

ORIGINAL

In the
Supreme Court of Ohio

CHESAPEAKE EXPLORATION, L.L.C,	:	Case No. 2014-0067
et al.,	:	
	:	
Petitioners,	:	On Certified Questions of State Law
	:	from the United States District Court for
	:	the Southern District of Ohio, Eastern
v.	:	Division
	:	
KENNETH BUELL, et al.,	:	S.D. Ohio Case No. 2:12-cv-00916
	:	
Respondents.	:	

MERIT BRIEF OF *AMICUS CURIAE* STATE OF OHIO
IN SUPPORT OF RESPONDENTS

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INTRODUCTION

The State of Ohio has a significant interest in the development of the State's natural resources. "As the conditions and needs of society grow more complex it is recognized that essential products, like coal, oil and gas, under certain conditions affect the public welfare, and, therefore, the public interest." *Orndoff v. Pub. Utils. Comm'n*, 135 Ohio St. 438, 440 (1939). This public interest is reflected in the Ohio Constitution, which grants the State the authority to regulate "methods of mining, weighing, measuring and marketing coal, oil, gas and all other minerals." Ohio Const. Article II, Section 36.

The Ohio Dormant Minerals Act, R.C. 5301.56, advances the State's interest in encouraging natural-resource development. By reuniting ownership of abandoned mineral estates with ownership of the land, the Act both "remed[ies] uncertainties in titles" and "facilitate[s] the exploitation of energy sources and other valuable mineral resources." *Texaco, Inc. v. Short*, 454 U.S. 516, 538 n.34 (1982) (citation omitted). Yet the mineral estate will not be deemed abandoned or dormant under the Act if one of several savings events has occurred within the preceding 20 years. As is relevant to this case, a mineral interest will not be deemed abandoned if it has been the subject of a recorded "title transaction." R.C. 5301.56(B)(1)(c)(i) (1989), *recodified at* R.C. 5301.56(B)(3)(a). But neither a lease of severed oil-and-gas interests, nor the expiration of such a lease, constitutes a recorded "title transaction" that triggers this savings event under the Dormant Minerals Act. Accordingly, the Court should answer "no" to the two questions certified by the Southern District of Ohio.

With respect to the first certified question: a title transaction does not occur when the owners of a title to a mineral estate lease their oil-and-gas rights to other parties. A title transaction is defined as "any transaction affecting title to any interest in land." R.C. 5301.47(F). But even when severed oil-and-gas rights have been leased to a third party, full title to those

rights remains with the lessor. It is well-established that leases—even leases in perpetuity—do not transfer ownership of the leased property; title to the property remains with the lessor in fee simple. *See Smith v. Harrison*, 42 Ohio St. 180, 185 (1884) (“A perpetual leasehold estate is not a fee simple, although, by our statutes, it has many incidents of a fee simple estate. . . . The fee simple remains in the lessor, his heirs and assigns.” (citation omitted)). Accordingly, an owner’s title to a severed mineral estate is not affected by a lease of the associated oil-and-gas interests. And while this Court has characterized the interest conveyed by an oil-and-gas lease in different ways, *compare Harris v. Ohio Oil Co.*, 57 Ohio St. 118, 130 (1897) (holding that an oil-and-gas lease conveyed a “vested, though limited, estate in the lands”) *with Back v. The Ohio Fuel Gas Co.*, 160 Ohio St. 81, 89 (1953) (holding that an oil-and-gas interest is merely “a license rather than a deed of conveyance”), in the end there is no reason that a lease of mineral interests should be treated differently than a lease of any other type of property.

With respect to the second certified question: a title transaction does not occur when an oil-and-gas lease expires. Regardless of whether the creation of a lease of oil-and-gas rights constitutes a savings event under the Dormant Minerals Act, the *expiration* of such a lease does not. To begin with, the expiration of a lease is not itself an independent transaction separate and apart from the initial lease agreement. A “transaction” is defined as “the act or an instance of conducting business or other dealings” and “a business agreement or exchange.” *Black’s Law Dictionary* 1253 (8th ed. 2005). With respect to a lease, the only act or agreement that occurs does so when the lease is signed. The parties to a lease do not perform a second act or reach a second agreement upon its expiration; the lease expires under the terms that were established as part of the initial agreement. Regardless, the Dormant Minerals Act does not simply require that there be a title transaction; it also requires that the title transaction be “filed or recorded in the

office of the county recorder in the county in which the lands are located.” R.C. 5301.56(B)(3)(a). Thus even if the expiration of a lease constituted a “title transaction,” it would not constitute a savings event under the Dormant Minerals Act unless the expiration itself was recorded with the county recorder. (Recording alone is not sufficient however, to transform an act that would otherwise not qualify as a title transaction into a savings event.)

