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Statute of Limitations on Reformation of Deed by the Grantor

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STATUTE OF LIMITATIONS ON REFORMATION OF DEED BY THE GRANTOR—In the recent case of *McClung v. Lawrence*[1] the Texas Supreme Court announced a new standard for determining when the four year statute of limitations[2] will begin to run against reformation suits brought by the grantor of a deed.

On May 14, 1947, Luther T. McClung and his wife conveyed seventeen separate tracts of land totalling approximately 1,800 acres to C. A. Lawrence and his wife. Preceeding the general warranty clause was the following reservation:

> The grantors hereby reserving unto themselves one fourth of all of the oil, gas and/or minerals in on or upon the above described land; however the grantees herein their heirs and assigns are hereby empowered and authorized to lease said land for oil, gas or other minerals without the joiner of the grantors herein in making any such lease or leases; and it is expressly stipulated that said grantors their heirs or assigns shall not participate in any bonus or delay rentals paid grantees under any such lease or leases upon the leasing of said land the interest of the said grantors their heirs and assigns shall be and become a 1/32 (one thirty second) royalty interest under such leases it being the intention hereby to reserve and retain in said grantors a non participating 1/32 royalty interest in and to the oil gas or other minerals in on or under the land hereby conveyed.

A reservation clause identical to the above was contained in the consideration clause of the deed.

It was stipulated by both the grantors and the grantees that there were outstanding mineral and royalty interests in some of the tracts of land, the existence, but not the extent of which had been known at the time of the conveyance. Some sixteen years later McClung and his wife brought suit against the Lawrences claiming that they, the McClungs, were entitled to a full 1/32 non-participating royalty in all of the land conveyed. The plaintiffs sought a favorable construction of the deed in such respects, and in the alternative, its reformation based upon the theory that by mutual mistake of the parties the deed failed to clearly state that the non-participating royalty interest was in addition to any prior reservations of minerals or royalties.

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[1] 430 S.W.2d 179 (Tex. 1968).
[2] Art. 5529, TEX. REV. CIV. STAT. 1925.

The defendants pleaded limitations and laches, and moved for summary judgment. The trial court sustained the motion for summary judgment and denied the grantor reformation of the deed.

Upon appeal, the case revolved around two issues: the construction of the language in the deed with respect to the mutual mistake of law, and the time at which the statute of limitations began to run against the grantor. Each of these issues will now be considered.

CONSTRUCTION

The court of civil appeals affirmed the trial court, and wrote the following concerning construction of the deed:

> Presumably the deed was prepared solely upon the basis of information furnished by the plaintiff, as the defendants were not present. The deed was executed by the plaintiffs on May 14, 1947 and delivered to the defendants . . . . Thus, the deed in question was executed in excess of 15 or 16 years prior to the institution of the suit.
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> The plaintiffs had ample opportunity to read and study the deed and to discuss its provisions with the attorneys they engaged to prepare it prior to the time it was executed and delivered by them.[3]

The court's language clearly indicates that certain equitable factors are concerned when the grantor asks for the equitable remedy of reformation. Among these are:

> (1) which party furnishes information that is necessary for the preparation of the deed
> (2) laches in instituting the cause of action
> (3) opportunity to inspect deed prior to execution and delivery
> (4) availability, after execution, of the deed for examination (recordation)
> (5) concealment or fraud on the part of either party

The court of civil appeals found none of the equitable factors listed above in the favor of the plaintiffs, and held that the four year statute of limitations barred the suit for reformation.

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[3]McClung v. Lawrence, 420 S.W.2d 419 (Tex. Civ. App. 1967, *writ granted*).

The court of civil appeals further held that the deed was unambiguous and clear on its face, and that the case should be determined along the lines of the rule set forth in the case of *Duhig v. Peavy-Moor Lumber Company*.[4] That case set forth that the covenant of general warranty operated as an "estoppel" denying the grantor or his successors from claiming any interest other than that specifically reserved in the deed.

The Texas Supreme Court in the *McClung* case, concurred with the applicability of the *Duhig* principle. The court held that although the construction should be in favor of the defendant, Lawrence, the *Duhig* principle was *not controlling* as to whether the plaintiff could bring suit outside the time period specified by the statute of limitations.

Statute of Limitations

The court of civil appeals in the *McClung* case had held that the plaintiffs' suit was barred as a matter of law by virtue of the statute of limitations. The court cited *Kahanek v. Kahanek*[5] as the basis for the holding.

In *Kahanek* the grantor brought a suit for reformation of a deed in which was omitted his reservation of ½ of ⅛ of the mineral interest in the land. The grantor not only failed to discover the mistake until eleven years after the execution of the deed, but he delayed an additional five years before he brought suit. The court of civil appeals held that the 16 year delay between the execution of the deed and the filing of the suit was plainly outside the statute of limitations and that the plaintiff was barred as a matter of law.

Justice Graves, writing in *Kahanek,* reviewed the status of the law in Texas:

> It is well settled . . . that the general rule appellant relies upon is to the effect that, in suits to correct a mistake in a deed, the limitation does not begin to run until the mistake is discovered, or should have been discovered by the exercise of such diligence as would have been exercised by a person of ordinary care and prudence; but it is also settled that a *distinction* has been written into our Texas law under that statute, based

[4] 135 Tex. 503, 144 S.W.2d 878 (1940).
[5] 192 S.W.2d 174 (Tex. Civ. App. 1946, *n.w.h.*).

> upon whether the party seeking to correct the mistake is the grantor or the grantee; the rule being that if such actor be the grantor, then he is charged, as a matter of law, with knowledge of the contents of his deed from the date of its execution, and limitation begins to run against his action to correct it from that date.[6] (emphasis added)

The Supreme Court of Texas in the *McClung* case drew an important distinction between the *Kahanek* case and the principal case.

