. RR. Co. Survey, Upton County, Texas, the cost of drilling, completing, equipping and operating the well during the payout period.

The parties agree, as of July 29, 1982, Westland owned a 24.2333 percent leasehold interest in the Shallow Rights and a 72.7 percent leasehold interest in the remaining vertical depths of the Morgan Lease quarter sections, including the deep rights, or the interval below 8,900 feet (hereafter, “Deep Rights”).

Westland Mortgages Certain Interests in Morgan Lease

Between 1971 and 1987, Westland executed numerous deeds of trust and mortgages to secure repayment of certain promissory notes. It used its interests in various oil and gas leases in Texas, New Mexico, and Louisiana, to secure these deeds of trust, including its interests in the Shallow Rights of the Morgan Lease quarter sections. These deeds of trust are referred to collectively as the Prior Deeds of Trust. Westland used the Shallow Rights as collateral in notes executed in favor of First Republic Bank Dallas, N.A. The Prior Deeds of Trust granting language stated:

> [Westland] . . . does hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN and SET OVER to the Trustee the following:
>
> A. The oil, gas and/or mineral leasehold interests and estates and other interests which are described in Exhibit A attached hereto and made a part hereof, and all interest of Grantor in all other oil, gas and/or mineral interests with which any of the interests and estates described in Exhibit A are now or hereafter may be unitized, in whole or in part[.]

Exhibit A to the Prior Deeds of Trust contained the following property description of the Shallow Rights:

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Properties in Upton County, Texas

Spraberry Trend Area Field
Morgan No. 1
Morgan A,B,C,& D

All of the rights, titles and interests of Westland Oil Development Corporation in and to the following oil, gas and mineral leases:

(1) Lease dated January 14, 1974, from W. R. Morgan et ux, as Lessor, to D. E. Billings, as Lessee, recorded in Volume 418, page 194, of the records of Upton County, Texas, INSOFAR AND ONLY INSOFAR as said Lease covers the N/2 and SW/4 of Section 25, the SW/4 of Section 26 and the SE/4 of Section 33, Block B, CCSD & RGNG Ry. Co. Survey, Upton County, Texas, limited to depths from below the stratigraphic equivalent of 7194 feet as found in the Parker & Parsley Morgan No. 1 well located in Section 33, Block B, CCSD & RGNG Ry. Co. Survey, and above 8900 feet,

which rights, titles and interests are represented and warranted to entitle Westland to not less than the following percentages of the gross production from the above lease:

Parker & Parsley Morgan No. 1.....21.2041%

Parker & Parsley Morgan A 21.2041%

Parker & Parsley Morgan B 21.2041%

Parker & Parsley Morgan C 21.2041%

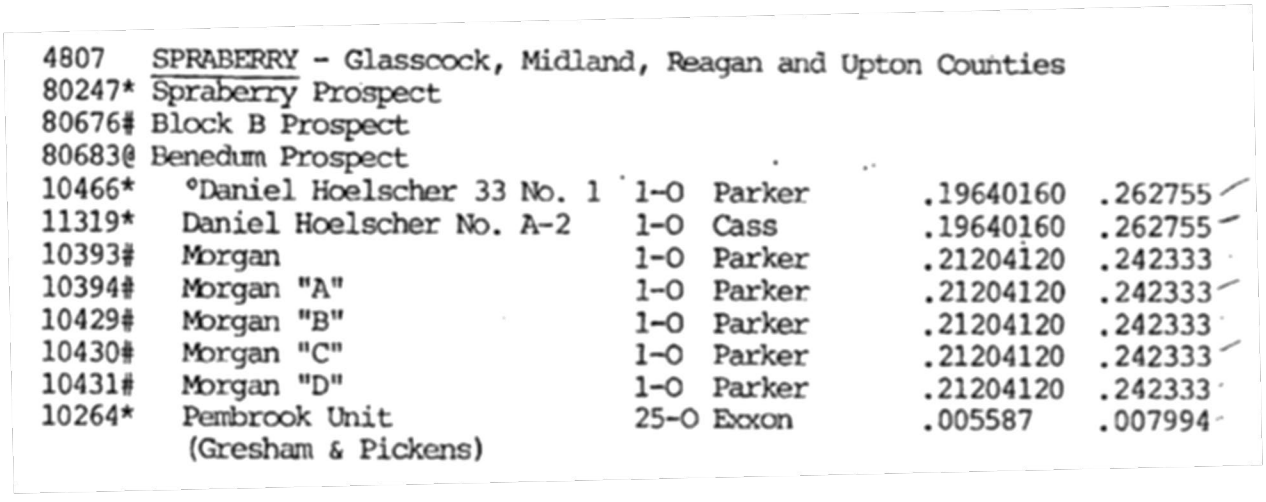
Parker & Parsley Morgan C 21.2041%

In 1988, as part of a debt reconstruction, Westland executed a Restated and Amended Deed of Trust, Mortgage, Assignment, Security Agreement and Financing Statement (hereafter, Amended Deed of Trust) with NCNB Texas National Bank, the receiver for First Republic Bank Dallas, N.A., pursuant to an assignment by the FDIC. The Amended Deed of Trust secured repayment of three new promissory notes executed by Westland (hereafter, Notes A, B, and C).

The collateral for Notes A, B, and C, were all the interests Westland previously pledged in its oil and gas leases, "together with all of the rights, hereditaments and appurtenances in anywise appertaining or belonging thereto," including "any interest hereafter acquired by [Westland] therein[,]" and the wells and all products and proceeds of the property.