For these reasons and the reasons that follow, the Court should answer both certified questions in the negative and should hold that neither the lease of oil-and-gas rights, nor the expiration of such a lease, constitute a title transaction under R.C. 5301.56(B)(3)(a).

STATEMENT OF AMICUS INTEREST

The State’s interest in this case is twofold—one in promoting the overall public interest and one in a landowner capacity. First, the State has an interest in “simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title,” R.C. 5301.55, and in facilitating the “exploitation of energy sources and other valuable mineral resources,” *Texaco, Inc. v. Short*, 454 U.S. 516, 538 n.34 (1982) (citation omitted). Second, as a property owner itself, the State’s interest in the outcome of this case is similar to the interest of many other property owners throughout Ohio. In many instances, ownership of the mineral rights underlying state land has reverted to the State by operation of the Dormant Minerals Act. Thus the State has an interest in preserving ownership of those mineral interests that have vested in itself and in similarly situated surface property owners.

STATEMENT OF THE CASE AND FACTS

A. The history and operation of the Dormant Minerals Act.

The Dormant Minerals Act was adopted in 1989 as a supplement to the already-existing Marketable Title Act. Ohio Legislative Service Commission Bill Analysis, Sub.S.B. No. 223 (1988). The purpose behind the Act’s adoption was to create a mechanism by which a severed

mineral estate could be deemed abandoned and ownership of the mineral interest could be restored to the owner of the surface property. *Id.* As originally adopted, the Act provided for the automatic vesting of “abandoned” or “dormant” mineral rights in a surface owner. It defined “abandoned” mineral rights as mineral interests owned separately from the surface land and to which one of six exceptions did not apply. *See* R.C. 5301.56(B)(1)(c) (1989) *recodified at* R.C. 5301.56(B)(3).

As is relevant to this case, one of the six exceptions to automatic vesting stated that a mineral interest would not be deemed abandoned if the “mineral interest ha[d] been the subject of a title transaction that ha[d] been filed or recorded in the office of the county recorder of the county in which the lands are located.” R.C. 5301.56(B)(1)(c)(i) (1989), *recodified at* R.C. 5301.56(B)(3)(a). The Dormant Minerals Act did not define the term “title transaction” but that term was (and is) defined elsewhere in the Marketable Title Act as “any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee’s, assignee’s, guardian’s, executor’s, administrator’s, or sheriff’s deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage.” R.C. 5301.47(F).

In 2006, the General Assembly amended the Dormant Minerals Act. As amended, the Act no longer *automatically* vests title to abandoned mineral interests in the owner of the surface estate. Instead, the 2006 amendments established a process for providing *notice* of the surface owner’s intent to declare the mineral interest abandoned and for the holder of that interest to contest that declaration. *See* R.C. 5301.56(E)-(H). Thus, for abandoned mineral interests that have not already vested in the owner of the surface estate under the older version of the Act, the Dormant Minerals Act now requires notice before an interest can be deemed abandoned.

B. Ownership of the mineral interests at issue in this case was severed from the surface estate and the mineral interests and the surface property were separately transferred on numerous occasions.

As discussed more fully in the district court's certification order, the property at issue in this case has been transferred repeatedly since 1958 when ownership of the surface property and the underlying mineral interests were first severed. Opinion and Order, *Chesapeake Exploration, L.L.C. v. Buell*, 2:12-cv-916 (S.D. Ohio, Jan. 1, 2014) ("Dist. Ct. Op.") at 3-5. From 1959 until 2008, North American Coal ("NA Coal," an entity different from Petitioner North American Coal Royalty Company "North American") was the recorded owner of the mineral rights underlying the property at issue in this case. *Id.* During that time, NA Coal leased its oil-and-gas rights on several occasions. Dist. Ct. Op. at 4. Most relevant to the questions certified by the federal district court, NA Coal leased its mineral rights to C.E. Beck in 1984 via a recorded lease. *Id.* C.E. Beck in turn assigned its mineral interest to Carless Resources in 1985, and Carless recorded the assignment. *Id.* Neither C.E. Beck nor Carless developed the leased mineral interest, and in 1989 the lease expired. *Id.* The oil-and-gas rights reverted to NA Coal by the terms of the original 1984 lease. *Id.* Expiration of the lease was not recorded. In 1992, NA Coal changed its name to Bellaire. In 2008, Bellaire transferred the mineral rights to petitioner North American via a quitclaim deed recorded in Harrison County. *Id.*

C. The record owners of the mineral estate filed a quiet title action in federal district court and the federal court certified two questions related to the interpretation of the Dormant Minerals Act.

