AVOID VOIDANCE: HOW TO DRAFT OIL AND GAS LEGAL DESCRIPTIONS IN COMPLIANCE WITH THE TEXAS STATUTE OF FRAUDS

Roderick E. Wetsel[*]*, Jeffrey L. Allen*[**]*, and Laura M. Bowen*[***]

---

[*] Roderick E. Wetsel is an Adjunct Professor of Law at Texas Tech University School of Law and formerly an Adjunct Professor at the University of Texas Law School from 2012 to 2018. He is the Senior Partner at Wetsel, Carmichael, Allen, & Lederle, LLP in Sweetwater, Texas, where he has practiced law for forty-two years. He is Board Certified in Oil, Gas, and Mineral law by the Texas Board of Legal Specialization.

[**] Jeffery L. Allen is a Partner at the firm and received both a J.D. and M.B.A. at Texas Tech University in 2007. He is also licensed to practice in New Mexico.

[***] Laura M. Bowen is an Associate with the firm and received both a J.D. and M.S. in Agricultural and Applied Economics at Texas Tech University in 2019.

The Authors would like to gratefully acknowledge the excellent assistance of Taylor Seaton, a 3L at Texas Tech University School of Law (and one of Professor Wetsel's outstanding students), in the preparation, writing, and editing of this Article.

I. INTRODUCTION

Every oil and gas practitioner in Texas lives with the horrible thought that, sooner or later, he or she will create an instrument that is partially or totally void under the Statute of Frauds. Although the legal description in an oil and gas lease, mineral or royalty deed, or similar document is often overlooked or dismissed as a mere formality, failure to comply with this age-old statute can have disastrous results. This Article offers guidelines and practical tips on how to "Avoid Voidance" in drafting legal descriptions in oil and gas instruments. It uses case law to emphasize the importance of careful drafting and discusses the current issues that insufficient land descriptions pose to the oil and gas industry.

Part II of the Article discusses the two applicable statutes that apply when conveying land in Texas. This Part also describes what type of oil and gas transactions Texas courts have held to be conveyances of real property and to which the Statute of Frauds and the Statute of Conveyances will apply.[1] Lastly, this Part outlines the common issues that arise in land descriptions when attempting to comply with the Statute of Frauds.[2]

Next, Part III discusses the judicial application of the Statute of Frauds. This Part examines several important cases which have formed the foundation that now touches every transaction involving real property.[3] Part III also discusses the judicially-created exception to the Statute of Frauds—equitable relief and the partial performance doctrine.[4]

Part IV discusses the applicable law in a context of the current oil industry. This Part examines a number of issues that are seen in the current

1. *See infra* Part II (discussing the Statute of Frauds and Statute of Conveyances and how both apply to various oil and gas conveyances).

2. *See infra* Part II.C (discussing the common issues in oil and gas conveyances).

3. *See infra* Part III.A (examining how the Court uses parol evidence to determine if the land description is sufficient).

4. *See infra* Part III (examining how the Court uses parol evidence to determine if the land description is sufficient, as well as exploring a number of cases interpreting the Statute of Frauds).

practice of oil and gas law, as well as issues that will likely be seen in the near future.[5]

Lastly, Part V concludes by discussing the importance of careful drafting to ensure that future transactions involving the conveyance of real property do not fall victim to the Texas Statute of Frauds, as so many conveyances have in the past.[6]

II. THE STATUTE OF FRAUDS AS IT APPLIES TO LEGAL DESCRIPTIONS

One of the oldest conveyancing doctrines is the requirement of certainty in land descriptions.[7] For centuries, courts have held that land being conveyed must be described with sufficient certainty that a person who is familiar with the land and the locality can identify the tract upon the ground.[8] This requirement is reflected in the Texas Statute of Frauds, which provides that a contract for the conveyance of land is not enforceable unless the agreement, or a memorandum of it, is in writing and signed by the person to be charged.[9] As Texas courts have interpreted and applied the statute, the writing must furnish within itself, or by reference to some other existing writing, the means or data by which the particular land to be conveyed may be identified with reasonable certainty.[10] "Parol evidence may be used to explain or clarify the written agreement, but not to supply the essential terms."[11] While the parties' knowledge or intent will not impact the validity of the legal description, parol evidence may be used to determine if a person familiar with the area could locate the conveyed property with reasonable certainty.[12]

A. Applicable Statutes in Texas

To promote stability in land titles and to avoid fraud, Texas has required that all transactions that involve land be in writing.[13] When dealing with a

---

5. *See infra* Part IV (examining how poor drafting poses numerous issues to the oil and gas industry).

