CAUSE NO. 13-09-23160-CVW

MERCURY-WARD LLC, MARGOT O. BURRELL, KELLY J. (OLDENBURG) WATSON, NIELS ULRIK OLDENBURG, STEEN ERIK OLDENBURG, THOMAS RESOURCES CORPORATION, STEVE HOLIFIELD and SJL INVESTMENTS,	§	IN THE DISTRICT COURT OF
Plaintiffs	§	WARD COUNTY, TEXAS
v.	§	
ANADARKO PETROLEUM CORPORATION, SWEPI LP, and THE GENERAL LAND OFFICE OF THE STATE OF TEXAS,	§	
Defendants	§	143RD JUDICIAL DISTRICT

ANADARKO PETROLEUM CORPORATION'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING THE VALIDITY OF THE ANADARKO LEASE

TO THE HONORABLE TRIAL COURT:

This is a leasehold title dispute in which the key issue is whether Defendant Anadarko Petroleum Corporation's ("Anadarko") lease of the late Jack Luse Burrell's mineral interests expired for lack of production during its primary term, or whether it remains in full force and effect by virtue of drilling operations prior to the expiration of the primary term followed by continuous production in paying quantities. Plaintiffs contest the validity of the lease extension executed by Jack's wife (and Plaintiff) Margot Burrell[1] after her husband's death, asserting that Margot did not have authority to execute the lease extension even though:

- after Jack's death and before executing the lease extension, Margot executed a lease amendment that named her the new owner and lessor of the minerals (and no one objected);

[1] For clarity, Mrs. Margot Burrell will be referred to by her first name, and Mr. Jack Luse Burrell will likewise be referred to by his first name.

- at the time of the lease extension, Margot represented and warranted that, as Jack's widow, she "is now the owner" and lessor of the minerals;
- at the time of granting the lease extension, Margot negotiated the extension, offered to extend the lease, proposed an increased amount of consideration, and accepted and deposited $192,000, the increased consideration, from Anadarko for executing the lease extension;
- Margot and Anadarko recorded the lease extension and no one objected;
- it is uncontested that Anadarko drilled a productive well on the leased property within the extended lease's primary term;
- Margot and her children later signed a top lease (with Plaintiff Mercury-Ward) of the same minerals that expressly acknowledged and was made "subject to" Anadarko's lease; and
- Margot, her children, and Mercury-Ward expressly agreed that their top lease would be "effective October 11, 2013"—the very moment at which the extended Anadarko lease was set to expire absent production during the extended primary term.

Based on Texas law and under the undisputed summary-judgment facts, Plaintiffs are legally incorrect in claiming that the Anadarko lease has expired, and their arguments should be rejected by this Court. Accordingly, Anadarko moves for partial summary judgment and respectfully requests the Court to hold that Anadarko's lease, as extended by Margot, remains in full force and effect due to production in paying quantities within and beyond the extended primary term.[2]

GROUNDS FOR MOTION

1. The plain language of Jack's will conveyed to his wife Margot a fee simple determinable in both Jack's mineral interests and the income therefrom, and at the very least conveyed to Margot a life estate with authority to manage the minerals. Either afforded her authority to execute the lease extension without her children's approval.

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[2] Anadarko also owns oil and gas leases from other undivided mineral owners covering the lands in dispute, but those are not at issue in this motion.

2. If the approval of Margot's children was necessary to make valid Margot's extension of the Anadarko lease, the children approved, ratified, and revived the extended lease when they executed ratifications of the Mercury-Ward top lease by making the top lease "subject to" the Anadarko lease.

3. Margot, her children, Mercury-Ward, and the remaining Plaintiffs are barred by law from challenging the validity of Margot's lease extension.

SUMMARY JUDGMENT EVIDENCE

The summary judgment evidence contained in the attached Appendix is incorporated herein for all purposes. The following Exhibits are contained in Anadarko's Appendix:

Exhibit A: Last Will and Testament of Jack Luse Burrell (and related Orders);

Exhibit B.1: Paid-up Oil, Gas & Mineral Lease dated October 10, 2005, between Jack Luse Burrell, as Lessor, and Webb, Shannon & Haas, LLC, as Lessee, recorded in Volume 789, Page 230 of the Official Public Records of Ward County, Texas;

Exhibit B.2: Bank draft payable to Jack Luse Burrell dated October 10, 2005;

Exhibit B.3: Assignment of Oil, Gas & Mineral Leases dated November 18, 2006, recorded in Volume 835, Page 622 of the Official Public Records of Ward County, Texas, from Webb, Shannon & Haas, LLC to Anadarko Petroleum Corporation;

Exhibit B.4: Amendment to Change Description of Oil, Gas and Mineral Lease dated March 9, 2009, between Margot O. Burrell, as Lessor, and Anadarko Petroleum Corporation, as Lessee, recorded in Volume 858, Page 421 of the Official Public Records of Ward County, Texas;

Exhibit B.5: Extension of Oil, Gas and Mineral Lease dated August 31, 2009, between Margot O. Burrell, as Lessor, and Anadarko Petroleum Corporation, as Lessee, recorded in Volume 867, Page 142 of the Official Public Records of Ward County, Texas;

Exhibit B.6: Check dated September 8, 2009 to Margot Burrell from Anadarko Petroleum Corporation;

Exhibit C.1: Letter dated August 11, 2008 to Jack Luse Burrell from Anadarko Petroleum Corporation;

Exhibit C.2: Letter dated July 29, 2009 to Margot Burrell from Sharon Cornal;

Exhibit C.3: Letter to Doug Ferguson from Andrea Timmons;

Exhibit C.4: Letter dated August 13, 2009 to Doug Ferguson from Andrea Timmons;

Exhibit C.5: Letter dated May 2, 2013 to Doug Ferguson from Andrea Timmons;

Exhibit D.1: Unrecorded Oil, Gas and Mineral Lease dated June 22, 2010 but effective October 11, 2013, between Margot O. Burrell, as Lessor, and Mercury-Ward LLC, as Lessee;

Exhibit D.2: Letter Agreement dated June 22, 2010, between Margot O. Burrell and Mercury-Ward LLC;

Exhibit D.3: Memorandum of Oil, Gas and Mineral Lease dated July 26, 2010, between Margot O. Burrell, as Lessor, and Mercury-Ward LLC, as Lessee, recorded in Volume 975, Page 205 of the Official Public Records of Ward County, Texas;

Exhibit D.4: Letter dated July 26, 2010 to Kelly Oldenburg Watson, Niels Ulrik Oldenburg, and Steen Erik Oldenburg from Andrea Timmons;

Exhibit D.5: Ratification of Oil and Gas Lease dated August 10, 2010, between Kelly Oldenburg Watson, as Lessor, and Mercury-Ward LLC, as Lessee, recorded in Volume 975, Page 206 of the Official Public Records of Ward County, Texas; Ratification of Oil and Gas Lease dated August 6, 2010, between Niels Ulrik Oldenburg, as Lessor, and Mercury-Ward LLC, as Lessee, recorded in Volume 975, Page 207 of the Official Public Records of Ward County Texas; Ratification of Oil and Gas Lease dated August 6, 2010, between Steen Erik Oldenburg, as Lessor, and Mercury-Ward LLC, as Lessee, recorded in Volume 975, Page 208 of the Official Public Records of Ward County, Texas;

Exhibit E: Deposition of Margot O. Burrell, May 27, 2014;

Exhibit F: Deposition of Kelly Oldenburg Watson, May 27, 2014;

Exhibit G: Deposition of Doug Ferguson, July 7, 2014.