Petitioners in this proceeding originally filed an action in the United States District Court for the Southern District of Ohio seeking to quiet title to the mineral interests underlying the surface estates owned by Respondents. Dist. Ct. Op. at 1-2. In response, Respondents filed their own claims seeking the same relief; they sought to quiet title to the mineral interests underlying their property. Dist. Ct. Op. at 2.

The federal district court resolved some—but not all—of the arguments presented by the parties in their respective complaints. The court first found that if no savings event had occurred in the twenty years prior to the 2006 amendments to the Dormant Minerals Act, then under the terms of the original 1989 version of the Act, the mineral rights would have automatically vested in the owners of the surface estate. Dist. Ct. Op. at 6-11.

The court then considered a variety of possible savings events. While it rejected some alleged savings events (such as NA Coal’s name change to Bellaire), Dist. Ct. Op. at 11-12, it ultimately identified two events that could possibly qualify as savings events under the statute: (1) NA Coal’s leasing of the mineral rights to C.E. Beck in 1984 and (2) the expiration of that same lease in 1989. Dist. Ct. Op. at 13. The court thus concluded that final resolution of the dueling actions to quiet title depended on the answers to two questions: (1) whether a recorded lease of a severed subsurface mineral estate is a title transaction under the Dormant Minerals Act, R.C. 5301.56(B)(3)(a); and (2) whether the expiration of a recorded lease and the reversion of the rights granted under that lease is a title transaction that restarts the twenty-year forfeiture clock under the Dormant Minerals Act at the time of the reversion. Dist. Ct. Op. at 22. Because the answers to those two questions turned on unsettled questions of state law, the district court declined to answer them in the first instance. It instead certified the questions to this Court pursuant to S.Ct.Prac.R. 9.01, *id.*, and the Court accepted the certified questions, *Chesapeake Exploration, L.L.C. v. Buell*, 138 Ohio St.3d 1446, 2014-Ohio-1182.

ARGUMENT

Certified Question of State Law I:

Is the recorded lease of a severed subsurface mineral estate a title transaction under the Ohio Dormant Minerals Act, R.C. 5301.56(B)(3)(a)?

A. The lease of a severed subsurface mineral estate is not a title transaction under R.C. 5301.56(B)(3)(a) and thus does not constitute a savings event under the Dormant Minerals Act.

1. R.C. 5301.47(F) makes clear that only those transactions that affect property ownership qualify as title transactions.

Under the Dormant Minerals Act, a savings event that restarts the twenty-year abandonment clock occurs when a “mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located.” R.C. 5301.56(B)(3)(a). The Act currently defines a “mineral interest” as “a fee interest in at least one mineral regardless of how the interest is created and the form of the interest, which may be absolute or fractional or divided or undivided.” R.C. 5301.56(A)(3). Although the Act does not itself define “title transaction,” that term is defined elsewhere in the Marketable Title Act as “any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee’s, assignee’s, guardian’s, executor’s, administrator’s or sheriff’s deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage.” R.C. 5301.47(F).

The definition of “title transaction” should be read narrowly. R.C. 5301.47(F) includes in the definition of “title transaction” “*any* transaction affecting title to *any* interest in land.” (Emphasis added). That definition merely invites the question of what it means to “affect” title however. The answer to that question can be found both in the ordinary meaning of the term “affect title” and in the provisions of R.C. 5301.47(F) itself.

Although not specifically defined in R.C. 5301.56 or R.C. 5301.47, the term “title” as it is commonly used equates to recorded ownership. Where a word is not defined in statute, “it must be afforded its plain and ordinary meaning.” *Kimble v. Kimble*, 97 Ohio St. 3d 424, 2002-Ohio-6667 ¶ 6; *see also* R.C. 1.42 (words and phrases shall be read according to common usage). Thus, under the ordinary understanding of the words, a transaction that “affect[s] title” is one that affects ownership of a property interest. Consistent with that common understanding of the term title, this Court has held in other contexts that “[w]here the term ‘owner’ is employed with reference to land or buildings, it is commonly understood to mean the person who holds the legal title.” *Bloom v. Wides*, 164 Ohio St. 138, 141 (1955). In this case, the property in question is a mineral interest—currently defined as “a fee interest in at least one mineral.” *See* R.C. 5301.56(A)(3). If a transaction does not affect that fee interest, then it does not constitute a title transaction for purposes of R.C. 5301.56(B)(3)(a).