Westland Conveys Certain Morgan Lease Interests to PetroTide

In 1992, PetroTide, via its general partner, Peter Paul Petroleum Company, purchased Westland's debts through an Acquisition Agreement. PetroTide purchased Notes A, B, and C for $6.5 million, in exchange to Westland conveying the collateral secured by the Amended Deed of Trust, as well as additional other oil and gas properties. The instrument covering this transaction was a Note Purchase Agreement. The stated intent of the Note Purchase Agreement was "to settle the indebtedness evidenced by the Loan Documents by acquiring the properties from [Westland] that are covered by the Security Documents." In particular, the deed of trust securing Note A included the Shallow Rights of the quarter sections in the Morgan Lease. The schedule of producing properties securing Note A included the following description of the Morgan Lease quarter sections:



4807	SPRABERRY - Glasscock, Midland, Reagan and Upton Counties				
80247*	Spraberry Prospect				
80676#	Block B Prospect				
80683@	Benedum Prospect				
10466*	°Daniel Hoelscher 33 No. 1	1-O	Parker	.19640160	.262755
11319*	Daniel Hoelscher No. A-2	1-O	Cass	.19640160	.262755
10393#	Morgan	1-O	Parker	.21204120	.242333
10394#	Morgan "A"	1-O	Parker	.21204120	.242333
10429#	Morgan "B"	1-O	Parker	.21204120	.242333
10430#	Morgan "C"	1-O	Parker	.21204120	.242333
10431#	Morgan "D"	1-O	Parker	.21204120	.242333
10264*	Pembrook Unit (Gresham & Pickens)	25-O	Exxon	.005587	.007994

PetroTide agreed it would cancel Note A in consideration to Westland conveying the properties pledged as collateral for Note A to PetroTide. An Assignment and Bill of Sale regarding the interests identified in the Acquisition Agreement was executed the same day and expressly made subject to it.

Appellant Reconveys Fifty Percent of its Interest in the Morgan Lease back to Westland

The Acquisition Agreement included a reversionary interest to Westland, in an amount dependent on the date payout was made. Payout occurred on July 1, 1998; thus, Westland was entitled to and received from Appellant a fifty percent reassignment of all interests Westland conveyed to PetroTide in 1992.[3]

Appellee Pacer subsequently acquired Westland's interests in the Morgan Lease, including those rights PetroTide reassigned to Westland in 1992. Appellee Parsley acquired its rights in the Morgan Lease from Appellee Pacer, with Appellee Pacer reserving an overriding royalty interest.

Parties' Positions

Interpretation of the Acquisition Agreement was the subject of the various motions for summary judgment at the trial court and the subject of this appeal. Appellant's position is Westland conveyed "all right, title and interest" in the leases referenced on exhibits to the Acquisition Agreement, "together with each and every kind and character of right, title, claim or interest which [Westland has] in and to the Leases . . .or covered by the leases," including "the net revenue interests and working interests in the wells [described in the exhibits]." Appellant claims the conveyance, therefore, is Westland's complete working interests in the Morgan Lease quarter

[3] Once again, the parties do not disagree that Appellant intended to reassign to Westland half of the identical interest it received from Westland; the dispute is over what PetroTide received through the Acquisition Agreement, half of which was reconveyed back to Westland and subsequently acquired by Appellee Pacer.

sections **at all depths**. Specifically, Appellant asserts the conveyed interest is 72.7 percent in the Deep Rights (below 8,900 feet) and 24.2333 percent in the Shallow Rights (between the depths of 7,194 and 8,900 feet).

Appellees argue the Prior Deeds of Trust mortgaged to First Republic Bank Dallas covered only the Shallow Rights of the Morgan Lease quarter sections. Appellees assert the Amended Deed of Trust only covered the Shallow Rights. The Assignment made subject to the Acquisition Agreement, according to Appellees, conveyed the Morgan Lease to PetroTide "INSOFAR AND ONLY INSOFAR" as the lease covered the proration units for Morgan 1, Morgan A, Morgan B, Morgan C, and Morgan D. Following the conveyance, PetroTide executed a Release of Lien, which released Note A and the associated deed of trust pertaining to the Shallow Rights on the subject quarter sections of the Morgan Lease. Appellees allege the leasehold interest conveyed in the Assignment included only the Shallow Rights, which were previously mortgaged. Furthermore, Appellees argue no proration units were associated with the Deep Rights on the Morgan Lease and no production was occurring at the time of the conveyance at those depths. Thus, as Appellee Pacer states in its motion for summary judgment,

> The Assignment to [Appellant] was necessarily depth limited to the shallow rights because Westland's ownership interests in the identified Morgan wells were depth limited. The proration unit for the Morgan wells could not extend below 8,900 feet, which is the bottom of the shallow depth interval owned by Westland in the Morgan wells.

In 1996, PetroTide merged with and into Appellant.

PROCEDURAL BACKGROUND

Appellant initially filed suit against Appellees seeking a declaration the 1992 Assignment conveyed all of Westland's then-existing leasehold interests in the Morgan lease quarter sections,

including both Shallow and Deep leasehold Rights. Appellees counterclaimed, contending Westland never assigned any interest in the Deep Rights to PetroTide and thus Appellant (as PetroTide's successor) owned no interest in the Deep Rights. All three parties moved for summary judgment.

Appellant argued Westland conveyed "all" of its right, title, and interest in and to the Morgan Lease quarter sections, without depth limitation or reservation, to PetroTide. Appellee Pacer argued Westland only conveyed the Shallow Rights to PetroTide, and therefore PetroTide (and later, Appellant) never received any interest in the Deep Rights. In response to Appellant's and Appellee Pacer's motions, Appellee Parsley argued an alternative theory: Westland conveyed a 24.2333 percent working interest in the Morgan Lease at all depths.

After a hearing, the trial court granted Appellee Pacer's counter motion for partial summary judgment, declared Appellant owned no interest in the Deep Rights, and denied Appellant's and Appellee Parsley's motions. The court severed the action so the partial summary judgment became final, and this appeal followed.

DISCUSSION

The parties raise one central question on appeal: whether, in the Acquisition Agreement and its accompanying documents, Westland conveyed the Morgan Lease quarter sections in their entirety—that is, at all depths—or whether the documents limited the conveyance to Shallow Rights alone. The trial court declared the conveyance was depth-limited, confined only to the Shallow Rights.

Appellant's position is the express language of the Acquisition Agreement and Assignment demonstrate the contracting parties' intent to convey "all" of Westland's right, title, and interest

in and to the Morgan Lease, without depth limitation. Appellee Pacer contends the intent of the parties must be gleaned not only from the language in the Acquisition Agreement and Assignment—which it believes supports its position the conveyance was depth-limited—but also from the circumstances surrounding the instruments' execution which they contend further illustrates the conveyance was depth limited.

Appellee Parsley agrees with and adopts Appellee Pacer's position regarding the outcome of the trial court's judgment and oppose Appellant's "all means all" position. In a conditional cross-appeal, Appellee Parsley argues regardless of depth, at most, Westland conveyed only 24.2333 percent interest in the quarter sections at all depths.

