COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

MARK S. HOGG, LLC,	§	
	§	No. 08-20-00199-CV
Appellant,	§	
	§	Appeal from the
v.	§	
	§	109th District Court
	§	
BLACKBEARD OPERATING, LLC,		of Winkler County, Texas
	§	
Appellee.		(TC# DC 19-17592)
	§	

O P I N I O N

In this case, we construe a broad assignment of numerous oil-and-gas-related property interests. Specifically, we decide whether the assignment conveyed—among other interests—the assignor's interest in a 1998 oil-and-gas lease. In deciding cross-motions for summary judgment, the trial court determined the lease at issue was conveyed by the assignment. For the foregoing reasons, we affirm.

I. BACKGROUND

In 1994 and 1998, respectively, Betty, George, and Mark Hogg (the Hoggs) executed two separate oil-and-gas leases to Three B Oil Company (Three B) covering land in Winkler County,

Texas. Mark S. Hogg, LLC (Hogg) is the successor-in-interest to Betty, George, and Mark Hogg. We will refer to these leases individually as the 1994 Lease and the 1998 Lease. The 1994 Lease covered 160 acres, being "all of the SE/4 of Section 24, Block B-10, Public School Lands." The 1998 Lease covered 120 of those same acres, being "all of the SE/4 of SE/4 and the N/2 of the SE/4 of Section 24, Block B-10, Public School Lands." The parties agree that, under the 1998 Lease, Three B drilled the F.H. Hogg #2 well (Hogg #2).

In 2005, Three B, along with other individuals[1] who held an interest in the SE/4 of Section 24, executed an assignment (the Assignment) of a number of oil-and-gas interests in favor of Stanolind Oil and Gas Corporation (Stanolind). The Assignment's granting clause provided that the Assignors transferred all of their identified "properties and assets," which the instrument referred to as grantors' "Assets." The granting clause further defined ten separate Asset categories and listed them in eight separate subparagraphs: (a) Leases and Lands; (b) Wells; (c) Units and Properties; (d) Contracts; (e) Surface Contracts; (f) equipment, machinery, fixtures, and other intangible personal property and improvements on the Properties; (g) oil, gas, condensate and other minerals produced from the Leases, Lands, and Wells; and (h) Records.

The first three subparagraphs of the Assignment, when defining Leases, Lands, Wells, Units, and Properties, then made reference to two exhibits—Exhibit A and Exhibit A-1—indicating each would more fully describe the interests assigned. Exhibit A named two leases: the 1994 Lease from the Hoggs to Three B and a 1995 Lease from Texaco Exploration and Production, Inc. to Three B. Of note, Exhibit A did not similarly name or include within its provisions, the

[1] The others included P.J. Harvey; Bambi Watson Harvey; Terry Watson; Barry R. Watson; Delores Watson; B.R. (Bill) Watson; and Delores and B.R. (Bill) Watson, doing business as Watson Packer Employee Fund.

1998 Lease from the Hoggs. However, Exhibit A-1 named the Hogg #2 well, which, as we have stated, the parties do not dispute was drilled under the 1998 Lease.

After the Assignment, Stanolind replaced Three B as the operator of the Hogg #2 well. In 2008, Stanolind assigned certain assets to Eagle Rock Acquisition Partnership II, LP (Eagle Rock), expressly including the 1998 Lease. In July of 2018, Eagle Rock, in turn, assigned certain of its assets to Blackbeard Resources, LLC, also expressly including an interest in the 1998 Lease. In 2019, Blackbeard Resources, LLC, subsequently merged with Blackbeard.

In 2019, a dispute arose as to Hogg and Blackbeard's rights to the leasehold estate covered by the 1998 Lease. In May of 2019, Blackbeard filed suit against Hogg in Winkler County, for trespass to try title in the disputed interest under the 1998 Lease, to quiet title in the disputed interest in the 1998 Lease, and for declaratory judgment that the Assignment included Three B's interest in the 1998 Lease. Hogg answered and filed a cross-claim for trespass to try title and declaratory judgment that the Assignment did not include Three B's interest in the 1998 Lease. Hogg and Blackbeard filed competing motions for summary judgment on the issue of whether the Assignment included Three B's interest in the 1998 Lease. After full briefing, the trial court set both motions for hearing. Subsequently, the trial court signed an order granting Blackbeard's motion for summary judgment while denying Hogg's cross-motion. After the trial court entered final judgment, this appeal followed.