This ordinary understanding of what it means to “affect title” is confirmed by the language of R.C. 5301.47(F) itself. The statute lists a variety of transactions that “affect title.” That list is not exhaustive, but it nevertheless illustrates the scope of what it means to “affect title.” Under a well-established canon of statutory interpretation, courts must read broad terms as being consistent with (and limited by) more narrow terms that surround them. *See Trans Rail Am., Inc. v. Enyeart*, 123 Ohio St. 3d 1, 2009-Ohio-3624 ¶ 28 (a statute that says it “includes certain things” shows “the General Assembly’s intent to illustrate the types” of actions covered by the statute); *see also Fraley v. Estate of Oeding*, 138 Ohio St. 3d 250, 2014-Ohio-452 ¶ 23 (when a statute contains a list of specific terms, as well a catchall term, it should be interpreted as “embracing only things of a similar character as those comprehended by” the specific terms); *State v. Aspell*, 10 Ohio St. 2d 1 (1967) syl. ¶ 2.

This canon applies straightforwardly here. Each of the transactions identified in R.C. 5301.47(F) is one that affects—or has the potential to affect—the *ownership* interest. All but two of the transactions identified in R.C. 5301.47(F) explicitly relate to the transfer of a title or deed (and by extension the transfer of ownership). *See* R.C. 5301.47(F). Even the two examples that do not specifically mention title or deed—“decree of any court” and “mortgage”—nevertheless limit transferability and affect or have the potential to affect property *ownership*. For example, a court’s decision in a quiet title action determines who holds title to property. And while a mortgage may not affect present ownership of property initially, it vests in the mortgage holder rights of ownership that may be exercised if the borrower defaults on the mortgage. Because all of examples found in R.C. 5301.47(F)’s definition of title transaction relate to property ownership, they demonstrate General Assembly’s intent to limit the scope of the term “title transaction” to only those transactions that likewise affect ownership.

2. A lease of oil-and-gas rights is not a savings event under R.C. 5301.56(B)(3)(a).

Unlike the examples of title transactions found in R.C. 5301.47(F), a lease does not affect a property owner’s title and so it does not constitute a savings event under R.C. 5301.56(B)(3)(a). When land is leased, fee simple ownership of the land “remains in the lessor.” *See Rawson v. Brown*, 104 Ohio St. 537, syl. ¶ 1 (1922); *see also Smith v. Harrison*, 42 Ohio St. 180, 185 (1884). Because “the possession of the tenant . . . is always the possession of his lessor,” a lessee does not possess any ownership interest or estate in the land being leased. *See Rawson*, 104 Ohio St. at 545-46. In similar fashion, changes in a property’s value do not affect *title* to the property. *Cf. McMillan v. Krantz*, 94 Ohio App. 9, 14-17 (5th Dist. 1952) (holding that improvements become part of the land and even though improvements might affect an owner’s equity or interest in the property, the identity of the property was defined by its title and

was therefore unchanged). Because a mineral-rights owner's title is not affected by a lease, a lease is not a title transaction as that term is defined in R.C. 5301.47(F).

Even if a lease did affect some aspect of a property owner's title, a lease still would not constitute a savings event for purposes of the Dormant Minerals Act. The Act states that a savings event will occur only when a *mineral interest* has been the subject of a title transaction. R.C. 5301.56(B)(3)(a). For purposes of the Dormant Minerals Act, the phrase "mineral interest" is a term of art and, while not specifically defined under the 1989 version of the Act, it is now defined as a "*fee interest* in at least one mineral." R.C. 5301.56(A)(3) (emphasis added). Thus, the Act requires that the fee interest *itself* be the subject of a title transaction. If a property interest that is something less than a fee interest is transacted, the plain language of R.C. 5301.56(A)(3) illustrates that the transaction does not constitute a savings event.