We examine each theory in turn. We must also determine whether the Acquisition Agreement and Assignment's language is ambiguous, which we review *de novo*. *See Piranha Partners v. Neuhoff*, 596 S.W.3d 740, 743 (Tex. 2020); *URI, Inc. v. Kleberg County*, 543 S.W.3d 755, 763 (Tex. 2018). To do so, we "consider[] [the contract's] language as a whole in light of well-settled construction principles and the relevant surrounding circumstances." *Piranha Partners,* 596 S.W.3d at 743 (*citing URI*, 543 S.W.3d at 763). No party contends the language in either instrument at issue is ambiguous. In fact, each party claims the express contract language supports their respective positions. Because each side's argument offers a position on the plain meaning of the contractual language at issue, we consider their respective arguments on appeal in our determination of whether ambiguity exists in the Acquisition Agreement and the Assignment.

Standard of Review

We review declaratory judgments under the same standard as other judgments or decrees. TEX.CIV.PRAC.&REM.CODE ANN. § 37.010; *Hawkins v. El Paso First Health Plans, Inc.*, 214

S.W.3d 709, 719 (Tex.App.—Austin 2007, pet. denied). Here, the trial court rendered the declaratory judgment through summary judgment proceedings, "we review the propriety of the trial court's declarations under the same standards we apply to summary judgment." *Id*.

We review a trial court's decision granting summary judgment *de novo*. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). This standard also applies to cases interpreting unambiguous contracts. *MCI Telecomms. Corp. v. Tex. Utils. Elec. Co.*, 995 S.W.2d 647, 650-51 (Tex. 1999). To prevail on a traditional motion for summary judgment, the movant must show there are no genuine issues of material fact and it is entitled to judgment as a matter of law. TEX.R.CIV.P. 166a(c); *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215-16 (Tex. 2003). After the movant satisfies his burden, the burden shifts to the nonmovant to provide evidence which raises a genuine issue of material fact and thus avoid summary judgment. *See Amedisys, Inc. v. Kingwood Home Health Care, LLC*, 437 S.W.3d 507, 511 (Tex. 2014). When cross-motions for summary judgment are filed, a court of appeals considers each motion and renders the judgment the trial court should have reached. *Coastal Liquids Transp., LP v. Harris County Appraisal Dist.*, 46 S.W.3d 880, 884 (Tex. 2001).

Applicable Law

Neither party contends the language in any document at issue is ambiguous. However, as the reviewing court, it is incumbent upon us to independently make that determination, an issue which we also review *de novo*. *See Piranha Partners*, 596 S.W.3d at 744; *URI,* 543 S.W.3d at 763. To do so, we must "consider[] [the contract's] language as a whole in light of well-settled construction principles and the relevant surrounding circumstances." *Piranha Partners,* 596 S.W.3d at 743 (*citing URI*, 543 S.W.3d at 763).

Rules of Construction

In interpreting a contract, a reviewing court's task "is to determine and enforce the parties' intent as expressed within the four corners of the written agreement." *Piranha Partners*, 596 S.W.3d at 743. A contract is ambiguous when it is susceptible to two or more reasonable interpretations. *See Columbia Gas Transmission Corp. v. New Ulm Gas, Ltd.*, 940 S.W.2d 587, 589 (Tex. 1996). A contract is not ambiguous simply because the parties hold differing theories of a contract's interpretation. *See id.*; *see also Piranha Partners*, 596 S.W.3d at 743.

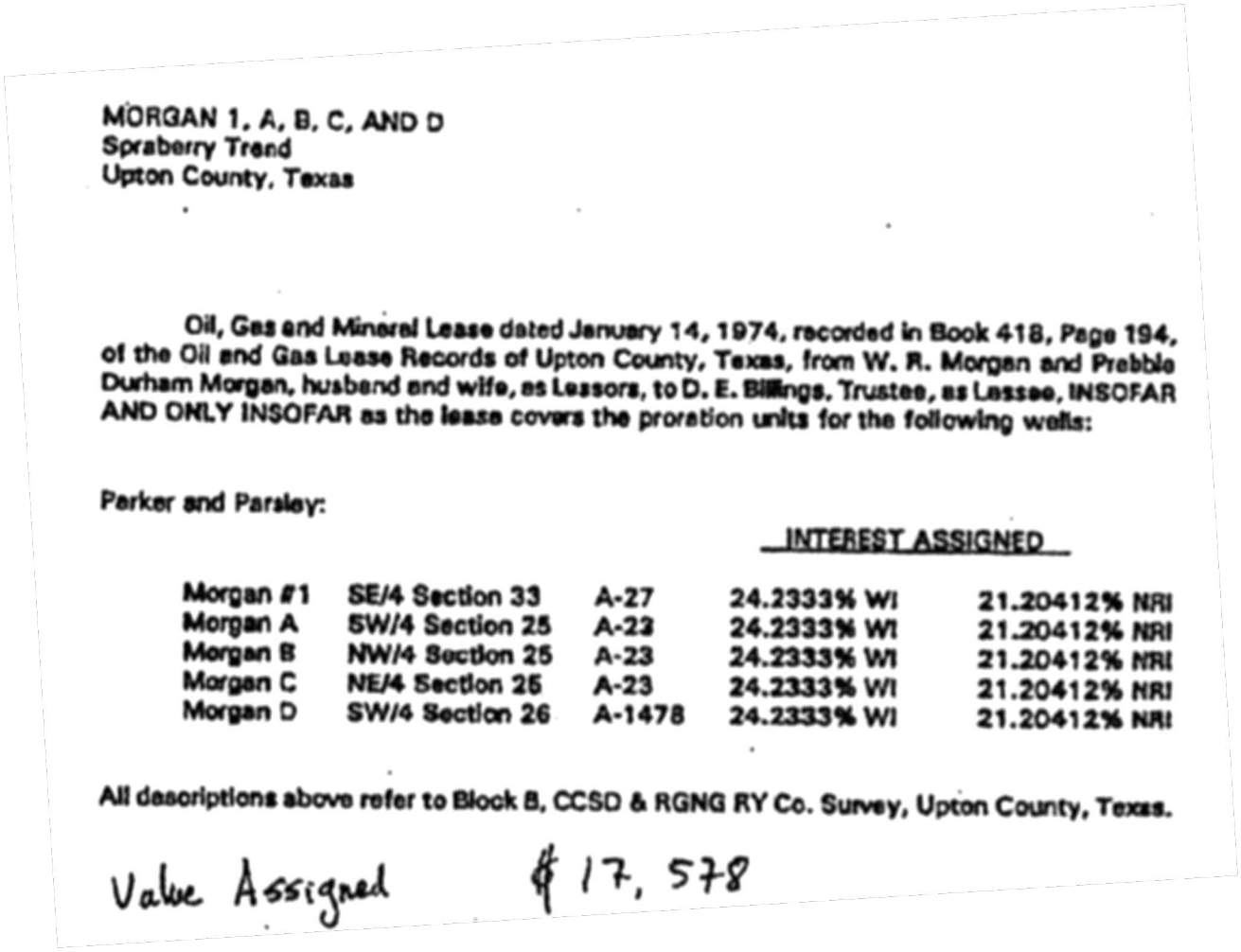
If we determine the contract is unambiguous, its construction is a question of law. *See MCI Telecomms.*, 995 S.W.2d at 650-51. Unambiguous oil and gas conveyances are to be interpreted in accordance with the parties' intent expressed within the agreement itself. *Perryman v. Spartan Tex. Six Capital Partners, Ltd.*, 546 S.W.3d 110, 117-18 (Tex. 2018). A reviewing court looks to the parties' intent as expressed in the written document, rather than their actual intent when it varies from the express terms within the agreement. *See Piranha Partners*, 596 S.W.3d at 744 (*citing Luckel v. White*, 819 S.W.2d 459, 461 (Tex. 1991)). "To achieve this objective, [courts] must examine and consider the entire writing in an effort to harmonize and give effect to all the provisions of the contract so that none will be rendered meaningless." *J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 229 (Tex. 2003). "We consider the entire agreement and, to the extent possible, resolve any conflicts by harmonizing the agreement's provisions, rather than by applying arbitrary or mechanical default rules." *Piranha Partners,* 596 S.W.3d at 744 (*citing Wenske v. Ealy*, 521 S.W.3d 791, 792, 796 (Tex. 2017)).