Exhibit H: Affidavit of Lindsay Jaffee dated October 23, 2014.

STATEMENT OF UNDISPUTED FACTS

Jack signs a lease with a broker, who assigns the lease to Anadarko.

Jack owned the mineral interest at issue in this case—an undivided 3/4 interest in the minerals underlying Section 143, Block 34 H&TC Ry Co. Survey, Abstract No. 249, Ward County, Texas. *See* Ex. B.1. On October 10, 2005, Jack (lessor) leased his mineral interest to a broker named Webb, Shannon & Haas, LLC (lessee) for a period of three years and "as long thereafter" as oil or gas is being produced or continuous-development operations are ongoing on the leased land. *Id.* Two additional years could be added to the lease's primary term at the option of the lessee. *Id.* Jack accepted $144,000 as consideration for executing the Anadarko lease. *See* Ex. B.2.

A year later—on November 18, 2006—Webb, Shannon & Haas assigned its interest in the lease to Anadarko. *See* Ex. B.3. Two years later, on August 11, 2008, Anadarko exercised its option as lessee to add two additional years to the lease by making a payment of an additional $96,000 to Jack. *See* Ex. C.1. That option extended the original lease's primary term from October 10, 2008 to October 10, 2010. *See* Exs. B.1, C.1.

Jack dies and his wife Margot amends the lease to name herself "owner" and "lessor."

Jack passed away on October 8, 2008. *See* Ex. E at 11: 4-5. He left a will, but the family elected not to formally identify conveyances from Jack's estate to any specified beneficiaries through a traditional judicial proceeding. Instead, the family simply submitted the will itself to a probate court, which admitted the will but made no determination to whom any of Jack's property was conveyed upon his passing. *See* Ex. A.

Five months after Jack's death, his wife (and Plaintiff) Margot executed an amendment of the Anadarko lease that designated herself "owner" and "lessor" of Jack's mineral interests. Ex. B.4. The amendment was recorded and is attached as Exhibit B.4. The instrument, titled "Amendment

to Change Description of Oil, Gas and Mineral Lease" and signed by Margot on March 9, 2009, expressly states that "Margot O. Burrell, widow of Jack Luse Burrell, is now the owner of this interest." *Id.* The amendment also states that Margot, as lessor, "hereby in all things adopts, ratifies and confirms said Oil, Gas and Mineral Lease, as amended, and does hereby lease, demise and let all of the land above described unto [Anadarko], subject to and under the terms and provisions of said Oil, Gas and Mineral Lease, as amended." *Id.* One of those incorporated terms and provisions was a warranty of title: "Lessor hereby warrants and agrees to defend title to the interest conveyed to Lessee hereunder." Ex. B.1. In the amendment, Margot also agreed that "[t]he provisions hereof shall extend to and be binding upon the heirs, legal representatives and assigns of the parties hereto." Ex. B.4.

Four months after Margot executed the Anadarko lease amendment in which she asserted ownership of Jack's minerals (and nine months after Jack's death), on July 14, 2009, the Burrell family recorded Jack's will in Ward County, Texas. *See* Ex. A.

Margot extends the lease as "owner" and "lessor."

The same month that Jack's will was recorded, Anadarko and Margot began negotiations to extend the Anadarko lease. *See* Ex. C.2. Within two weeks, Margot's attorney Andrea Timmons—who "represent[ed] her in the management of her oil and gas interests," Ex. C.3—accepted Anadarko's increased offer to pay Margot $192,000 for a three-year extension of the lease, Ex. C.4. Margot signed the lease extension on August 31, 2009, Ex. B.5, and deposited Anadarko's $192,000 check on September 11, 2009, Exhibit B.6. Margot's lease extension was notarized by her attorney Andrea Timmons, was recorded, and is attached as Exhibit B.5.

Like her March 2009 lease amendment, the Anadarko lease extension identifies Margot as "Lessor" and "owner" of the now-contested mineral interest. *See* Ex. B.5. The extension also adopts the terms and provisions of the original lease:

> Now therefore, said Oil, Gas and Mineral Lease, as herein extended, shall continue in full force and effect and [Margot] hereby GRANTS, LEASES, and LETS to ANADARKO PETROLEUM CORPORATION, . . . their successors and assigns, the land described in and covered by said Oil, Gas and Mineral Lease upon all of the terms and provisions set out in said Oil, Gas and Mineral Lease, as herein extended.

Id. Again, one of those adopted terms and provisions is the original lease's warranty-of-title clause, by which Margot "warrants and agrees to defend title to the interest conveyed to Lessee hereunder." Ex. B.1. Margot's lease extension extended the primary term of the Anadarko lease from October 10, 2010 to October 10, 2013. *See* Exs. B.5, B.1.

Anadarko develops the lease and Margot signs a "top lease" with Plaintiff Mercury-Ward.

On September 30, 2013, Anadarko spudded the Burrell-State Unit 1H Well on the leased land. *See* Ex. H. It is undisputed that the well was spudded within the primary term of the lease extension. *See id.* It is also undisputed that the well has continually produced in paying quantities since being drilled and completed. *See id.* Anadarko has spent at least $7,869,501 to develop the lease thus far. *See id.*

But as it turns out, Margot began to have second thoughts about Anadarko some time after she signed the three-year lease extension. In the period leading up to the spudding of the well, Margot entered into a top lease with Mercury-Ward made effective October 11, 2013 (but dated June 22, 2010), the very day the Anadarko lease as extended by Margot was set to expire absent production. *See* Ex. D.1. Margot accepted a non-refundable payment of $230,625 from Mercury-Ward as consideration for executing the Mercury-Ward top lease, but the parties did not record it. *See* Ex. D.2. The Mercury-Ward top lease is attached as Exhibit D.1. Margot also

executed a Memorandum of Oil, Gas and Mineral Lease on July 26, 2010, which states that the "Top Lease shall be subordinate and subject to the [Anadarko] Lease . . .", but it was not recorded until July 15, 2013. *See* Ex. D.3.

Margot claims she never owned the minerals.

Margot and Mercury-Ward mutually agreed and stipulated that the top lease would take effect only after the extended Anadarko lease expired. *See* Ex. D.2. The first sign of an issue came in May 2013, when Anadarko's lease broker Doug Ferguson reached out to Margot about the possibility of obtaining another lease extension (at that point, Anadarko had not yet decided to drill a well within the primary term of Margot's lease extension). *See* Ex. G at 70. At some point in her discussions with Ferguson over the possibility of an additional lease extension, Margot suggested—for the first time to anyone—that she owned a "life estate" in her late husband's minerals and not the underlying mineral interests themselves. *Id.* at 71:17-20.

When Ferguson responded that if that were true, he might need to obtain ratifications of Margot's prior lease extension from her children, Margot insisted that no such ratifications were needed because she was given complete authority to manage the mineral interests without approval from her children. *See id.* at 72. Ferguson followed up with Margot's attorney, Timmons, who also represented and insisted that no approval from Margot's children was necessary and that Margot alone had full and complete authority to lease Jack's minerals. *See id.* at 73. Timmons's follow-up letter to Ferguson said:

> [Margot] was confused as to why at this time you are requesting ratification by her children of the current [extended] lease with Anadarko effective October 10, 2010 to October 10, 2013. . . . *Please note that [Margot's] life estate gives her the authority to manage all of the oil interests as she desires and to receive all of the*

> *income from such during her lifetime.* Her only restriction is that she cannot sell any of the interests without approval of her children.