But a lease does not transfer a fee interest in the leased property. *See Rawson*, 104 Ohio St. 537 at syl. ¶ 1 (a leasehold is not a fee simple estate); *see also Hempel v. Zabor*, 2007-Ohio-5320 ¶ 12 (6th Dist. 2007) (same); *In re Gasoil, Inc.* 59 B.R. 804, 807 (Bankr. N.D. Ohio 1986) (citing *Acklin v. Waltermeir*, 19 Ohio C.C. 372, 379 (Circuit Court of Ohio 1899) for the proposition that a lease "does not rise to the dignity of a freehold estate."). A lease is, by its very nature, a transfer of an interest that is less than a fee interest. *See Broerman v. Blanke*, 3rd Dist. Auglaize No. 2-98-30, 1999-Ohio-762, *2 (April 23, 1999) ("It is axiomatic that when an owner conveys a leasehold estate the owner retains his fee simple interest in the property."). So no matter what marginal effect a lease might have on the value of the owner's interest, it does not transfer a fee interest in the mineral estate and therefore does not qualify as a savings event under R.C. 5301.56(B)(3)(a).

Although there may be reasons to treat leases of mineral rights as savings events, if the General Assembly had wanted to include leases in the definition of title transaction or within the Dormant Minerals Act, it could have done so easily. In many other states, the definition of title transaction explicitly includes leases. *See* Kan. Stat. § 58-3402(g), N.C. Gen. Stat. § 47B-8(2), Okla. Stat. tit.16, § 78(f). In other states, the equivalent of Ohio’s Dormant Minerals Act expressly identifies a lease of oil-and-gas rights as a savings event. *See* Mich. Comp. Laws § 554.291(1) (an oil and gas interest will not be considered dormant if, among other things, it has been leased), Neb. Rev. Stat. § 57-229(1) (a mineral interest is not abandoned if it has been leased by the owner of record), N.D. Cent. Code § 38-18.1-03(1)(d) (a mineral interest is not abandoned when it is subject to a recorded lease), S.D. Codified Laws § 43-30A-3(4) (same). Unlike either category of states, the General Assembly did *not* choose to include leases within the definition of title transaction or to classify a lease of oil-and-gas rights as a savings event under the Dormant Minerals Act.

3. Petitioners mistakenly rely on prior case law in support of their conclusion that the lease of a mineral estate constitutes a savings event under the Dormant Minerals Act.

Petitioners are incorrect that Ohio law characterizes an oil-and-gas lease as a transfer of title to a fee simple determinable interest. It is true that this Court has characterized mineral leases in seemingly conflicting ways. It has said, for example, that a lease conveys “a vested, though limited, estate in lands for the purposes named in the lease.” *Harris v. Ohio Oil Co.*, 57 Ohio St. 118, 130 (1897); *see also Moore v. Indian Camp Coal Co.*, 75 Ohio St. 493, 499 (1907) (creation of mineral interest whether by lease or other method “confers upon the owner of the mineral a fee-simple estate”). But it has also said that the transfer of oil-and-gas interests was a “license rather than a deed of conveyance.” *Back v. Ohio Fuel Gas Co.*, 160 Ohio St. 81, 89 (1953); *Nonamaker v. Amos*, 73 Ohio St. 163, 170 (1905) (holding that an oil-and-gas lease

involved neither “title to the land” nor “any interest or estate therein”); *see also Ohio Oil Co. v. Toledo, F. & S.R. Co.*, 2 Ohio Cir. Dec. 505 (Circuit Court of Ohio 1889) (stating that a lease “is in the nature of an incorporeal hereditament; that, strictly speaking, it is not a right in the land as such.”). It was, in part, these conflicting characterizations of oil-and-gas leases that prompted the district court to certify the first question of state law to this Court. It is also these conflicting statements that have generated confusion in the other courts about how to properly characterize oil-and-gas lease. *See also In re Frederick Petroleum Corp.*, 98 B.R. 762, 764-65 (Bankr. S.D. Ohio 1989) (noting conflicting authority); *In re Loveday*, No.10-64110, 2012 WL 1565479 *2-3 (Bankr. N.D. Ohio, May 2, 2012) (same).

To the extent that there is tension in its prior cases, the Court’s most recent decision on the question establishes that a mineral lease does not transfer an ownership interest in real property. *See Back*, 160 Ohio St. at 89. It is this more recent decision that the Southern District of Ohio relied on when it held that “oil and gas leases have not historically been considered interests in land in Ohio.” *Wellington Res. Group, L.L.C. v Beck Energy Corp.*, 975 F. Supp. 2d 833, 838 (S.D. Ohio 2013). Furthermore, in reaching its decision, the *Wellington* court did not just examine Ohio law; it also surveyed how other States—including States with long histories of oil-and-gas production—have treated oil and gas leases. *See id.* at 841 (citing cases from other jurisdictions when determining that “oil and gas leases are not a grant of real property.”). And this reading is supported by other surveys of Ohio law. *See In re Frederick Petroleum Corp.*, 98 B.R. at 766-67 (recounting the history of Ohio law regarding oil and gas leases); *but see McLaughlin v. CNX Gas Co.*, No.5:13-CV-1502, 2013 WL 6579057, *3 (N.D. Ohio, Dec. 13 2013) (distinguishing the Southern District of Ohio’s decision in *Wellington*).