Analysis

Appellant's Position: "All Means All" Absent Express Limitation

Appellant's general position is the express language of the Acquisition Agreement and Assignment demonstrate the contracting parties' intent to convey "all" of Westland's right, title, and interest in and to the Morgan Lease, without depth limitation. In support of its position, Appellant cites to a number of cases where the Texas Supreme Court has held "all means all" in one context or another. *See Davis v. Mueller*, 528 S.W.3d 97, 102 (Tex. 2017)("All means all."); *El Paso Field Servs., L.P. v. Mastec N. Am., Inc.*, 389 S.W.3d 802, 808 (Tex. 2012)("all risks" means "all risks"); *Enter. Leasing Co. v. Barrios*, 156 S.W.3d 547, 549 (Tex. 2004)(per curiam)("All losses means all losses."). Appellant also argues the absence of language manifesting the grantor's intent to grant less than its full interest in an estate conveys the interest the grantor had in the subject estate. *Cockrell v. Tex. Gulf Sulphur Co.*, 299 S.W.2d 672, 675 (Tex. 1956). A reservation within the grant of an estate "must be 'by clear language' and cannot be implied, and a reservation is a form of 'exception' through which the grantor excludes for itself a portion of that which would otherwise fall within the deed's description of the interest granted." *See Piranha Partners*, 596 S.W.3d at 748.

Appellant argues the Acquisition Agreement explicitly states PetroTide purchased Westland's debt in Notes A, B, and C in exchange for "all right, title and interest" in the leases described in the exhibits to the Acquisition Agreement, without reference to any depth limitation. Exhibit D to the Acquisition Agreement describes the Morgan Lease quarter sections as one of the leases conveyed in the Acquisition Agreement, and contains the following description of the property:



MORGAN 1, A, B, C, AND D
Spraberry Trend
Upton County, Texas

Oil, Gas and Mineral Lease dated January 14, 1974, recorded in Book 418, Page 194, of the Oil and Gas Lease Records of Upton County, Texas, from W. R. Morgan and Prebble Durham Morgan, husband and wife, as Lessors, to D. E. Billings, Trustee, as Lessee, INSOFAR AND ONLY INSOFAR as the lease covers the proration units for the following wells:

Parker and Parsley:

			INTEREST ASSIGNED	
Morgan #1	SE/4 Section 33	A-27	24.2333% WI	21.20412% NRI
Morgan A	SW/4 Section 25	A-23	24.2333% WI	21.20412% NRI
Morgan B	NW/4 Section 25	A-23	24.2333% WI	21.20412% NRI
Morgan C	NE/4 Section 25	A-23	24.2333% WI	21.20412% NRI
Morgan D	SW/4 Section 26	A-1478	24.2333% WI	21.20412% NRI

All descriptions above refer to Block B, CCSD & RGNG RY Co. Survey, Upton County, Texas.

Value Assigned $17,578

Appellant argues the Acquisition Agreement's inclusive language in its definition of "Interest," which "include[s] all properties pledged to secure payment of the Note A and Note B…plus additional properties owned by [Westland] as set forth in Exhibits D and E hereto[,]" and "[a]ll of [Westland's] right, title and interest in and to all of the real, personal and mixed property used in the operation of the Interests . . . in whole or in part" covers more than just the Shallow Rights of the Morgan Lease quarter sections. Appellant also suggests because other leases listed in Exhibits D and E were expressly depth-limited, the omission of depth limitation in the quarter sections indicates Westland's intent to convey more than just the Shallow depths.

Appellant likewise posits the Assignment conveys *all* of Westland's right, title and interest in the Morgan Lease, and not just the Shallow Rights. The Assignment states Westland "granted, bargained, sold, conveyed, and assigned:"

> a. The oil and gas leases . . . and other estates and properties which are specifically described in Exhibit A attached hereto and made a part hereof for all purposes;
>
> b. Without limitation of the foregoing, all other rights, titles and interests of [Westland] in and to (i) the lands, oil, gas and/or other mineral leases . . . leasehold estates, fee minerals, royalty and overriding royalty interests, production payments, carried working interests . . . and other rights, estates or property interests specifically described or referred to in Exhibit A and in and to the oil, gas and/or other minerals thereunder or allocable thereto and that may be produced therefrom, and (ii) all other oil, gas and/or mineral interests with which any of the interests and properties [previously described] herein may be pooled or unitized . . . and (iii) all rights, options, titles and interests of [Westland] related to the Subject Properties...
>
> . . .
>
> d. All rights, titles and interests of [Westland] in, to and under . . . all other contracts, warranties, agreements, documents, instruments and rights which are appurtenant to any of the interests specifically described in the above subsections . . . .