Ex. C.5 (emphasis added).

Timmons further directed Ferguson not to contact Margot's children, insisting that all contact with Margot's children must go through Timmons and Margot. *See id.* Nonetheless, Ferguson did reach out to Margot's three children—Kelly J. (Oldenburg) Watson, Niels Ulrik Oldenburg, and Steen Erik Oldenburg (all Plaintiffs)—who neither signed ratifications nor objected to either the lease extension, Margot's previously recorded claim of ownership to the minerals, or their mother's authority to execute the Anadarko lease extension on her own. *See* Ex. H.

Margot, her children, and Mercury-Ward (among others) sue Anadarko and assert that Margot never owned and had no authority to extend the lease of her late husband's mineral interests.

It is no doubt rare that a person would (1) lease real property, (2) conditionally lease the same real property to someone else, and then (3) claim the first lease is invalid because she never really owned the property to begin with or had no authority to lease it despite her representations to the contrary. But that is the situation Anadarko finds itself in.

On November 15, 2013—over four years after Margot accepted $192,000 for executing an extension of her late husband's lease with Anadarko in which she represented and listed herself as "owner" and "lessor," and almost five years after she executed an amended lease to indicate she was the "owner" and "lessor" of the mineral interests upon her husband's death—Margot joined her children, Mercury-Ward, and others as Plaintiffs in this lawsuit. In the suit she and her family allege, for the first time ever, that the lease extension Margot executed in favor of Anadarko was "void and of no effect" and that her lease with Anadarko expired three years earlier, on October 10, 2010, for lack of production within the lease's initial primary term.

Unbeknownst to Anadarko, Margot and her children had evidently developed a theory for why—contrary to her prior repeated representations and warranties—she had never actually owned the mineral interests she had leased to Anadarko. Specifically, they now assert that Jack's will conveyed to Margot an ordinary life estate in the minerals, and that the minerals themselves were conveyed to her children as remaindermen subject to Margot's life estate. Anadarko disagrees based on the text of Jack's will, the undisputed summary-judgment facts, and Texas law.

This motion therefore presents the question: Is the Anadarko lease in full effect—as maintained by production from the well drilled on the land within the lease's extended primary term—or did the lease expire at the end of its initial primary term because Margot did not have authority to execute the extension without her children's approval? For all of the reasons set forth herein, Anadarko respectfully requests that the Court grant this motion for partial summary judgment and hold that the Anadarko lease, as extended by Margot, remains in full force and effect.

ARGUMENT

I. THE ANADARKO LEASE REMAINS IN FULL FORCE AND EFFECT BECAUSE JACK BURRELL'S WILL CONVEYED TO MARGOT AN INTEREST IN THE MINERALS THAT AFFORDED HER AUTHORITY TO EXECUTE THE ANADARKO LEASE EXTENSION.

This is a traditional motion for partial summary judgment requesting that the Court recognize the validity of Margot's extension of the Anadarko lease based on Jack's will, settled Texas law, and the undisputed summary judgment facts. *See* TEX. R. CIV. P. 166a(c).

Because the resolution of this case turns in part on the construction of a will, Texas's will-construction rules apply. "In construing a will, the court's focus is on the testatrix's intent," which "must be ascertained from the language found within the four corners of the will." *San Antonio Area Found. v. Lang*, 35 S.W.3d 636, 639 (Tex. 2000). Courts construing wills, like other contracts, must "focus *not* on 'what the testatrix intended to write, but [instead on] the meaning of the words she

actually used.'" *Id.* (quoting *Shriner's Hosp. for Crippled Children of Tex. v. Stahl*, 610 S.W.2d 147, 151 (Tex. 1980)) (emphasis added). In doing so, courts may not "redraft wills to vary or add provisions 'under the guise of construction of the language of the will' to reach a presumed" but unstated intent. *Id.* (quoting *Stahl*, 610 S.W.2d at 151). Extrinsic evidence cannot be considered to attempt to show that "the testatrix intended something outside of the words used." *Id.*

There are two passages in Jack's will that are pertinent. In Article II, titled "Tangible Personal Property & Wishes Regarding Burial," Jack wrote:

> 5. Interest in Oil and Gas Revenues. I give to my spouse if she survives me, all income from any oil and gas interests which I shall own as my separate property upon my death. Upon my spouse's death, such oil and gas interests and the revenue therefrom shall be distributed in equal shares among my spouse's then living lineal descendants, *per stirpes*.

Ex. A. And in Article IV, titled "Residuary Bequest," Jack wrote:

> All of the rest and remainder of the property which I shall own at my death . . . , which property shall be referred to as my "Residuary Estate," shall be disposed of as provided in this Article.
>
> 1. If My Spouse Survives Me. If my spouse survives me, the Residuary Estate shall be distributed to her outright and free of trust.

Id.

These provisions contain no language limiting Margot's inherited interest to a life estate. Under Texas law, these passages conveyed to Margot a fee simple determinable with an executory interest in those (and only those) of Margot's "lineal descendants" who survive her. At the very least, these provisions gave Margot more than an ordinary life estate in the minerals. Either way, the plain terms of Jack's will conveyed to Margot an interest in the minerals that afforded her the right to execute the Anadarko lease extension *without* seeking the approval of her children or anyone else.

A. Margot Owns the Mineral Interests in Fee Simple Determinable; Upon Her Death, the Minerals Will Pass to Her "Then Living Lineal Descendants"—a Class That May or May Not Include Her Currently Living Children.

It is axiomatic that, absent express language to the contrary, a fee simple in a mineral interest conveys along with it the right to lease that interest. *See Diamond Shamrock Corp. v. Cone*, 673 S.W.2d 310, 313 (Tex. App.—Amarillo 1984, writ ref'd n.r.e.). Thus, the first question presented by this motion is this: What happened to Jack's mineral interests? Based on the plain language of the provisions quoted above, those interests passed to Margot in fee simple under the residuary clause, and upon her death they will pass again to her "then living lineal descendants"—whomever they may be. As a matter of law, this is a fee simple determinable interest, which gave Margot the authority to execute the Anadarko lease extension.

Looking to the plain language of the will quoted above, it is clear that neither sentence of Article II.5 conveys Jack's underlying mineral interests to anyone at the time of *Jack's* death. *See* Ex. A. The first sentence—"I give to my spouse if she survives me, all income from any oil and gas interests which I shall own as my separate property upon my death"—conveys all of the *income* from Jack's mineral interests to Margot at the time of Jack's death, but does not convey the underlying mineral interests to anyone. *Id.* (emphasis added). And the second sentence—"*Upon my spouse's death*, such oil and gas interests *and* the revenue therefrom shall be distributed in equal shares among my spouse's *then living lineal descendants*"—conveys both the income from Jack's minerals and the underlying minerals to Margot's "then living lineal descendants" at the time of *Margot's* death. *Id.* (emphasis added). But these two sentences leave unanswered a key question: If neither sentence of Article II.5 conveyed Jack's underlying mineral interests (as distinct from the income derived from those minerals) to anyone at the time of *his* death, what happened to the minerals?[3]

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[3] It is undisputed that at Jack's death, there was no oil and gas production (and no royalty income) from the lands attributable to the interest at issue.