6. *See infra* Part V (concluding the issues that insufficient land descriptions pose).

7. William B. Burford & George A. Snell, III, *Basic Conveyancing Rules for Mineral Deeds and Assignments of Oil and Gas Leases* 1, 1 (2013), https://www.cailaw.org/media/files/IEL/Conference Material/2015/title/BBurford-paper.pdf.

8. Ernest Smith, *Recent Developments in Oil and Gas Conveyancing*, INST. ON ADVANCED OIL AND GAS L., at G-1, (Austin: State Bar of Texas, Professional Development Program, 1986).

9. TEX. BUS. & COM. CODE ANN. § 26.01(b)(4).

10. Tex. Builders v. Keller, 928 S.W.2d 479, 481 (Tex. 1996); *see also* Neary v. Mikob Props., Inc., 340 S.W.3d 578, 584 (Tex. App.—Dallas 2011, no pet.).

11. *Neary*, 340 S.W.3d at 586 (quoting *Tex. Builders*, 928 S.W.2d at 481).

12. May v. Buck, 375 S.W.3d 568, 574 (Tex. App.—Dallas 2012, no pet.) (citing Morrow v. Shotwell, 477 S.W.2d 538, 539 (Tex. 1972)); *see also* BUS. & COM. § 26.01.

13. TEX. PROP. CODE ANN. § 5.021.

conveyance of land, there are two applicable statutes—the Texas Statute of Conveyances and the Texas Statute of Frauds.[14]

1. The Texas Statute of Conveyances

The Texas Statute of Conveyances is located within the Texas Property Code.[15] This statute, while very similar to the Texas Statute of Frauds, is less cited.[16] The Texas Statute of Conveyances requires that a conveyance of an estate for more than one year in land be in writing.[17] Specifically, this statute states: "A conveyance of an estate of inheritance, a freehold, or an estate for more than one year, in land and tenements, must be in writing and must be subscribed and delivered by the conveyor or by the conveyor's agent authorized in writing."[18]

The writing requirement is not the only requirement contained in the Texas Statute of Conveyances.[19] It also requires that the conveyor or the conveyor's authorized agent subscribe and deliver the writing.[20] According to Texas court decisions, oil and gas leases,[21] assignments of working interests,[22] assignments of overriding royalty interests,[23] and mineral and royalty deeds[24] are considered conveyances of interests in real property. The statute also applies to areas of mutual interest agreements,[25] farmout agreements,[26] and other oil and gas contracts and agreements.[27] Because Texas considers these assignments as conveyances of real property, each must comply with the Statute of Frauds in order to be valid.[28]

2. The Texas Statute of Frauds

The Texas Statute of Frauds, which oddly is found in the Texas Business and Commerce Code, applies to a contract for the sale of real estate.[29] The Texas Statute of Frauds provides that:

---

14. *Id.*; BUS. & COM. § 26.01(b)(4).
15. PROP. § 5.021.
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.*
21. *See* Long Trusts v. Griffin, 222 S.W.3d 412, 416 (Tex. 2006).
22. *See* May v. Buck, 375 S.W.3d 568, 572 (Tex. App.—Dallas 2012, no pet. h.).
23. *See* Quigley v. Bennett, 227 S.W.3d 51, 54 (Tex. 2007); Pecos Dev. Corp. v. Hydrocarbon Horizons, Inc., 803 S.W.2d 266, 267 (Tex. 1991).
24. *See* Stovall v. Poole, 382 S.W.2d 783, 784 (Tex. App.—Waco 1964, writ ref'd n.r.e.).
25. Westland Oil Dev. Corp. v. Gulf Oil Corp., 637 S.W.2d 903, 909–10 (Tex. 1982).
26. *See* Stekoll Petroleum Co. v. Hamilton, 255 S.W.2d 187, 190–91 (Tex. 1953).
27. *See* Beverly Found. v. W.W. Lynch, 301 S.W.3d 734, 740 (Tex. App.—Amarillo 2009, no pet. h.); Thompson v. Clayton, 346 S.W.3d 650, 654 (Tex. App.—El Paso 2009, no pet. h.).
28. TEX. BUS. & COM. CODE ANN. § 26.01(b)(4).
29. *Id.*