II. DISCUSSION

Hogg raises alternative issues on appeal. Hogg argues the Assignment did not convey an unidentified lease—the 1998 Lease—when the conveyance language expressly defined and limited "Leases" to only those specifically identified and described in Exhibit A. Alternatively, it

argues the Assignment could not have conveyed the unnamed lease when Exhibit A-1 merely identified the name of a unit. We address these issues together.

A. Standard of Review

We review a trial court's decision on summary judgment de novo. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). In order to prevail on a traditional motion for summary judgment, the movant must show there are no genuine issues of material fact and that 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). When, as here, cross-motions for summary judgment on the same issue are filed, we consider each motion and render the judgment the trial court should have reached. *Coastal Liquids Transp., LP v. Harris Cty. Appraisal Dist.*, 46 S.W.3d 880, 884 (Tex. 2001).

B. Applicable Law

In interpreting a contract, such as the assignment at issue here, our task "is to determine and enforce the parties' intent as expressed within the four corners of the written agreement." *Piranha Partners v. Neuhoff*, 596 S.W.3d 740, 743 (Tex. 2020) (citing *Perryman v. Spartan Tex. Six Capital Partners, Ltd.*, 546 S.W.3d 110, 117–18 (Tex. 2018)). "Whether a contract is ambiguous is a question of law." *ConocoPhillips Co. v. Koopman*, 547 S.W.3d 858, 878 (Tex. 2018). Although neither party here contends that the Assignment is ambiguous, we are required to independently make that determination. *See Piranha Partners*, 596 S.W.3d at 744. To do so, we consider the contract's "language as a whole in light of well-settled construction principles and the relevant surrounding circumstances." *Id*. at 743 (citing *URI v. Kleberg Cty.*, 543 S.W.3d 755, 763 (Tex. 2018). Ambiguity does not arise merely because the parties assert differing interpretations.

See id.; *N. Shore Energy, L.L.C. v. Harkins*, 501 S.W.3d 598, 602 (Tex. 2016). If the language of a contract can be given a certain or definite meaning, then the contract is not ambiguous. *Endeavor Energy Res., L.P. v. Discovery Operating, Inc.*, 554 S.W.3d 586, 601 (Tex. 2018). Ambiguity only arises when a contract is susceptible to two or more reasonable interpretations. *ConocoPhillips*, 547 S.W.3d at 874; *Columbia Gas Transmission Corp. v. New Ulm Gas, Ltd.*, 940 S.W.2d 587, 589 (Tex. 1996).

If we determine a contract is unambiguous, our duty is to ascertain the intent of the parties from all the language found in the four corners of the document. *Luckel v. White*, 819 S.W.2d 459, 461 (Tex. 1991). We "look not for the parties' actual intent but for their intent as expressed in the written document." *Piranha Partners*, 596 S.W.3d at 744 (citing *URI*, 543 S.W.3d at 763–66). The expressed intent is determined by the plain language used in the contract. *Great Am. Ins. Co. v. Primo*, 512 S.W.3d 890, 893 (Tex. 2017). We concentrate on the specific language the parties chose, and we examine the entire instrument, seeking to harmonize and give effect to each provision so that none are rendered meaningless. *U.S. Shale Energy II, LLC v. Laborde Props., L.P.*, 551 S.W.3d 148, 154 (Tex. 2018); *Luckel*, 819 S.W.3d at 462. To discern intent, we construe words and phrases together and in context, not in isolation. *Hysaw v. Dawkins*, 483 S.W.3d 1, 13 (Tex. 2016).

Generally, deeds are construed "to confer upon the grantee the greatest estate that the terms of the instrument will permit." *Piranha Partners*, 596 S.W.3d at 747 (quoting *Waters v. Ellis*, 312 S.W.2d 231, 234 (Tex. 1958)). Of course, the greatest estate the terms of an instrument permits differs in concept from the greatest estate possible; thus, to determine the greatest estate the instrument permits, we construe each provision in context and in harmony with all others. *Id*. at

747–48. "[A] deed will pass whatever interest the grantor has in the land, unless it contains language showing a clear intention to grant a lesser estate." *Rahlek, Ltd. v. Wells*, 587 S.W.3d 57, 64 (Tex. App.—Eastland 2019, pet. denied) (citing *Sharp v. Fowler*, 252 S.W.2d 153, 154 (Tex. 1952)). A clear intention to grant a lesser estate than what the grantor owns may be accomplished by two different means: first, by withholding part of the estate by express reservation; or second, by granting only the portion it desires to convey. *See Piranha Partners*, 596 S.W.3d at 748.