As the *Wellington* court's survey of the existing law shows, this Court's decision in *Back* is consistent with established law. It was also established law that at least one lower court looked to when it stated that, "[b]y the great weight of authority, so-called mining leases are leases in fact as well as in name. . . . A mining lease is not a sale of land, nor a sale of minerals in the land, but a grant of the use and possession of the and for the purpose of removing the minerals during a specified period in consideration of a royalty payable as rent." *Waters v. Monroe Coal Co., Inc.*, 54 Ohio Misc. 37, 41-42 (C.P. 1977) (quoting 1A Thompson on Real Property 40, Section 161 p. 44). Thus, despite any lingering confusion about their exact nature, at the end of the day, there is no reason to treat oil-and-gas leases differently than any other lease for purposes of the Dormant Minerals Act. No lease—not even an oil-and-gas lease—transfers a fee estate to the lessee or affects the lessor's ultimate ownership of the leased property. For that reason the lease of oil-and-gas rights does not constitute a title transaction and is not a savings event under R.C. 5301.56(B)(3)(a).

Certified Question of State Law II:

Is the expiration of a recorded lease and the reversion of the rights granted under that lease a title transaction that restarts the twenty-year forfeiture clock under the Ohio Dormant Minerals Act at the time of the reversion?

- A. The expiration of a lease of a severed subsurface mineral estate is not a title transaction under R.C. 5301.56(B)(3)(a) and does not constitute a savings event pursuant to the Dormant Minerals Act.**

Even if this Court ultimately concludes that a lease constitutes a title transaction under R.C. 5301.56(B)(3)(a) and R.C. 5301.47(F), it should still hold—for at least two reasons—that the expiration of a lease is not a savings event under the Dormant Minerals Act.

1. The Dormant Minerals Act requires that a savings event both constitute a transaction and that a record of that transaction be recorded.

To qualify as a savings event under R.C. 5301.56(B)(3)(a), a mineral interest must be the subject of a “title transaction” that “has been filed or recorded in the office of the county recorder of the county in which the lands are located.” Before asking whether a transaction constitutes a title transaction, it is necessary to first ask whether there has been a transaction at all. Without a transaction, no savings event occurred and the inquiry is at an end. If there has been a transaction, however, and if that transaction satisfies the definition of R.C. 5301.47(F), then it is still necessary to determine whether the transaction has been recorded. If all three requirements are not met; if there has not (1) been a transaction, (2) that qualifies as a title transaction, and (3) that has been recorded, no R.C. 5301.56(B)(3)(a) savings event has occurred. With respect to the expiration of an oil-and-gas lease, two of those three requirements are lacking.

First, is the expiration of an oil and gas lease a transaction? Although the term “title transaction” is defined R.C. 5301.47(F), the broader term “transaction” is not. As it is commonly used however, the term transaction means “the act or an instance of conducting business” as well as “a business agreement or exchange.” Black’s Law Dictionary 1253 (8th ed. 2005); *see also* American Heritage Dictionary of the English Language 1843 (5th ed. 2011) (defining transaction in part as “a business agreement or exchange”). A transaction is thus a singular and discrete event. It is “*the* act,” “*an* instance,” or “*a* business agreement.” *See id*; *see also Smith v. Landfair*, 135 Ohio St. 3d 89, 2012-Ohio-5692 ¶ 18 (holding that “words and phrases contained in Ohio’s statutes are to be given their plain, common, ordinary meaning” and noting that “Ohio courts have looked to common dictionary definitions to assist them” in interpreting statutes.).

Second, can the expiration of a lease be a savings event if it was never recorded? Unlike the meaning of “transaction,” the requirement that a savings event be “filed or recorded in the

office of the county recorder of the county in which the lands are located” requires no interpretation. R.C. 5301.47 defines both “records” and “recording,” stating that “records” include official public records as well as records in the county recorder’s office, R.C. 5301.47(B), and that “recording” includes filing, R.C. 5301.47(C). The recording requirement of R.C. 5301.56(B)(3)(a) therefore could not be more clear: A record of a transaction must be filed with the county recorder if the transaction is to serve as a savings event for the purpose of the Dormant Minerals Act.