The answer lies in Jack's will's residuary clause—Article IV. There, Jack first defined the residuary: "*[a]ll* of the rest and remainder of the property which I shall own at my death." *Id.* (emphasis added). Then, he conveyed to Margot the entirety of his residuary at the time of his death: "If my spouse survives me, the Residuary Estate shall be distributed to her outright and free of trust." *Id.* Thus, because Jack's underlying mineral interests were not conveyed in Article II (or in any other specific bequest), they necessarily were left as part of the residuary estate—which expressly passed to Margot "outright and free" at Jack's death—*i.e.*, in fee simple.[4] Later, those same underlying mineral interests will pass—upon *Margot's* death—to Margot's "then living lineal descendants." *See id.* Thus, the will provides a conveyance of the minerals to Margot (via the residuary clause) "free and outright," and then those same minerals are conveyed to Margot's "then living lineal descendants" upon her death (via Article II.5). *Id.* When a will makes such a conveyance—*i.e.*, when a party conveys property to one individual, but then conveys that same property to another individual upon the first individual's death—the first individual receives the property in fee simple determinable and the second individual (or individuals) receives an executory interest. *Cooley v. Williams*, 31 S.W.3d 810, 813-15 (Tex. App.—Houston [1st Dist.] 2000, no pet.).

In *Cooley*, the court of appeals was called upon to determine what interests were conveyed under circumstances that are similar to those in this case. There, the contested will stated: "If I die all my [possessions] go to my husband Paul Odis McKee and when he dies everything goes to Rhobbin LaVern Jabbia [Cooley]." *Id.* at 812. As in this case, the *Cooley* will transferred a present interest in property to the testator's spouse, then upon the spouse's death, the will transferred the same property to another party. *Compare id. with* Ex. A.

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[4] *See Welder v. Hitchock*, 617 S.W.2d 294, 297 (Tex. App.—Corpus Cristi 1981, writ ref'd n.r.e.) ("There is never a time when title is not vested in someone . . . . It has been said that there is no shorter interval of time than between the death of a decedent and the vesting of his [beneficiaries]."); *see also* TEX. ESTATES CODE § 101.001(a)(1) (2013).

To give effect to this language, the appellate court first reviewed the general rules of will construction:

> We look for the testator's intent as revealed in the language of the whole will. We harmonize all provisions if at all possible to give effect to that intent. . . . [And,] [u]nless a lesser estate is created by express words or operation of law, we read a devise to be in fee simple absolute.

Id. at 812 (citations omitted). Next, the court defined the relevant potential property interests at play and distinguished between two key potential interests—a "fee simple" and a "life estate":

> A "fee simple absolute" is an estate over which the owner has unlimited power of disposition in perpetuity without condition or limitation. An "executory limitation" is an event which, if it occurs, automatically divests one of devised property. A fee simple estate subject to an executory limitation is called a "determinable fee simple estate." This is a fee simple interest in every respect, except that it passes to another if the contingency happens. The recipient upon the contingency's happening has an "executory interest.". . . A life estate is created by words showing intent to give the right to possess, use, and enjoy the property during life. . . . [But] the life tenant may not devise any of that property that remains at her death.

Id. at 813 (citations omitted).[5]

Applying these rules of construction to the will, the *Cooley* court held that the instrument "created a determinable fee simple in decedent's [spouse] with an executory interest in [the third party]." *Id.* The court reasoned that "[t]he first half of the sentence"—*i.e.*, "If I die all my [possessions] go to my husband"—"gave decedent's husband a fee simple estate." *Id.* (citation omitted). And "[t]he second half of the sentence"—*i.e.*, "when he dies everything goes to Rhobbin Lavern Jabbia [Cooley]"—"also clearly gave 'everything' after the husband's death to Cooley." *Id.* "To read the two halves together—without nullifying the second half and while preserving the greatest estate possible in the first devisee—is to construe decedent's husband's devise as a determinable fee simple." *Id.* (citing *Smith v. Bynum*, 558 S.W.2d 99, 101 (Tex. Civ. App.—Tyler

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[5] "An estate in land that is conveyed or devised is a fee simple unless the estate is limited by express words or unless a lesser estate is conveyed or devised by construction or operation of law." TEX. PROP. CODE § 5.001(a).

1977, writ ref'd n.r.e.)). "Accordingly, Cooley held an executory interest in decedent's estate: the contingency was her grandfather's dying with some of decedent's property." *Id.* at 813-14. The court concluded:

> This reading harmonizes both parts of the [will]; comports with decedent's evident intent, as indicated by naming two sequential devisees with fee simple language applicable to both (and without any language typical of a life estate); and gives the first devisee the greater estate (determinable fee simple, rather than life estate).

Id. at 814.

Under *Cooley*, Article IV (the residuary clause) of Jack's will—the only clause that conveyed his underlying mineral interests at the time of his death—conveyed the minerals to Margot "outright and free of trust," in fee simple, albeit determinable at her death pursuant to Article II.5. Article II.5 conveyed those same underlying mineral interests to Margot's "then living lineal descendants" at the time of her death. *See* Ex. A. Together, the passages created a fee simple determinable. *See Cooley*, 31 S.W.3d at 814. Because a fee simple determinable "is a fee simple interest in every respect, except that it passes to another if the contingency happens," *id.* at 813 (citing *Barker v. Rosenthal*, 875 S.W.2d 779, 781 (Tex. App.—Houston [1st Dist.] 1994, no writ), Margot's interest in the mineral rights afforded her authority to execute the Anadarko lease extension as a matter of law. *See Diamond Shamrock*, 673 S.W.2d at 313. Indeed, no other construction of the will gives effect to all of the will's language while at the same time declining to add terms or otherwise change the plain language of the will. The minerals passed to Margot "outright and free of trust" but determinable at her death. This "outright" ownership afforded her full and complete authority to execute the Anadarko lease extension.

B. At the Very Least, Margot Owns a Life Estate That Afforded Her a Right to Manage Jack's Minerals Before They Were Conveyed to Her "Then Living Lineal Descendants" Upon Her Death.

1. Under *Cooley*, Margot also received the income from Jack's minerals in fee simple determinable.

Separately and independently from the minerals, Jack's will also conveyed the "income" from his oil-and-gas interests. *See supra*; *see* Ex. A. Following *Cooley*, this Court should conclude that Article II.5 conveyed to Margot a fee simple determinable in the income from Jack's mineral interests. The first sentence of this provision conveyed the income to Margot, and the second sentence conveyed the same interests to Margot's "then living lineal descendants" at the time of her death—and no language evinces any intent to limit the conveyance to a life estate. *See Cooley*, 31 S.W.3d at 813-14. Indeed under *Cooley*, the will passed both the mineral interests themselves and the right to receive income from those minerals in fee simple determinable to Margot. *Id.* And, there can be no argument that one who owns both the mineral interests and the right to receive income from those interests also owns the right to execute leases on the interests. *See Diamond Shamrock*, 673 S.W.2d at 313. *Cooley* is thus dispositive as to all of Jack's mineral interests: Margot received a fee simple determinable in both the minerals and the income from those minerals, and her surviving lineal descendants received an executory interest. Margot thus had complete authority to extend the Anadarko lease.