C. Analysis

1. The Assignment's plain language

In its first issue, Hogg contends that the express language of the Assignment limited the leases conveyed to only those specifically identified and described in Exhibit A. The Assignment's granting clause stated that the Assignors "transferred, bargained, conveyed, and assigned" all of their "properties and assets," identified in eight subsequent subparagraphs. These eight subparagraphs were labeled (a) through (h) and defined the following ten asset categories: (a) Leases and Lands; (b) Wells; (c) Units and Properties; (d) Contracts; (e) Surface Contracts; (f) equipment, machinery, fixtures, and other tangible personal property and improvements on the Properties; (g) oil, gas, condensate, and other minerals produced from the Leases, Lands, and Wells; and (h) Records. Because these subparagraphs and the definitions they contain are central to our analysis, we reproduce them in their entirety here:

> a. All of those interests that are set forth on the Exhibit "A" that is attached hereto and made a part hereof for all purposes in the oil and gas leases; oil, gas and mineral leases; subleases, and other leaseholds; carried interests; farmout rights; options; fee simple mineral interests (whether leased or unleased) that are also described on Exhibit A (collectively, the "**Leases**"); and all other properties and interests of the Assignor, including, but not limited to, any and all interests of the Seller in those Leases, together with each and every kind and character of right, title, claim, and interest in and to any and all lands, including any surface

interests and the improvements located thereon, and the lands covered by the Leases, and any other lands pooled, unitized, communitized, or consolidated therewith, again including, but not limited to, those lands that are described on the Exhibit "A" that is attached hereto and made a part hereof (collectively, the "**Lands**");

b. All of those interests in the Leases reflected on Exhibit "A" in oil, gas, water or injection wells located on the Lands, whether producing, shut-in, or temporarily abandoned, including, but not limited to, the interests in the wells shown on the Exhibit "A-1" that is attached hereto and made a part thereof (the "**Wells**");

c. All leasehold interest in or to any pools or units that include any Lands or all or a part of any Leases or include any Wells, including, but not limited to, those pools or units shown on Exhibit "A-1" (the "**Units**"), and including, but not limited to, all leasehold interests attributable to the interests set forth in Exhibit "A" as to any such Unit, whether such Unit production comes from Wells located on or off of a Lease, and all tenements, hereditaments, and appurtenances belonging to the Leases and Units (the Leases, Lands, Wells, and Units to be referred to collectively herein as the "**Properties**");

d. All of the Assignor's interest in, to, and under, or derived from all contracts, agreements, and instruments by which the Properties are bound, or that relate to or are otherwise applicable to the Properties, to the extent applicable to the Properties, including, but not limited to the following: operating agreements; unitization, pooling, and communitization agreements, declarations and orders; joint venture agreements; farmin and farmout agreements; water rights agreements; exploration agreements, participation agreements; exchange agreements; transportation or gathering agreements; agreements for the sale and purchase of oil, gas, casinghead gas, or processing agreements (collectively, the "**Contracts**"), but excluding any contracts, agreements, and instruments to the extent transfer is restricted by third-party agreement or applicable law and the necessary consents to transfer are not obtained;

e. All right, title, and interest of Assignor in or to all surface interests, easements, permits, licenses, servitudes, rights-of-way, surface leases, and other surface rights (the "**Surface Contracts**"), excluding any permits and other appurtenances to the extent transfer is restricted by third-party agreement or applicable law and the necessary consents to transfer are not obtained;

f. All right, title, and interest of Assignor in all equipment, machinery, fixtures, and other tangible personal property, and improvements located on the Properties or used or held for use primarily in connection with the operation of the Properties, including any wells, tanks, boilers, buildings, fixtures, injection facilities, saltwater disposal facilities, compression facilities, pumping units and

engines, flow lines, pipelines, gathering systems, gas and oil treating facilities, machinery, power lines, pipelines, gathering systems, gas and oil treating facilities, machinery, power lines, telephone and telegraph lines, roads, and other appurtenances, improvements, and facilities, but excluding (i) vehicles, and (ii) any computers and related peripheral equipment;

g. All right, title, and interest of Assignor in and to oil, gas, condensate, and other minerals produced from, or attributable to the Leases, Lands, and Wells from and after the Effective Time, and all oil, gas, condensate, and imbalances with co-owners and/or pipelines and all make-up rights with respect to take-or-pay payments; and

h. All right, title, and interest of Assignor in and to all lease files; land files; well files; gas and oil sales contract files; gas processing files; division order files; abstracts; title opinions; land surveys; non-confidential logs; maps; engineering data and reports; reserve studies and evaluations; and files and all other books, records, data, files, maps and accounting records related primarily to the Assets, or used or held for use primarily in connection with the maintenance or operation thereof, but excluding: (i) any books, records, data, files, maps, and accounting records to the extent disclosure or transfer is restricted by third-party agreement or applicable law and the necessary consents to transfer are not obtained; (ii) computer software; (iii) work product of Assignor's legal counsel (other than title opinions); and (iv) records relating to the negotiation and consummation of the sale of the Assets (subject to such exclusions, the "**Records**").