> . . . It was the opinion of the Court of Civil Appeals that as a matter of law Petitioners were charged with knowledge of the provisions of the deed from the date of its execution, and that limitation commenced to run against them from that date. *Kahanek v. Kahanek,* 192 S.W.2d 174 (Tex. Civ. App. 1946, no writ), and *Kennedy v. Brown,* 113 S.W.2d 1018 (Tex. Civ. App. 1938, writ dism.), were cited as the principal supporting authorities. These cases considered suits instituted by the grantors in the respective deeds seeking their reformation upon allegations that certain reservations of mineral rights had been *entirely omitted* from the deeds, a fact plainly evident.[7] (emphasis added)

The supreme court then relied upon the case of *Miles v. Martin*[8] as controlling under the fact situation. The *Miles* case was a suit to recover an undivided one-fourth interest in the minerals of the conveyed land. The grantor had received payments from his reserved one-fourth interest for a period of five years before he discovered the mistake and brought suit for reformation. The Texas Supreme Court held that the grantor was entitled to a new trial upon a showing of evidence that raised a fact question as to whether he should have discovered the mistake within the four year statute of limitations.

In *Miles* and *McClung,* the following language from the *Kahanek* case was relied upon as controlling for determining when the statute of limitations began to run against the grantor of the deed:

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[6]Note 5, *supra,* at 176; Kennedy v. Brown, 113 S.W.2d 1018 (Tex. Civ. App. 1938, *writ dism.*); Barclay v. Falvey, 192 S.W.2d 791 (Tex. Civ. App. 1936, *writ ref'd*); Gulf Production v. Palmer, 230 S.W.2d 1017 (Tex. Civ. App. 1921, *writ ref'd*).

[7]Note 1, *supra,* at 181.

[8]159 Tex. 336, 321 S.W.2d 62 (1959).

> The record suggests that the parties to the deed may have been mutually mistaken as to the legal effects of its provisions and believed that the instrument effectively reserved to respondent a one-fourth interest in addition to that already owned by the Walls. Against such a mistake of law, equity will grant relief by way of reformation if the circumstances otherwise warrant an exercise of its power.[9]

This article will not attempt to review in-depth the problem of granting reformation when there exists a mistake of law, but a short review of the basic principles of the subject is necessary for a better understanding of the *McClung* case.

The generally accepted rule is that a mistake of law affords no grounds for relief.[10] Accordingly, a mutual mistake, standing alone, as to a matter of a law is not a ground for reformation.[11] However, Texas courts have shown some liberalism and allowed reformation where ignorance of the draftsman of the agreement was the cause for the incorrect phrasing of the instrument.[12] To these rules, the Texas Supreme Court has added the corollary that while a naked mistake (one in which there are no other equities involved) with regards to the applicable law or its effect will not be a ground for reformation, if the grantor can show that there is a possibility of a mutual mistake and other equitable "circumstances," the reformation of the instrument may be granted.

In conclusion, the Texas Supreme Court has modified the pre-existing standard for determining when the statute of limitations begins to run against the grantor of a deed who brings a suit for reformation. If the grantor can show circumstances or equities (such as the non-interrupted payments to him paid by the grantee from his disputed reservation of mineral interests) combined with the possibility of a mutual mistake of law as to the legal effect of the language in the deed, then he may be entitled to reformation of the instrument even if the four year statute of limitations has run. The grantor has now attained the same right (i.e. to ask

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[9]Note 1, *supra*, at 181; Note 8, *supra*, at 67.

[10]Pomeroy, EQUITY JURISPRUDENCE, Sec. 843 (4th ed.).

[11]Westchester Fire Ins. Co. v. Wagner, 50 S.W. 569 (Tex. Civ. App. 1899, *n.w.h.*).

[12]Benson v. Ashford, 216 S.W. 283 (Tex. Civ. App. 1919, *writ dism.*). For a collection of Texas cases dealing with the subject see Note, 7 BAYLOR L. REV. 241 (1955).

for reformation after the limitation period has expired) as the grantee has possessed for several years in Texas.

It should be remembered that the grantor must show the following requirements if he desires reformation at a time later than four years after the execution of the deed:

> (1) equities or circumstances that indicate the instrument or deed is not the actual agreement that was contemplated by the parties and
> (2) the actual agreement between the parties concerning reservation and payment of mineral interests has been followed in good faith and
> (3) the possibility of a mutual mistake of law between the parties respecting the language in the instrument or deed.

The question undoubtedly will arise whether this ruling will extend to reformation suits to correct a mistake of fact, such as a misdescription of land. The writer is of the opinion that while the four year statute of limitations still governs the reformation suits brought upon a mistake of fact theory, the Texas Supreme Court has modified the heretofore strict application of the limitation statute. It is further thought that this ruling is broad enough to permit a grantor to bring a suit in reformation based on a mistake of fact if he can show that the mistake was material and that he exercised reasonable diligence in discovering it.

This concept of equitable reformation has no set patterns. Reasonable diligence under different fact situations will necessarily differ in each case. Therefore, each case will be decided on its own facts and merits.

It is noteworthy to remind the reader that the supreme court drew a distinction between the *Kahanek* case and the *McClung* case. Where an omission occurs, the court has made it clear that reasonable diligence on the part of the grantor will be much more difficult to prove. In summation, the Texas Supreme Court has apparently said that in cases of omission the statute of limitations will be construed strictly against the grantor, and the court has impliedly stated that in cases of other mistakes of fact (misdescription) the statute will be construed along a more liberal line towards allowing the grantor additional time outside the limitation period, if he exercises reasonable diligence in discovering the mistake of fact.

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