2. Even if Plaintiffs are correct that Margot received only a life estate in the minerals, under *Hudspeth*, the will's conveyance of "all income" to Margot authorized her to execute mineral leases.

In contrast to the plain meaning of the actual words used in Jack's will, Plaintiffs take the position that Jack's will conveyed to Margot "a life estate in [Jack's] oil and gas interests . . . , with the remainder interest in that same property being vested in equal shares, per stirpes, among the living lineal descendants of Margot . . . at her death." *See* Plaintiffs' Third Am. Pet. at 19-20.

Among the problems with Plaintiffs' position is that because the recipient of the will's conveyance to Margot's "then living lineal descendants" cannot and will not be determined until her death, *see* Ex. A, no remainder interest is presently vested in *any* persons. *See supra* Part III.B. But regardless, Plaintiffs' construction of the will is incorrect because it contravenes the will's plain terms. There are no words in Jack's will that evince any intent to create a life estate—words such as "for her lifetime," "in life estate," "for the duration of her life," or "for her use and benefit until she dies." *See Cooley*, 315 S.W.3d at 813. To the contrary, the residuary clause conveyed the minerals to Margot "outright"—the precise opposite of a life estate. Ex. A. Because courts are prohibited from adding terms to or changing the terms of a will—even assuming that the testator intended something other than what he said—Plaintiffs' construction is necessarily incorrect and must be rejected. *See San Antonio Area Found.*, 35 S.W.3d at 639.

But even assuming that Jack's will granted a life estate (rather than a fee simple determinable) in the minerals to Margot without saying so, the will's gift of "*all* income from *any* oil and gas interests" by law conveyed to Margot the right to manage those interests. The conveyance of a life estate in minerals does not ordinarily convey to the life tenant the right to collect oil and gas royalties or bonuses; those belong instead to the remaindermen (*i.e.*, those persons who were conveyed the mineral interests subject to the life estate). *Hudspeth v. Hudspeth*, 756 S.W.2d 29, 31 (Tex. App.—San Antonio 1988, writ denied) (citing *Clyde v. Hamilton*, 414 S.W.2d 434, 439 (Tex. 1967)). Ordinarily, the life tenant is limited to receiving the interest earned on bonuses and royalties (not the bonuses and royalties themselves). *Id.* Further, the life tenant may not "dispose of the corpus" (*i.e.*, the underlying mineral interest) without the approval of the remaindermen. *Id.* In fact, in an ordinary life estate, neither the life tenant nor the remaindermen may dispose of the corpus without the other; they must agree. *MCZ, Inc. v. Smith*, 707 S.W.2d 672, 679

(Tex. App.—Houston [1st Dist.] 1986, writ ref'd n.r.e.). Thus, had Jack's will stated that Jack "grants to Margot Burrell a life estate in any mineral interests that I own at my death," without more, it is undisputed that Margot (1) would have received a life tenancy in the minerals; (2) would not have received the right to bonuses and royalties; and (3) would not have received the authority to lease the minerals without the approval of the remaindermen.

But there is a critical exception to the ordinary life-tenancy rule: a testator *may* by will give the life tenant more than an ordinary life tenancy. One example of that—at issue here—is that the testator may give the life tenant "all income" from the oil-and-gas interests during the tenant's lifetime. *E.g.*, *Hudspeth*, 756 S.W.2d at 30 n. 1, 32-33 ("I . . . give to [my spouse] all rents, revenues and income of every kind and character derived from [my] real estate . . . during the span of her natural life . . . ."). In that case, the testator gives the life tenant, in addition to the normal attributes of a life tenancy, the right to consume royalties and bonuses. *Id.* at 32-33. Because Texas law "favors the first taker" and requires that wills be "construed so as to grant to the first taker the greatest estate which by fair construction . . . is capable of passing," a life tenant with a right to consume "all income" from a mineral interest necessarily also has the authority to "execute mineral leases" of the interests. *Id.* at 33.

In this case, Jack differentiated between the "income" from his oil-and-gas interests and the underlying minerals interests themselves. He conveyed the "income" to Margot, and then upon her death, to Margot's "then living lineal descendants" in Article II.5. But importantly, Jack conveyed the underlying mineral interests to Margot in the residuary clause and then to Margot's "then living lineal descendants" in Article II.5. No language includes "life estate" terminology, but instead conveyed to Margot a fee simple determinable in the minerals "outright and free" and the income from the minerals. *See supra* Part I.A. But assuming *arguendo* that Plaintiffs are right—*i.e.*, that

Jack's will conveys to Margot a life tenancy in Jack's mineral interests without using any life-estate language—then she received *more* than an ordinary life tenancy. She also received the right to "all income" from the minerals during her lifetime, which by law also necessarily includes a right to execute leases of the mineral interests. *See Hudspeth*, 756 S.W.2d at 32-33.[6]

C. The Anadarko Lease, as Extended by Margot, Remains in Full Force and Effect by Virtue of Oil and Gas Production.

It is undisputed that on August 31, 2009, Margot executed an extension of the Anadarko lease in consideration for a payment of $192,000. *See* Exs. B.5, B.6. That instrument, signed by Margot as owner of the interest and recorded in the county records, extended the primary term of the Anadarko lease to October 10, 2013, and for so long thereafter as oil or gas was being produced on the property. *See* Exs. B.1, B.5. It is also uncontested that Anadarko spudded a well on the property on September 30, 2013, and the well has continued to be commercially productive. *See* Ex. H.

Because Margot had the authority under Texas law to execute the lease without the necessity of joining whomever might be Margot's "then living lineal descendants" at the time of her death and because Anadarko perpetuated the lease beyond the extended primary term by means of drilling an oil and gas well and obtaining production in paying quantities therefrom, the Anadarko lease, as extended, was perpetuated beyond the primary term and remains in full force and effect as a matter of law. Accordingly, this Court should render partial summary judgment holding that Anadarko's extended lease of Jack Burrell's minerals is valid and remains in full force and effect.

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[6] Even if the will had created only a life estate in Jack's minerals, a construction of that life estate that affords Margot the authority to execute mineral leases is preferred under Texas law because, given that the "then living lineal descendants" cannot be now identified, a construction that would require their participation would render the minerals unalienable.

II. EVEN IF THE APPROVAL OF MARGOT'S CHILDREN WERE REQUIRED TO GIVE EFFECT TO MARGOT'S EXTENSION OF THE ANADARKO LEASE, HER CHILDREN GAVE THAT APPROVAL WHEN THEY RATIFIED THE MERCURY-WARD TOP LEASE "SUBJECT TO" THE ANADARKO LEASE "AS EXTENDED AND AMENDED."

Plaintiffs' theory is that Jack's will conveyed to Margot only an ordinary life estate in Jack's minerals, and, therefore, she did not have the authority to execute a mineral lease without the approval of her children. This construction is legally incorrect as explained above. But even assuming that an ordinary life estate was created and that Margot's children were expressly named and vested remaindermen, Plaintiffs' argument is still legally incorrect because Margot's children ratified the extended lease.