2. The unrecorded expiration of a lease is not a savings event under the Dormant Minerals Act.

a. The expiration of a lease is not a transaction separate and independent from the creation of a lease.

The expiration of a lease is not itself a transaction. It is not an independent act, and it does not occur separate and apart from the formation of the lease agreement itself. The events triggering a lease’s termination, whether through the expiration of the lease period or because some other condition identified in the lease has occurred, are established as part of the initial lease agreement. A lease therefore terminates by its own terms and no separate act or agreement is required. Accordingly, the only business agreement with respect to the termination of a lease occurs when a lease begins, not when it ends. As a result, no savings event occurs when a lease expires—regardless of whether its expiration was recorded.

b. The requirements of R.C. 5301.56(B)(3)(a) cannot be satisfied if the expiration of a lease is not recorded with the county recorder.

Even if the expiration of a lease *did* constitute a transaction, it would still not qualify as a savings event under R.C. 5301.56(B)(3)(a) unless its expiration was recorded with the county recorder. The requirement that a savings transaction be recorded is absolute; the plain language of the Dormant Minerals Act cannot be more explicit. *See* R.C. 5301.56(B)(3)(a). As this Court

has repeatedly held, “if the language [of a law] is unambiguous, we must apply the clear meaning of the words used.” *Bosher v. Euclid Income Tax Bd. of Rev.*, 99 Ohio St. 3d 330, 2003-Ohio-3886 ¶ 14; *Provident Bank v. Wood*, 36 Ohio St. 2d 101, 105-06 (1973) (If a “statute conveys a meaning which is clear, unequivocal and definite, at that point the interpretative effort is at an end, and the statute must be applied accordingly.”). Under the plain language of R.C. 5301.56(B)(3)(a), then, a savings event does not occur in the absence of a *recorded* transaction.

The requirement that a savings event be recorded makes sense in light of the larger purpose served by the Dormant Minerals Act. The Dormant Minerals Act is in many ways a subject-specific marketable title act. See Ohio Legislative Service Commission Bill Analysis, Sub.S.B. No. 223 (1988) (discussing proposed legislation in the context of the then-existing Marketable Title Act). The purpose of marketable title acts is to simplify title searches, in part by terminating abandoned or unused interests in land. See *Semachko v. Hopko*, 35 Ohio App. 2d 205, syl. ¶ 1 (8th Dist. 1973) (“The purpose of the [Marketable Title] Act is to simplify and facilitate land title transactions by allowing persons to rely on a record chain of title”); see also *Heifner v. Bradford*, 4 Ohio St. 3d 49, 52 n.4 (1983) (“The Marketable Record Title Act is also a recording act in that it provides for a simple and easy method by which the owner of an existing old interest may preserve it. If he fails to take the step of filing the notice as provided, he has only himself to blame if his interest is extinguished.” (quoting *Miami v. St. Joe Paper Co.*, 364 So.2d 439, 442 (Fla. 1978))).

The burdens imposed and the costs exacted by the Dormant Minerals Act are also permissible ones. In upholding the constitutionality of the Indiana Dormant Minerals Act (which operated in similar fashion to the 1989 version of Ohio’s Act), the U.S. Supreme Court held that one of the purposes of a dormant minerals act is to facilitate “the exploitation of energy sources

and other valuable mineral resources.” *Texaco, Inc. v. Short*, 454 U.S. 516, 538 n.34 (1982). The Ohio law advances these interests by providing a variety of ways that the owner of a mineral interest may make active use of that interest and may thereby prevent it from being abandoned. *See* R.C. 5301.56(B)(3). Ohio law also provides a way for a lessor to record the expiration or termination of an oil-and-gas lease. *See* R.C. 5301.332. It is consistent with those provisions of Ohio law to require the owner of a mineral interest to either make use of that interest as described in the Dormant Minerals Act, or to at least take the minimal step of recording the expiration of a lease pursuant to R.C. 5301.332.

3. Contrary to the Petitioners’ arguments, the initial recording of a lease does not satisfy the requirements of R.C. 5301.56(B)(3)(a) and does not qualify the expiration of a lease as a savings event under that statute.