For the purposes of the remainder of this opinion, we refer to each of the above subparagraphs with a capital letter that corresponds with the original lettering; for example, we will refer to the first subparagraph as "Subparagraph A."

The first three of these subparagraphs—A, B, and C—made reference to two Exhibits: Exhibit A and Exhibit A-1, respectively. Both Exhibits were attached to the assignment. Exhibit A explicitly referenced two leases, including the 1994 Lease, but made no reference to the 1998 Lease.[2] Exhibit A-1 consisted of three columns labeled as follows: first, "Lease Name;" second,

[2] Exhibit A also explicitly referenced a 1995 Lease by Texaco Exploration and Production, Inc., as lessor, in favor of Three B, as lessee. Aside from its reference in the Assignment, nothing about the 1995 Lease has any bearing on this case.

"Three B Oil Co. WI %," and third, "Three B Oil Co. NRI %." Only one named interest—HOGG F.H. 2—was listed in the first column of Exhibit A-1. The corresponding second column listed a percentage just under 80% and the third column listed a percentage just over 60%.[3] The parties' dispute in this case centers around ownership interests under the 1998 Lease, considering the 1998 Lease's non-inclusion on Exhibit A, combined with the explicit inclusion of the Hogg #2 well—which, again, was drilled under the 1998 Lease—on Exhibit A-1.

As a preliminary matter, we find nothing ambiguous about the Assignment. *See Piranha Partners*, 596 S.W.3d at 743–44 (holding that whether a contract is ambiguous is a preliminary matter that must be decided before an appellate court interprets the language of the contract). The Assignment uses clear, plain language to convey broad interests in the properties described, including detailed definitions where necessary. At issue is simply the interpretation of the language used. *See id*. at 744. In *Piranha Partners*, the Supreme Court of Texas sought to interpret a property assignment that, like here, used broad granting language and pointed to an exhibit for a more specific description of the property to be conveyed. *See id*. Like the Supreme Court in *Piranha Partners*, we must construe the language of the exhibits in context with the entirety of the Assignment's provisions. *See id*. at 747.

Read together, the eight subparagraphs under the granting clause make clear that the Assignors intended to transfer all of their interests in the Assets described. This is confirmed by a later paragraph in the Assignment that discussed the Assignors' varying interests in the Assets conveyed:

> Despite the varying degrees of ownership and interest in the Assets, all of the

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[3] Specifically, 79.6875% under column two and 60.703125% under column three.

> members of the Assignor group have joined in the execution of this Assignment, not for the purpose of clouding title, but for purposes of confirming that the Assignor conveys to the Assignee all of the right, title, and interest in the Assets that any and all of the members of the Assignor group may own, regardless of the quantum of interest owned by each member of the Assignor in each Asset. Each member of the Assignor group joins in the execution of this Assignment in order to confirm that any working interest in any of the Assets of any member of that group vests in the Assignee.

Of course, generally conveying all interest in the Assets described answers part of the question presented, but we still must determine whether Three B's interest in the 1998 lease was explicitly included as one of the Assets. Hogg argues that Subparagraph A's limited definition of "Leases," as further described in Exhibit A, combined with Exhibit A's non-inclusion of the 1998 Lease, effectively precludes any unnamed lease from inclusion in the entire Assignment. Blackbeard argues the opposite: that after defining "Leases," Subparagraph A goes on to state that the Assignment conveys "all other properties and interests of the Assignor, including, but not limited to, any and all interests of the Seller in . . . the lands covered by the Leases . . . including, but not limited to those lands that are described on the Exhibit 'A' that is attached hereto. . . ."