It is long-settled Texas law that when a party executes an instrument that is made "subject to" an earlier instrument, the party to the later instrument ratifies the validity and efficacy of the earlier instrument and adopts it as that party's own. In *Grissom v. Anderson*, for example, after a husband executed a mineral lease that was inoperative because it lacked his wife's approval, the lease was nonetheless fully valid and effective because the wife later signed a deed related to the property that was made "subject to" the earlier mineral lease. 125 Tex. 26, 79 S.W.2d 619, 622-23 (Tex. 1935). As a matter of law, the wife's acknowledgment of the lease in the subsequently executed instrument ratified the lease in full form and effect. *Id.* Similarly in *Humble Oil & Refining Co. v. Clark*, by executing a subsequent instrument that was made "subject to" a mineral lease, a woman who had become old enough to execute the original lease (but had been a minor when the lease was initially executed) caused the otherwise-defective lease to become fully effective. 126 Tex. 262, 87 S.W.2d 471, 474 (Tex. 1935). As the Texas Supreme Court explained, "the new instrument, duly executed as it was, effected a transfer to the [lessee] of the leasehold estate . . . ,

regardless of the fact that the prior instrument is and was void." *Id.*[7] Indeed, the signature of an oil-and-gas mineral interest owner on a deed that acknowledges a previous oil-and-gas lease will, by law, ratify and revive even an allegedly terminated lease. *Loeffler v King*, 149 Tex. 626, 236 S.W.2d 772, 630 (Tex. 1951) ("By authority of an unbroken line of decisions by this court it must be held that, by [executing] the royalty deed [that referenced the oil-and-gas lease,] the parties ratified and gave new life to the . . . lease, even if it had in fact theretofore terminated.").

In this case, if Margot's execution of the Anadarko lease extension was initially ineffective because her children did not approve it, it became effective when Margot's children ratified the lease by executing the Mercury-Ward top lease, which expressly provides that it is "subject to" the "extended and amended" Anadarko lease. Indeed, their ratification is unmistakable. On August 6, 2010, Plaintiffs Steen Erik Oldenburg and Niels Ulrik Oldenburg, and four days later, their sister Plaintiff Kelly Oldenburg Watson, signed ratifications of the Mercury-Ward "top lease" that Margot had executed on July 12, 2010. *See* Ex. D.5. Each ratification states: "I, the undersigned, *do hereby, ratify, adopt, and confirm* [the Mercury-Ward top] lease in all of its terms and provisions. . . ." *Id.* (italics in original; underscore added). Each ratification also states that the top lease is "effective the 11th day of October 2013," *id.*—the very moment at which the Anadarko lease *as extended and amended by Margot* was set to expire unless Anadarko developed the lease during the primary term, *see* Exs. B.5, B.1.

The Mercury-Ward top lease and instruments signed contemporaneously therewith repeatedly make reference to—and are made expressly "subject to"—the Anadarko lease as extended by Margot.

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[7] *See also Greene v. White*, 137 Tex. 361, 153 S.W.2d 575, 586-87 (Tex. 1941); *Turner v. Hunt*, 131 Tex. 492, 116 S.W.2d 688, 690 (Tex. 1938); *Nat'l Gas Pipeline Co. of Am. v. Law*, 65 S.W.3d 121, 128 (Tex. App.—Amarillo 2001, pet. denied).

For example, the top lease:

- states that it is "subject to [Anadarko's] existing oil and gas lease dated October 10, 2005 of record in Volume 789, Page 230 of the official public records in the office of the county clerk," Ex. D.1; and,

- is expressly made "effective October 11, 2013"—the moment at which the Anadarko lease as extended by Margot expires absent production, *id.*; *see also* Ex. B.5, B.1.

Likewise, the letter agreement between Margot and Mercury-Ward—signed contemporaneously with the top lease—states that:

- the top lease is only to become effective upon "the expiration of the present oil & gas lease in favor of Anadarko Petroleum," Ex. D.2; and,

- the parties to the top lease "do not intend to file the Memo of Oil & Gas Lease of record in Ward County, Texas until such time as the present Oil & Gas lease covering your mineral interest has expired," *id.*, and the parties did *not* file that memorandum on or even near October 11, 2010 (the date they now claim the Anadarko lease expired)—they filed it three years later, Ex. D.3.

Finally, the Memorandum of Oil, Gas and Mineral Lease—also signed contemporaneously with the top lease:

- states that the top lease is "effective October 11, 2013," *id.*—the very moment that the Anadarko lease was set to expire, absent production, *as amended by Margot*, *see* Exs. B.1., B.5;

- acknowledges that "[o]n the date the [top lease] was executed," the Anadarko lease, "*as extended and amended* . . . appeared to be in force and effect as to all or part of the lands and interest covered hereby," Ex. D.3 (emphasis added); and

- states that "[t]his Top Lease *shall be subordinate and subject to the [extended and amended Anadarko] Lease for as long as, and to the extent that, the . . . Lease remains in force and effect according to its present terms*," *id.* (emphasis added).

Under black-letter Texas law, these instruments irrefutably effect a ratification of the Anadarko lease—as extended by Margot—in at least two important ways. First, the instruments repeatedly acknowledge that they are "subject to" the Anadarko lease "as extended and amended" and in effect at the time of Margot's execution of the top lease. Likewise, the top lease was

explicitly made "effective October 11, 2013,"—the very moment at which the Anadarko lease "as extended and amended" by Margot was set to expire absent development that would perpetuate the lease beyond the primary term. Thus, the top lease, which Margot's children adopted in full, expressly acknowledged and was made "subject to" the Anadarko lease as extended by Margot. As a matter of law, therefore, Margot's children ratified the lease extension. *See Grissom*, 79 S.W.2d at 622-23; *Humble Oil*, 87 S.W.2d at 474.

Second, by making the top lease "effective October 11, 2013," and by making it expressly "subject to" the Anadarko lease, the top lease *revived* the Anadarko lease—even if it had (as Plaintiffs assert) initially expired for lack of development. When a party adopts an instrument that is made "subject to" an oil-and-gas lease, that instrument ratifies and revives the lease even if it has terminated. *See Loeffler*, 236 S.W.2d at 630. Thus, even if Plaintiffs were otherwise correct that the initial Anadarko lease expired on October 10, 2010, Margot's children and their mother revived and adopted it on October 11, 2013. *See id.*

For these reasons, the children ratified, adopted, and revived the Anadarko lease "as extended and amended" by Margot. Accordingly, even if Margot had received only an ordinary life estate in Jack's mineral interest, and even if her now-living children could be presently deemed vested remaindermen of those interests, Margot's children ratified and revived the Anadarko lease *as extended*—giving the extended lease full force and effect as a matter of law.

III. MARGOT BURRELL, HER CHILDREN, MERCURY-WARD, AND THE REMAINING PLAINTIFFS ARE BARRED FROM CONTESTING THE VALIDITY OF MARGOT'S LEASE EXTENSION.