Contrary to Petitioners’ argument, *see* Chesapeake Exploration Br. at 23-24 and North American Br. at 22, R.C. 5301.56(B)(3)(a) requires that the expiration of a lease be recorded *separately* from the lease itself. Ohio law specifically contemplates that the expiration of a lease can and will be independently recorded. *See* R.C. 5301.09 (providing that whenever a “lease is forfeited . . . because the term of the lease has expired, the lessee, his successors or assigns, shall have such lease released of record in the county where such land is situated without cost to the owner thereof”); *see also* R.C. 5301.332 (providing a procedure for the lessor to record the expiration or termination of an oil and gas lease). If the General Assembly had intended for the initial recording of a lease to provide an adequate record of land leases as well as their expiration, it would not have provided a means for separately recording the termination of a lease. *See Weaver v. Edwin Shaw Hosp.*, 104 Ohio St. 3d 390, 2004-Ohio-6549 ¶ 13 (“[S]ignificance and effect should, if possible, be accorded to every word, phrase, sentence and part of an act.”).

Petitioners' argument also fails because, at the time that a lease is recorded, no one can be sure of when or how it will be terminated. Whether a lease has been terminated therefore cannot be determined from the face of a lease and a record of the termination must be recorded separately. Even in the cases that Petitioner North American cites for the principle that the expiration of a lease is a title transaction, *see* North American Br. at 19, the release of rights under the leases in question were recorded separately from the leases themselves. *See McLaughlin*, 2013 WL 6579057 at *2 (“On July 6, 1992, Kelt Resources, Inc. executed a Partial Release of Oil and Gas Lease.”); *see also Schucht v. Bedway Land and Minerals Co.*, Harrison C.P. No. CVH-2012-0010 (April 21, 2014) at 2; *Davis v. Consolidation Coal Co.*, Harrison C.P. No. CVH-2011-0081 at 3.

Petitioners' suggestion that the expiration of a lease should be treated as a savings event because the existence of a lease “is the opposite of dormancy” is also misplaced. *See* Chesapeake Exploration Br. 25-26. As this Court has recognized, the mere fact that a mineral interest has been leased does not mean that the interest is being used productively. *See Ionno v. Glen-Gery Corp.*, 2 Ohio St. 3d 131, 134 (1983) (holding that annual payment under lease did not “relieve the lessee of his obligation to reasonably develop the land”). Even the Michigan Supreme Court decision in *Energetics, Ltd. v. Whitmill*, which Petitioners heavily rely upon elsewhere, firmly rejected the argument that oil-and-gas rights cannot be considered dormant if they have been leased. *See* 497 N.W.2d 497, 501-02 (1993) (rejecting the argument that dormancy is tolled while a severed interest remains subject to a lease).

The *Energetics* decision also does not support Petitioners' argument that the unrecorded expiration of a lease constitutes a savings event under R.C. 5301.56(B)(3)(a). The Michigan Supreme Court's decision turned on language specific to Michigan's dormant minerals statute.

The Michigan statute provides that a savings event occurs when a mineral interest has been “transferred” by recorded instrument. Mich. Comp. Laws § 554.291(1). But, as the Nebraska Supreme Court correctly held in refusing to follow *Energetics*, “the Michigan court’s reasoning was grounded in the unique language of the Michigan statute.” *Ricks v. Vap*, 784 N.W.2d 432, 436 (Neb. 2010). Like Nebraska’s law, Ohio’s Dormant Minerals Act is missing the same Michigan-specific language. R.C. 5301.56 does not use the broad term “transferred.” It defines a savings event more narrowly, requiring that a fee interest in at least one mineral be the subject of a recorded title transaction. Compare R.C. 5301.56(B)(3)(a) with Mich. Comp. Laws § 554.291(1) (identifying a recorded “transfer” of a mineral interest as a savings event).

This Court should therefore reject Petitioners’ invitation to rely on the *Energetics* decision for the same reason that the *Ricks* court did. Instead, like the Nebraska Supreme Court, this Court should hold that the expiration of a lease is not a savings event under the Ohio Dormant Minerals Act. While differences between Nebraska and Ohio law make *Ricks* instructive but not controlling, compare Neb. Rev. Stat. § 57-229 with R.C. 5301.56, the Nebraska Supreme Court’s conclusion—that the expiration of a lease is not a savings event—was and is persuasive. For all the reasons discussed above, this Court should likewise hold that the expiration of a lease of an oil-and-gas rights is not a savings event under R.C. 5301.56(B)(3)(a), and it should therefore answer “no” to the second certified question of State law.

CONCLUSION

For the foregoing reasons, the Court should answer both Certified Questions of State Law in the negative.

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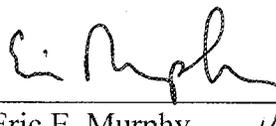
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