Exhibit A contains an identical description of the Morgan Lease quarter sections as Exhibit D of the Acquisition Agreement, copied above, without the handwritten "value assigned" notation. According to Appellant, the absence of a depth limitation in the Assignment indicates the parties' intended Westland would convey all of its interest in the Shallow and Deep Rights in the Morgan Lease quarter sections to PetroTide.

Finally, Appellant claims the "in so far as" language in the exhibit descriptions limits the conveyed interests to the quarter sections enumerated in the property description, rather than Westland's Shallow and Deep Rights interests in the entirety of the Morgan Lease (i.e., those portions of the Morgan Lease that do not include the quarter sections).

In summary, Appellant's argument is the Acquisition Agreement and Assignment's language conveying "all" right, title and interest, absent explicit depth limitation language, indicates the parties' intended Westland to convey its entire interest in the Morgan Lease quarter sections to PetroTide, so therefore, include the Deep drilling Rights as well as the Shallow Rights.

Appellees' Position: Depth Limitation Was Inherent in Property Description

Appellees argue the express language of the documents show Westland intended to convey to PetroTide the properties serving as collateral for Note A—which included the Shallow Rights, but not any Deep Rights—and additional properties located in counties other than Upton County. Appellees urge us to consider the Prior Deeds of Trust and Amended Deed of Trust, the Note Purchase Agreement, the Acquisition Agreement, the Assignment, and the Reassignments together. Because all the instruments relate to the purchase and restructuring of Westland's debt, Appellees posit they should be read and construed together. *See DeWitt County Elec. Co-op., Inc. v. Parks*, 1 S.W.3d 96, 102 (Tex. 1999)(stating that writings pertaining to the same transaction should be considered as one instrument and read and construed together even if executed at different times and not expressly referring to one another). Appellees state even the Prior Deeds of Trust and Amended Deed of Trust, although executed years earlier, relate to the debt restructuring because the Note Purchase Agreement references them in defining the scope of the transaction.

The Acquisition Agreement also references the Prior Deeds of Trust, Amended Deed of Trust, Note Purchase Agreement, and the Assignment. The Assignment states it is subject to the Acquisition Agreement. Additionally, both Reassignments reference the Assignment and are made subject to the Acquisition Agreement. Appellees urge us to read all the documents together for

context and "harmonize [the Assignment's] construction with the Security Documents [the Prior Deeds of Trust and Amended Deed of Trust], the Note Purchase [Agreement], the Acquisition Agreement, the Reassignments, and the Joint Operating Agreement."

When read together, according to Appellees, the instruments' language reveals the parties' intent *not* to include Deep Rights in the Morgan Lease quarter sections as part of PetroTide's purchase of Note A and its corresponding collateral. Appellees suggest this is true even when the instruments are considered in isolation.

Because the Deep Rights were not income-producing, Appellees argue PetroTide would not have expected them as part of the conveyance since they would have served little purpose as collateral without producing income. Additionally, Appellees argue the stated intent of the Acquisition Agreement was to extinguish Westland's debt under Note A by PetroTide's purchase and cancellation of Note A in exchange for the collateral securing Note A, as well as some specified additional properties *outside of Upton County*, until the income derived from those properties (via their oil and gas production) paid PetroTide for its purchase of the debt, plus costs and interest. In the Acquisition Agreement, PetroTide agreed to purchase all of Westland's "Interests." "Interests" is defined as

> all properties pledged to secure payment of the Note A and Note B pursuant to the Security Documents[4] for the payment of the Notes, as set forth on, and with the exceptions noted on Exhibit I hereto, plus additional properties owned by [Westland] as set forth on Exhibits D and E hereto, also pledged as collateral for the Notes, and shall, for the purposes of Paragraphs 7 and 8, include any other oil and gas properties that may be conveyed to Buyer hereby as described on Exhibit F (the "Additional Properties")[.]

[4] Security Documents used here refers to the Prior Deeds of Trust and the Amended Deed of Trust.

Exhibits D and E of the Acquisition Agreement provide property descriptions of the mortgaged properties, which Appellees refer to as the "Original Collateral." The other properties PetroTide purchased via the Acquisition Agreement are described in that instrument's Exhibit F and referred to as the "Additional Properties" in the Acquisition Agreement. As Appellees point out, the Deep Rights in the Morgan Lease quarter sections are not included in the "Interests" defined in the Acquisition Agreement because they were not part of the previously-pledged collateral, nor are they listed in Exhibit F to that agreement.

Likewise, as it pertains to the Assignment, Appellees claim the language in paragraph (a) confirms the parties' intent to convey only the specified leasehold rights defined in the Assignment's Exhibit A. Contrary to Appellant's position, Appellees argue paragraphs (b) through (f) of the Assignment convey "certain contract and property rights that were appurtenant to the leasehold rights conveyed by paragraph (a)[,]" and do not widen the scope of the property conveyed as described in paragraph (a) and defined by Exhibit A. The Assignment states:

> [Westland] . . . does hereby . . . ASSIGN unto [PetroTide] the following . . .
>
> (a) The oil and gas leases, oil, gas and mineral leases and other estates and properties which are specifically described in Exhibit A attached hereto and made a part hereof for all purposes;

Exhibit A to the Assignment appears as follows:

MORGAN 1, A, B, C, AND D
Spraberry Trend
Upton County, Texas

Oil, Gas and Mineral Lease dated January 14, 1974, recorded in Book 418, Page 194, of the Oil and Gas Lease Records of Upton County, Texas, from W. R. Morgan and Prebble Durham Morgan, husband and wife, as Lessors, to D. E. Billings, Trustee, as Lessee, INSOFAR AND ONLY INSOFAR as the lease covers the proration units for the following wells:

Parker and Parsley:

			INTEREST ASSIGNED	
Morgan #1	SE/4 Section 33	A-27	24.2333% WI	21.20412% NRI
Morgan A	SW/4 Section 25	A-23	24.2333% WI	21.20412% NRI
Morgan B	NW/4 Section 25	A-23	24.2333% WI	21.20412% NRI
Morgan C	NE/4 Section 25	A-23	24.2333% WI	21.20412% NRI
Morgan D	SW/4 Section 26	A-1478	24.2333% WI	21.20412% NRI

All descriptions above refer to Block B, CCSD & RGNG RY Co. Survey, Upton County, Texas.