A. Margot and Her Children Are Estopped from Contesting the Validity of the Instrument Based on Title She Warranted.

In Texas, a party may not profit from his or her own representation, and then turn around and deny the truth of that representation when it becomes convenient to do so. This principle manifests

itself in at least two doctrines that relate to Plaintiffs' claims here: quasi-estoppel and estoppel by contract. "Quasi-estoppel precludes a party from asserting, to another's disadvantage, a right inconsistent with a position previously taken. The doctrine applies when it would be unconscionable to allow a person to maintain a position inconsistent with one to which he acquiesced, or from which he accepted a benefit." *Lopez v. Munoz, Hockema & Reed, L.L.P.*, 22 S.W.3d 857, 964 (Tex. 2000). "[E]stoppel by contract" holds that "[a] party who accepts the benefits under a contract is estopped from questioning the contract's existence, validity, or effect." *In re D.R.R.*, 322 S.W.3d 771, 774 (Tex. App.—El Paso 2010, no pet.) (op. on rehearing). A party simply "cannot enter an agreement, benefit therefrom, and then attack the agreement later when it is suddenly in his interests to do so." *Id.*

Applying this law, Margot Burrell is estopped from contesting the validity of the Anadarko lease extension she executed. It is uncontested that Margot executed the lease extension in which she stated that she is the "owner" of Jack's mineral interest. *See* Ex. B.5. It is also uncontested that by adopting and ratifying the original Anadarko lease as her own, Margot warranted her title to the mineral interest within the oil-and-gas lease extension. *See id.*, Ex. B.1. And it is uncontested that she accepted and deposited $192,000 from Anadarko in consideration for her agreement to extend the Anadarko oil-and-gas lease of the minerals over which she claimed ownership. Ex. B.6. Margot cannot "enter an agreement, benefit therefrom, and then attack the agreement later when it is suddenly in [her] interests to do so." *See In re D.R.R.*, 322 S.W.3d at 774. Therefore, she is estopped from denying the validity of the lease extension. Indeed, having benefitted greatly by her warrant of title to Jack's mineral estate, it would be unconscionable to permit her to now contest the lease's validity. *See Lopez*, 22 S.W.3d at 964. And because her children sat by, without ever objecting, as Margot claimed and recorded her ownership of the minerals and executed and recorded an extension

of the Anadarko lease, they are also estopped from asserting that Margot never had the right to lease the minerals. *See id.* (doctrine bars challenge of contract "to which [the party] acquiesced"). Margot and her children's challenge to her authority to execute the Anadarko lease extension is barred as a matter of law.

B. Margot's Children Are, at Most, Unvested Contingent Remaindermen Without Standing to Challenge Margot's Lease Extension.

The fundamental underpinning of Plaintiffs' suit against Anadarko is their argument that in order to be valid, Margot's extension of the Anadarko lease must have been approved by her children because—Plaintiffs' assert—her children own "vested" "remainder interests" in Jack Burrell's mineral estate. *See, e.g.*, Plaintiffs' Third Am. Pet. at 20.[8] This argument is fatally flawed, however, because even assuming Jack's will created only an ordinary life estate in Margot, the will does *not* name her children as remaindermen. Instead, it states that "[u]pon [Margot's] death, such oil and gas interests and the revenue therefrom shall be distributed in equal shares among my spouse's *then living lineal descendants* . . . ." Ex. A (emphasis added). We do not and cannot know today who will be Margot's "lineal descendants" "living" at the time of her death, and only those persons have an interest in the remainder of any hypothetical life estate in Jack's minerals.[9] As a result, Margot's children—who may or may not ultimately survive their mother and thus qualify as a recipient of Jack's interest—have no standing to contest Margot's lease extension.

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[8] Although not directly at issue in this motion, it must be noted that under no circumstances is Mercury-Ward's top lease operable even if Plaintiffs are correct that Jack's will created an ordinary life estate in his minerals and that Margot's children are vested remaindermen. In *MCZ, Inc. v. Smith*, 707 S.W.2d 672, 674-80 (Tex. App.—Houston [1st Dist.] 1986, writ ref'd n.r.e.), the court explained that when a life tenant signs one lease without the approval of the remaindermen, and then signs a second lease with the approval of the remaindermen, neither lease is operable because once a life tenant signs a lease, she cannot make another lease effective because she has "nothing left to lease." *Id.* at 680. The end result, in such a scenario, is that neither lease is effective to lease the mineral interest in life tenancy. *Id.*

[9] *See* Dukeminier & Johanson, *Wills, Trusts & Estates* 713 (6th Ed. 2000) ("A remainder is contingent if (1) it is not given to a presently ascertained person or (2) it is subject to a condition precedent.").

The Texas courts have precisely so ruled under indistinguishable facts. In *Wilkes v. Wilkes*, for example, the Texas Supreme Court was asked to construe will language that, upon the death of a life tenant, conveyed a trust's remaining principal to "then surviving lineal descendants, if any." 488 S.W.2d 398, 402 (Tex. 1972). The Court explained that "it cannot now . . . be known whether either of [the current lineal descendants of the life tenant] will ultimately receive any portion of that principle." *Id.* Instead, a future gift to "then surviving lineal descendants" is *not* a gift to specific persons but rather is conveyed to a "class" of persons whose members are uncertain and may only be determined at a future date—*i.e.*, upon the death of the life tenant. *Id.* at 404. Quoting the decision in a "similarly described" fact situation from the Kentucky Supreme Court, the Texas Supreme Court wrote:

> No one can know, until these . . . life tenants are dead, just who will compose the benefit[t]ed class. Until that time comes, the interest of these remaindermen in this property is *merely a contingent interest*.
>
> Where, under the provisions of a will, a gift to a class is postponed until after the termination of a preceding estate, as a rule, those members of the class, and those only, take who are in existence when such preceding estate terminates, and the time for distribution comes. The number of pieces into which the pie shall be cut and the parties to whom they shall be passed is determined by those of the class present when the time for cutting comes.

Id. at 405 (quoting *Ford v. Jones*, 3 S.W.2d 781, 785-86 (1928)) (emphasis added).

As a result, the Court held, the court of appeals erred when it concluded that the will "create[d] a vested remainder" in the child of the life tenant. *Id.* at 407.

The Texas Supreme Court reached the same result in *Pickering v. Miles*, in which the Court construed a will that conveyed the testator's property to his son in life tenancy, then upon his son's death, in fee simple to the testator's grandchildren who "are living at his death." 477 S.W.2d 267, 270 (Tex. 1972). The Court explained that the grandchildren living at the time of the testator's death did *not* receive a vested interest in the remainder:

> At the time the remainder in the testator's grandchildren was created, that is, when the will became effective upon the testator's death, the remainder was *contingent rather than vested.* This is made so by the words "that are living at his death." Where the will makes the survival of the life tenant a condition precedent to the vesting of the remainder, the remainder is said to be contingent.

Id. (emphasis added).[10] And, because a mere "expectant heir has no present interest or right in property that he may [or may not] subsequently inherit," "he cannot maintain a suit for the enforcement or adjudication of a right in the property." *Davis v. First Nat. Bank of Waco*, 139 Tex. 36, 161 S.W.2d 467, 472 (1942). Accordingly, because Margot's children have at most an unvested contingent interest in Jack's mineral interests and they may or may not ever receive such interests, they have no standing to contest the validity of Margot's extension of the Anadarko lease.[11]

C. All Other Plaintiffs, as Non-Parties to the Instrument, Have No Standing to Challenge Margot's Lease Extension.

In Texas, a non-party to a contract generally has no right to bring suit to enforce or challenge a contract entered into between other parties. *See S. Tex. Water Auth. v. Lomas*, 223 S.W.3d 304, 306 (Tex. 2007). "Texas courts presume," therefore, "that a non-contracting, third party has no justiciable interest in a contract." *Cassidy v. TeamHealth, Inc.*, No. 01-08-000324-CV, 2009 WL 2231217, at *3 (Tex. App.—Houston [1st Dist.] July 23, 2009, pet. denied) (mem. op.); *see also El Paso Cmty. Partners v. B&G/Sunrise Joint Venture*, 24 S.W.3d 620, 626 (Tex. App.—Austin 2000, no pet.) ("[S]omeone who is not a party to an agreement has no interest in the terms of that contract."). As a matter of law, a non-party has no standing to bring suit to construe a contract unless

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[10] *See also Fisher v. Southland Royalty Co.*, 270 S.W.2d 677, 679-80 (Tex. Civ. App.—Eastland 1954, writ ref'd n.r.e.).