We agree with Blackbeard; we see nothing in the Assignment or Exhibit A that precludes another lease interest from being conveyed by some additional provision beyond mere inclusion on Exhibit A. In addition to conveying all the interest in the specific Leases described on Exhibit A, Subparagraph A included an even broader grant of all interests of the Assignor in the lands covered by those Leases. We can see from the 1994 Lease that it covered 160 acres, being "all of the SE/4 of Section 24, Block B-10, Public School Lands." According to the definition of "Lands" in Subparagraph A, the Assignment also included all of the Assignor's interest in those 160 acres. We also know that Three B was one of the Assignors, and that Three B, at that time, owned an additional leasehold interest in 120 of those same acres—being "all of SE/4 of SE/4 and the N/2

of SE/4 of Section 24, Block B-10, Public School Lands—under the 1998 Lease. As a result of the foregoing, the definition of "Lands" in Subparagraph A, by its plain terms, included all of Three B's interest in the 120 acres covered by the 1998 Lease. We also note that Exhibit A makes specific reference to "[t]he SE/4 of Section 24, Block B-10, PSL Survey, limited in depth from the surface to 6,300 feet beneath the surface of the earth."

Having determined that the Assignment's definition of "Lands" included the 120 acres covered under the 1998 Lease, we move to Subparagraph C, which conveyed "[a]ll leasehold interest in or to any pools or units that include any Lands . . . including, but not limited to, those pools or units shown on Exhibit 'A-1.'" As we stated, Exhibit A-1 clearly identified the Hogg #2 well, which the parties agree was drilled under the 1998 Lease. Because Subsection C's plain terms convey "[a]ll leasehold interest" in Hogg #2, we determine—after harmonizing all relevant provisions—that the Assignment permits an interpretation that it transferred Three B's interest in the 1998 Lease. Said differently, we interpret the Assignment "to confer upon the grantee the greatest estate that the terms of the instrument will permit." *Piranha Partners*, 596 S.W.3d at 746 (quoting *Waters v. Ellis*, 312 S.W.2d 231, 234 (Tex. 1958)). Accordingly, we determine that the Assignment conveyed all of Three B's interest in the 1998 Lease.

2. The Statute of Frauds

As a sub-issue, Hogg argues that such an interpretation of the Assignment does not hold up under the statute of frauds. We disagree. In Texas, to satisfy the statute of frauds as a matter of law, a conveyance must contain a valid legal description of the land to be conveyed. *See, e.g., Morrow v. Shotwell*, 477 S.W.2d 538, 540 (Tex. 1972); TEX. BUS. & COM. CODE ANN. § 26.01(b)(4). Under the statute of frauds, a land description must "furnish within itself, or by

reference to some other existing writing, the means or data by which the particular land to be conveyed may be identified with reasonable certainty." *Broaddus v. Grout*, 258 S.W.2d 308, 309 (Tex. 1953). "If enough appears in the description so that a party familiar with the locality can identify the premises with reasonable certainty, it will be sufficient." *Gates v. Asher*, 280 S.W.2d 247, 248–49 (Tex. 1955).

Having already determined that the Assignment included all of the Assignor's interest in the Leases identified in Exhibit A, and additionally included any interest in the Lands covered by those Leases, Hogg's statute-of-frauds defense depends only upon whether the Assignment—or any existing writing referenced in the Assignment—identifies the actual land at issue. *See Broaddus*, 258 S.W.2d at 309. We need look no further than the Exhibit A to the Assignment itself to see that it does make a sufficiently specific reference. After identifying the two specific leases—including the 1994 Lease—Exhibit A goes on to state that the Leases are recorded in the "Real Property Records of Winkler County" and interests in those Leases are conveyed "INSOFAR AND ONLY INSOFAR as the above Leases cover the following described lands, to-wit: The SE/4 of Section 24, Block B-10, PSL Survey, limited in depth from the surface to 6,300 feet beneath the surface of the earth." This type of description has been held sufficient to satisfy the statute of frauds. *See Reeder v. Curry*, 426 S.W.3d 352, 359 (Tex. App.—Dallas 2014, no pet.) ("The writing does not have to list metes and bounds to be enforceable, but it must provide the necessary information to identify the property with reasonable certainty."). Here, the Assignment identifies the county, survey, block, and section of the described land. As our sister court in Dallas held in *Reeder v. Curry*, we determine that the property at issue here can be identified with reasonable certainty by the description contained in the Assignment. *See id*.

Hogg's first issue is overruled. Hogg further raises a second issue, presented as an alternative argument, that if the Assignment satisfies the statute of frauds as to the Hogg #2 well, it could only have conveyed the Assignor's interest in that well or unit, as opposed to the entire interest in the 1998 Lease. That argument is subsumed by our analysis of the plain language of the Assignment. As a result, Hogg's second issue is overruled.

III. CONCLUSION

The trial court's judgment is affirmed.

GINA M. PALAFOX, Justice

November 17, 2022

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