Specifically, Appellees direct us to the limitation on Exhibit A stating the leasehold interest described is conveyed "INSOFAR AND ONLY INSOFAR as the lease covers the proration units" for Morgan 1, A, B, C, and D. Exhibit A also quantifies the working interest and net revenue interest conveyed. Appellee offers five indications of the parties' intent in how the Assignment should be construed: (1) Exhibit A providing the definition for the conveyed property interest; (2) "insofar and only insofar" as a limitation on the conveyance of the property described in Exhibit A; (3) using a well's proration unit to define the leasehold conveyed; (4) listing the specific interests assigned; and (5) using geographical, geological, and well owner/operator descriptions to further describe the interests conveyed.

In short, Appellees claim the depth limitations are inherent to the property described in the exhibits referenced in the conveyance paragraphs of the Acquisition Agreement and Assignment.

Did the Parties Intend to Limit the Depth of the Conveyance?

Based on the express language in the Acquisition Agreement and Assignment, it is our opinion the contractual language is unambiguous, and the parties intended to limit the depth of the conveyance of the Morgan Lease quarter sections to the Shallow Rights.

First, we find the express language of the Acquisition Agreement and Assignment indicate they are to be read alongside and harmonized with the Sale Purchase Agreement, Prior Deeds of Trust, and Amended Deed of Trust. Indeed, we find it practically impossible to appreciate the scope of either the Acquisition Agreement or the Assignment without referencing the Sale Purchase Agreement, Prior Deeds of Trust, and the Amended Deed of Trust, since both the Acquisition Agreement and the Assignment explicitly reference the other and the numerous instruments outlined above. The Reassignments confirm the parties' intent as expressed in the Acquisition Agreement and Assignment, although we need not refer to the Reassignments to ascertain that intent. We consider these corresponding documents not to alter the plain meaning of the agreement expressed within the four corners of the document, but rather to provide clarity and context to the parties' intent and aid in construing the intent set forth in the document. *See Barrow-Shaver Res. Co. v. Carrizo Oil & Gas, Inc.*, 590 S.W.3d 471, 483-84 (Tex. 2019). They need only be referenced as far as the Acquisition Agreement and Assignment reference them.

The Acquisition Agreement

We first consider the Acquisition Agreement. The Acquisition Agreement's language states Westland agrees to convey "the Interests described on Exhibits D and E hereto, pursuant to the forms of assignment attached hereto as Exhibit C[.]"[5] It goes on to state,

> 'Interests' shall include all properties pledged to secure payment of the Note A and Note B pursuant to the Security Documents for the payment of the Notes, as set

[5] Exhibit C is the form assignment identical to the Assignment executed by Westland and PetroTide as part of this transaction.

forth on, and with the exceptions noted on Exhibit I hereto, plus additional properties owned by Sellers as set forth on Exhibits D and E hereto, also pledged as collateral for the Notes, and shall, for the purposes of Paragraphs 7 and 8, include any other oil and gas properties that may be conveyed to Buyer hereby as described on Exhibit F (the 'Additional Properties'), and shall mean:

a. All right, title and interest of [Westland] in the properties set forth in Exhibits D, E and F in and to (i) the oil, gas and/or mineral leases . . . leasehold estates, fee, royalty and overriding royalty interests described therein (the 'Leases'), together with each and every kind and character of right, title, claim or interest which [Westland has] in and to the Leases, and the lands described or referred to in Exhibits D, E and F or covered by the Leases . . . (ii) the net revenue interests and working interests in the wells described in Exhibits D, E and F…(iii) all rights, options, titles, and interests of [Westland] related to the Leases . . . granting [Westland] the right to obtain or otherwise earn additional rights in and to the Interests, and (iv) all tenements, hereditaments, and appurtenances belonging to any of the foregoing[.]

The express terms of Westland's conveyance in the Acquisition Agreement, therefore, is limited to the property described in the referenced Exhibits. That fact becomes more evident when the conveyance is read with the limitations highlighted in bold:

'Interests' shall include all properties pledged to secure payment of the Note A and Note B pursuant to the Security Documents for the payment of the Notes, as set forth on, and with the exceptions noted on Exhibit I hereto, plus additional properties owned by Sellers **as set forth on Exhibits D and E hereto, also pledged as collateral for the Notes**, and shall, for the purposes of Paragraphs 7 and 8, include any other oil and gas properties that may be conveyed to Buyer hereby as described on Exhibit F (the 'Additional Properties'), and shall mean:

b. All right, title and interest of [Westland] in the properties **set forth in Exhibits D, E and F** in and to (i) the oil, gas and/or mineral leases . . . leasehold estates, fee, royalty and overriding royalty interests **described therein (the 'Leases')**, together with each and every kind and character of right, title, claim or interest which [Westland has] in and to the Leases, and the lands **described or referred to in Exhibits D, E and F or covered by the Leases . . .** (ii) the net revenue interests and working interests in the wells **described in Exhibits D, E and F** . . . (iii) all rights, options, titles, and interests of [Westland] **related to the Leases** . . . granting [Westland] the right to obtain or otherwise earn additional rights in and to the Interests, and (iv) all tenements, hereditaments, and appurtenances belonging to any of the foregoing[.][Emphasis added].

Perhaps most important to glean from the Acquisition Agreement's language is the interests conveyed "include all properties pledged to secure payment of the Note A . . . pursuant to the Security Documents for the payment of the Notes, as set forth on, and with the exceptions noted on Exhibit I hereto, plus additional properties owned by Sellers as set forth on Exhibits D and E hereto, **also pledged as collateral for the Notes**[.]" [Emphasis added]. In other words, the properties conveyed in Exhibit D previously served as collateral under the Prior and/or Amended Deeds of Trust. The Deep Rights in the quarter sections were never collateral for the Prior or Amended Deeds of Trust. On this matter, the parties are in agreement.