[11] The fact that Jack did not name the recipients of his mineral interests after Margot's death, but instead created a class of persons yet to be determined, is further evidence that he did not intend to limit Margot's interest to a life estate which would require the remaindermen's approval to execute a lease. If he had so intended, the minerals would be unleaseable—a construction that clashes with his gift of the "income" from such minerals to Margot, as well as Texas's public policy in favor of oil-and-gas production and free alienability.

"the parties intended to secure some benefit to that third party, and only if the contracting parties entered into the contract directly for the third party's benefit." *Grinnell v. Munson*, 137 S.W.3d 706, 712 (Tex. App.—San Antonio 2004, no pet.) (citing *MCI Telecomms. Corp. v. Tex. Utilities Elec. Co.*, 995 S.W.2d 647, 651 (Tex. 1999)). Moreover, the parties "intent to confer a direct benefit upon a third party 'must be clearly and fully spelled out'" in the contract. *S. Tex. Water Auth.*, 223 S.W.3d at 306 (quoting *MCI Telecomms. Corp.*, 995 S.W.2d at 651)). This rule is just as binding in the oil-and-gas context as it is outside of it. *E.g.*, *Grinnell*, 137 S.W.3d at 712-14 (holding that surface-estate owner has no standing to seek a declaration that a lease had terminated); *Tenn. Gas Pipeline Co. v. Lenape Resources Corp.*, 870 S.W.2d 286, 295 (Tex. App.—San Antonio 1993) (holding that party to gas-purchase agreement had no standing to challenge the validity of a related gas lease to which it was not a party), *aff'd in part and rev'd in part on other grounds*, 925 S.W.2d 565 (Tex. 1996); *Bruner v. Exxon Co., U.S.A.*, 752 S.W.2d 679, 682 (Tex. App.—Dallas 1988, writ denied) (holding that even an assignee of rentals had no right to construe the lease between the lessor and the lessee).

Here, neither Mercury-Ward nor any of the other remaining Plaintiffs are parties to the original lease or Margot's extension. As such, they have no standing to sue for a construction of the lease, nor to challenge its validity. Nor can it be said that they are in any way third-party beneficiaries of the Anadarko lease and extension; nothing in the instruments was expressly or even implicitly executed for their benefit. Thus, they have no standing.

Moreover, Plaintiff Mercury-Ward is further barred from contesting the validity and applicability of the Anadarko lease because it took its own leasehold interest in the minerals subsequent, subject and subordinate to the extended Anadarko lease. As the Texas Supreme Court has made clear, "[i]t is well settled that 'a purchaser is bound by *every* recital, reference and

reservation contained in or fairly disclosed by any instrument which forms an essential link in the chain of title under which he claims.'" *Westland Oil Development Corp. v. Gulf Oil Corp.*, 637 S.W.2d 903, 908 (Tex. 1982) (emphasis in original) (quoting *Wessels v. Rio Bravo Oil Co.*, 250 S.W.2d 668 (Tex. Civ. App.—Eastland 1952, writ ref'd)). Before Mercury-Ward took its interest, Margot both amended and extended the Anadarko lease as "owner" and "lessor," and both instruments were publicly recorded. *See* Exs. B.4, B.5. Mercury-Ward was therefore bound by the recitals therein—including Margot's claim of ownership of the mineral interests. *See Westland*, 637 S.W.2d at 908.

Furthermore, Mercury-Ward's own top lease and the instruments it signed contemporaneously therewith expressly acknowledged that Mercury-Ward took its interest in Jack's minerals "subject to" the Anadarko lease "as extended and amended," that the Anadarko lease remained in full force and effect, and that the top lease was made "effective" the day after the Anadarko lease—as extended by Margot—was set to expire absent development. *See supra* Part II. Because a party to a deed is estopped from denying the truth of a matter recited within that deed, *XTO Energy Inc. v. Nikolai*, 357 S.W.3d 47, 56 (Tex. App.—Fort Worth 2011, pet. denied); *Moore v. Energy States, Inc.*, 71 S.W.3d 796, 800 (Tex. App.—Eastland 2002, pet. denied), Mercury-Ward is barred from claiming that Margot never owned or had authority to manage her late-husband's mineral interests.[12]

[12] Margot's contest of the Anadarko lease extension's validity is also barred by equitable estoppel. *See Johnson & Higgins of Tex., Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507, 515-16 (Tex. 1998); *Sigel v. Buccaneer Hotel Co.*, 40 S.W.2d 168, 173-74 (Tex. Civ. App.—Galveston 1931, writ ref'd).

PRAYER

For all of these reasons, Anadarko respectfully requests that the Court grant this motion for partial summary judgment and hold that the Anadarko lease was extended by Margot Burrell and remains in full force and effect by virtue of Anadarko's production in paying quantities within and beyond the lease's extended primary term.

Respectfully submitted,

DAVIS, GERALD & CREMER
A Professional Corporation

By: _____

John A. "Jad" Davis
State Bar No. 05511400
jadavis@dgclaw.com
Jacob M. Davidson
State Bar No. 24059651
jmdavidson@dgclaw.com
Michael C. Christensen
State Bar No. 24087300
mcchristensen@dgclaw.com
400 W. Illinois, Ste. 1400
Midland, Texas 79701
(432) 687-0011
Fax: (432) 687-1735

Ryan Clinton
State Bar No. 24027934
rdclinton@dgclaw.com
111 Congress Ave., Suite 1660
Austin, Texas 78701
(512) 537-9938

Stanley M. Johanson
State Bar No. 10670800
Sjohanson@law.utexas.edu
727 East Dean Keeton Street
Austin, Texas 78705
(512) 232-1270

ATTORNEYS FOR DEFENDANT ANADARKO PETROLEUM CORPORATION

CERTIFICATE OF SERVICE

I certify that on this 24th day of October, 2014, a true and correct copy of the foregoing was delivered as follows:

VIA HAND DELIVERY
Mr. Harold L. Hensley, Jr.
Ms. Mary W. Baker
Kelly Hart & Hallman LLP
508 W. Wall Avenue, Suite 444
Midland, TX 79701

VIA HAND DELIVERY
Mr. Michael T. Morgan
Freeman Mills PC
400 W. Illinois, Ste. 120
Midland, TX 79701

VIA CERTIFIED MAIL AND E-MAIL
Mr. Scott Hickey
Kelsey, Kelsey & Hickey
P.O. Box 918
Denton, TX 76202

VIA CERTIFIED MAIL AND E-MAIL
Mr. Dan Miller
Mr. Paul R. Tough
McElroy, Sullivan & Miller,
Weber & Olmstead L.L.P.
P.O. Box 12127
Austin, TX 78711-2127

Jacob M. Davidson