Exhibit D, as Appellees point out, contains several indications the conveyance of the Morgan Lease quarter sections was limited to the Shallow Rights. First, Exhibit D contains the limiting language regarding the proration units. It limits the conveyance of the Morgan Lease only "INSOFAR AND ONLY INSOFAR as the lease covers the proration units for [Morgan #1, A, B, C and D]." *See Petro Pro, Ltd. v. Upland Res., Inc.*, 279 S.W.3d 743, 750 (Tex.App.—Amarillo 2007, pet. denied)(holding the phrase "insofar and only insofar" is grant-limiting language). Additionally, where an exhibit is referenced to describe the property being conveyed, it is the description of the interest in the *exhibit* which controls the scope of the grant, regardless of the breadth of the granting language. *See Piranha Partners*, 596 S.W.3d at 747-48.

Appellant cites well-settled case law in support of its contention the inclusive grant language conveyed Westland's interest in the Morgan Lease quarter sections at all depths. For example, in *Davis v. Mueller*, the Texas Supreme Court said in no uncertain terms, "[a]ll means all[,]" in a case involving conveyance of "'all of the mineral, royalty, and overriding royalty interest owned by Grantor in Harrison County[.]'" 528 S.W.3d at 102. *Davis* involved a general

conveyance enlarging a more specific accompanying conveyance. In *Davis*, the grantor listed ten "vaguely described tracts" which was then followed by the general grant language set forth above. *Id.* at 99. There, the Texas Supreme Court held although the specific grants failed to satisfy the requirements under the statute of frauds due to their lack of specificity, the general grant was sufficient and clear since "all means all" and the grantor explicitly agreed to grant all of her mineral interests in Harrison County. *See id.* at 101-102.

However, the granting language on the deed in *Davis* is distinguishable from the conveyance language present in this case. *Piranha Partners* provides a more analogous factual framework to Westland's conveyance to PetroTide. *See Piranha Partners*, 596 S.W.3d at 747-48. There, the granting language stated Neuhoff Oil assigned and conveyed to Piranha "all of [Neuhoff Oil's] right, title and interest in and to the properties described in Exhibit 'A' . . . INSOFAR AND ONLY INSOFAR AS set out in Exhibit A." *Id.* at 744. Exhibit A contained a description very similar in substance to the property descriptions associated with the Acquisition Agreement and Assignment, listing the county, well, quarter section and property description, and the oil and gas lease operating on the property. *Id.* at 745.

In that case, the Texas Supreme Court held that the language of the assignment, considered in its entirety, evidenced the parties' intent to convey Neuhoff Oil's overriding royalty interest covering all the section identified in the assignment's Exhibit A. *Id.* at 753. Perhaps most instructive to us in this case is that the Texas Supreme Court clarified that "insofar and only insofar as" language serves as a limitation on the conveyance. *Id.* However, the assignment in *Piranha Partners* also contains at least two notable distinctions from the language in this case which allowed the high court to determine a broader conveyance occurred than we believe is warranted

here. There, the conveyance language states "All oil and gas leases, mineral fee properties or other interests, INSOFAR AND ONLY INSOFAR AS set out in Exhibit A . . . whether said interest consists of leasehold interest, overriding royalty interest, or both . . . which [interest] *shall include any* working interest, leasehold rights, overriding royalty interests and reversionary rights held by [Neuhoff Oil], as of the Effective Date." *Id.* As the Texas Supreme Court held, the grant included "any" overriding royalty interest then held by Neuhoff Oil to the extent it was described in Exhibit A. *Id.* At the time, Neuhoff Oil held an overriding royalty interest in the entire Puryear Lease. *Id.* Accordingly, the Supreme Court held Neuhoff Oil intended to convey its overriding royalty interest in all of Section 28, which is the broadest area described in Exhibit A. *Id.* at 755.

Missing from the assignment language in *Piranha Partners*, but present in this case, is repeated qualification of the grant's limitation to the property specifically described in the attached exhibit, as well as any reference to the described property previously serving as collateral for a prior obligation. Here, the granting language in the Acquisition Agreement was all of Westland's right, title and interest to "in the properties **set forth in Exhibit[] D . . .** in and to (i) the oil, gas and/or mineral leases, . . . leasehold estates, fee, royalty and overriding royalty interests **described [in Exhibit D]** (the "Leases"), together with each and every kind and character of right, title, claim or interest which [Westland has] in and to the Leases, and the lands **described or referred to in Exhibit[] D . . .** [and] the net revenue interests and working interests in the wells **described in Exhibit[] D . . .** [.]" [Emphasis added]. Exhibit D describes the Morgan Lease, with the limiting language "insofar and only insofar" as the Morgan Lease covers the proration units assigned to Morgan #1, A, B, C, and D. In other words, the broad granting language is still limited by the specificity in the exhibit containing the property description, particularly the limitation noting it

applies only to the proration units associated with the described property. This is a critical difference between the contractual language in *Davis* and *Piranha Partners* and the contractual language used here.

A proration unit is the "acreage assigned to a well for the purpose of assigning [production] allowables and allocating allowable production to the well." 16 TEX.ADMIN.CODE § 3.38(a)(3). In order to be assigned a proration unit, there must be production occurring in the subject acreage and a well designated. *See Endeavor Energy Resources, L.P. v. Discovery Operating, Inc.*, 554 S.W.3d 586, 596 (Tex. 2018)("Generally, 'an operator must first designate [a well's] proration unit and the acreage assigned to it, then certify that the acreage is productive before receiving the well's production allowable.'"). Appellant concedes the only production occurring in the quarter sections of the Morgan Lease was within the Shallow depths, between 7,194 – 8,900 feet. Accordingly, the proration unit could not extend into an area where production was not occurring, such as the area below 8,900 feet in the Morgan Lease. Since the conveyance was limited to only those areas of the Morgan Lease covered by proration units, and no proration units were assigned below 8,900 feet, then the conveyance could not have possibly covered Morgan Lease depths below 8,900 feet.

Additionally, the Parker and Parsley wells specified in Exhibit D to the Acquisition Agreement is depth-limited pursuant to their leasehold interests and the Joint Operating Agreement they had with Westland. Exhibit D covers the Morgan Lease "INSOFAR AND ONLY INSOFAR as the lease covers **the proration units for the following wells: Parker and Parsley: Morgan #1, Morgan A, Morgan B, Morgan C, Morgan D** [as previously described] . . . All descriptions above refer to Block B, CCSD & RGNG RY Co. Survey, Upton County, Texas." [Emphasis added]. According to the Joint Operating Agreement between Westland and Parker and Parsley,

the lease granted to Parker and Parsley from Westland for the Morgan Lease included Morgan No. 1, A, B, C, and D, "limited to depths from below the stratigraphic equivalent of 7194 feet as found in the Parker & Parsley Morgan No. 1 well . . . and above 8900 feet."

The "interest assigned" values defined in Exhibit D for the Morgan Lease also correspond exactly with the working interest and net revenue interest Westland held in the Shallow Rights. The parties agree Westland owned a 72.7 percent working interest in the Deep Rights. However, Appellant has consistently failed to explain why, given that Westland owned a 72.7 percent working interest in the Deep Rights and PetroTide received *all* of Westland's interests in the Morgan Lease quarter sections, there is no mention of a 72.7 percent working interest conveyed in the Morgan Lease to PetroTide. The answer is no leasehold interests in the Deep Rights were conveyed.

Finally, Exhibit D contains geological references to the property's location – specifically, its location within the "Spraberry Trend." The geological reference to the Spraberry Trend, which Appellees assert is located within the Shallow stratigraphic section, supports their claim Westland only conveyed the Shallow Rights. We find this fact persuasive in concluding only the Shallow Rights were to be conveyed.

We find the parties' intent was to convey only the Shallow Rights in the Acquisition Agreement.

The Assignment

The property description in the Assignment is identical to the Acquisition Agreement property description. We do not find it necessary to reiterate it here. However, the Assignment's granting language is slightly different and warrants discussion. The Assignment states

[Westland] . . . does hereby GRANT . . . and ASSIGN unto [PetroTide] the following . . .:

(a) The oil and gas leases, oil, gas and mineral leases and other estates and properties which are specifically described in Exhibit A attached hereto and made a part hereof for all purposes;

(b) Without limitation of the foregoing, all other rights, titles and interests of [Westland] in and to (i) the lands, oil, gas and/or other mineral leases, . . . leasehold estates, fee minerals, royalty and overriding royalty interests . . . and other rights, estates or property interests **specifically described or referred to in Exhibit A** and in and to the oil, gas and/or other minerals thereunder . . .[.] [Emphasis added].

Here, like the Acquisition Agreement, the "all" language in the grant explicitly refers back to the property as described in Exhibit A to the Assignment. And, as it contains identical language as the Acquisition Agreement's Exhibit D, Exhibit A has the same "insofar and only insofar" limitations as Exhibit D related to the proration units, the well descriptions, the interests specified, and the geological and geographical references. Moreover, we find the phrase "without limitation of the foregoing" to mean paragraph (a) is the general grant, and the rights described in paragraph (b) are not intended to limit the grant in paragraph (a). We are not inclined to, then, expand the grant made in paragraph (a)—which is expressly limited by Exhibit A's property description—by finding additional rights are conferred under paragraph (b). We therefore apply the same logic to our reading of the Assignment and the scope of its conveyance, which is made explicitly subject to the Acquisition Agreement. We find no reasonable alternative meaning could apply to our construction of these documents.

Although unnecessary to further confirm the parties' intended only to convey the Shallow Rights of the Morgan Lease quarter sections, the Reassignments confirm this finding and the trial court's declaration. The 1998 Reassignments, whereby Appellant, as PetroTide's successor, reassigned the subject conveyed interests back to Westland, state their intent that "one-half of the

identical rights, titles, and interests" were being conveyed back to Westland as were originally granted to PetroTide via the Assignment. The Reassignments go on to state "[a]n undivided 12.11665% working interest and 10.60206% net revenue interest" were being reassigned to Westland, and the conveyance was "made pursuant to the terms of [the] Acquisition Agreement[.]" The enumerated reversionary interests in the Reassignment correspond to exactly fifty-percent of the working and net revenue interests, respectively, as described in Exhibit D to the Acquisition Agreement and Exhibit A to the Assignment. And, as previously discussed, those figures describe the Shallow Rights ownership interests Westland possessed in the Morgan Lease prior to execution of the Acquisition Agreement and Assignment. This further confirms our holding the conveyance under the Acquisition Agreement and Assignment was only of the Shallow Rights.

"A purchaser is bound by *every* recital, reference and reservation contained in or fairly disclosed by any instrument which forms and essential link in the chain of title under which he claims." *Westland Oil Dev. Corp. v. Gulf Oil Corp.*, 637 S.W.2d 903, 908 (Tex. 1982). In this case, multiple examples of the intended depth limitation are expressly referred to in the subject conveyance clauses *because the conveyance clauses explicitly reference the exhibit containing the limitation*, or the fact that the conveyed properties at issue were only those properties which previously served as collateral for the Prior and Amended Deeds of Trust. We are unpersuaded by Appellant's argument the absence of express depth limitation in the conveyance itself indicates no depth limitation was intended. We hold the Acquisition Agreement and Assignment are unambiguous, and the express language within the Acquisition Agreement and Assignment from Westland to PetroTide recorded in Volume 590, page 444 of the public records of Upton County,

Texas, conveyed no leasehold interests to PetroTide in the Morgan Lease quarter sections below the depth of 8,900.

Appellant's first issue is overruled.

Remaining Issues

Having determined by *de novo* review the express contractual language supports the trial court's judgment that the conveyance from Westland to PetroTide of its Morgan Lease quarter sections was limited to the Shallow Rights, we do not reach Appellant's second issue regarding the propriety of the trial court admitting Appellee Pacer's expert's affidavit. *See* TEX.R.APP.P. 47.1 ("The court of appeals must hand down a written opinion that is as brief as practicable but that addresses every issue raised *and necessary* to final disposition of the appeal.")[Emphasis added]. Likewise, Cross-Appellant Parsley's cross-appeal was conditional on our reversal of the trial court's judgment. Since we affirm the trial court's judgment, we do not reach Cross-Appellant Parsley's cross-appeal. *See Marrs and Smith Partnership v. Sombrero Oil and Gas Co., L.L.C.*, 511 S.W.3d 53, 64 n.9 (Tex.App.—El Paso 2014, no pet.).

CONCLUSION

Appellant's first issue is overruled, and we do not reach Appellant's second issue or Cross-Appellant's conditional appeal. *See* TEX.R.APP.P. 47.1.

The trial court's judgment is affirmed.

July 26, 2021

YVONNE T. RODRIGUEZ, Chief Justice

Before Rodriguez, C.J., Palafox, and Alley, JJ.