> Promise or Agreement Must Be in Writing
> (a) A promise or agreement described in Subsection (b) of this section is not enforceable unless the promise or agreement, or a memorandum of it, is
>
> (1) in writing; and
>
> (2) signed by the person to be charged with the promise or agreement or by someone lawfully authorized to sign for him.
>
> (b) Subsection (a) of this section applies to:
>
> (1) a promise by an executor or administrator to answer out of his own estate for any debt or damage due from his testator or intestate;
>
> (2) a promise by one person to answer for the debt, default, or miscarriage of another person;
>
> (3) an agreement made on consideration of marriage or on consideration of nonmarital conjugal cohabitation;
>
> (4) a contract for the sale of real estate;
>
> (5) a lease of real estate for a term longer than one year;
>
> (6) an agreement which is not to be performed within one year from
> t he date of making the agreement;
>
> (7) a promise or agreement to pay a commission for the sale or purchase of:
>
> (A) an oil or gas mining lease;
>
> (B) an oil or gas royalty;
>
> (C) minerals; or
>
> (D) a mineral interest.[30]

To summarize, the Texas Statute of Frauds requires that: (1) the agreement or memorandum be in writing; (2) each party to the agreement sign the memorandum; and (3) the document must contain all the essential elements of the agreement so that the nature of the agreement may be ascertained without the need for outside information.[31] An additional element for real property transactions is that the land conveyed must be specifically described to comply with the Statute of Frauds.[32]

B. Property Descriptions that Satisfy the Statute of Frauds

Because a conveyance in real property must comply with the Statute of Frauds, the land to be conveyed must be specifically described.[33] This specific land description must be included within the document itself or must

30. *Id.*

31. Cohen v. McCutchin, 565 S.W.2d 230, 232 (Tex. 1978).

32. *See* May v. Buck, 375 S.W.3d 568, 574 (Tex. App.—Dallas 2012, no pet.).

33. Wilson v. Fisher, 188 S.W.2d 150, 152 (Tex. 1945); *see also* Pick v. Bartel, 659 S.W.2d 636, 637 (Tex. 1983); Kmiec v. Reagan, 556 S.W.2d 567, 569 (Tex. 1977); Morrow v. Shotwell, 477 S.W.2d 538, 539 (Tex. 1972).

reference an already existing writing that describes the land.[34] This description should be specific enough that a person, from the written description, can locate the land described upon the ground.[35]

1. Describing with Specificity the Land Conveyed

Issues have arisen as to what level of specificity is sufficient.[36] When considering whether the land can be located, the court will inquire into whether "a person familiar with the area can locate the premises with reasonable certainty."[37] This theory is often referred to as the "'nucleus of description' theory."[38] Courts ordinarily give a liberal construction to the words in the description to allow the conveyance to be upheld and have allowed parties to admit parol evidence to describe descriptive words that were used to describe the conveyed land.[39] Thus, because of the *nucleus of description theory*, the specificity of the land description may be subject to considering evidentiary proof; however, one should still note that the determination as to whether the deed is valid remains a question of law.[40]

2. Issues that Arise with Multiple Documents

Because oil and gas transactions are typically recorded as a memorandum, issues arise when the filed memorandum fails to include or reference the property description.[41] If the conveyance document does not satisfy the Statute of Frauds, regardless of the existence of other documents that contain the property description, the conveyance will be void.[42] This is not to say that a void conveyance can never be fixed.[43] Texas courts have allowed grantors to subsequently file documents with a sufficient property description to correct or ratify a void instrument.[44] In *Reserve Petroleum v.*

---

34. *Fisher*, 188 S.W.2d at 152; *see also Pick*, 659 S.W.2d at 637; *Kmiec*, 556 S.W.2d 567; *Morrow*, 477 S.W.2d at 539.

35. Compton v. Tex. Se. Gas Co., 315 S.W.2d 345, 348 (Tex. App.—Houston 1958, writ ref. n.r.e.).

36. *See* Swinehart v. Stubbeman, McRae, Sealy, Laughlin & Browder, Inc., 48 S.W.3d 865, 877 (Tex. App.—Houston [14th Dist.] 2001, pet. denied); Siegert v. Seneca Res. Corp., 28 S.W.3d 680, 682 (Tex. App.—Corpus Christi 2000, no pet.).

37. Apex Fin. Corp. v. Garza, 155 S.W.3d 230, 237 (Tex. App.—Dallas 2004, pet. denied) (citing Gates v. Asher, 280 S.W.2d 247, 248–49 (Tex. 1955)); *see also* Fears v. Tex. Bank, 247 S.W.3d 729, 735 (Tex. App.—Texarkana 2008, pet. denied).

38. *Siegert*, 28 S.W.3d at 683 (citing Westland Oil Dev. Corp. v. Gulf Oil Corp., 637 S.W.2d 903, 909 (Tex. 1982)).

39. *Gates*, 280 S.W.2d at 248–49 (allowing parol evidence to describe a typographical error that deemed a descriptive word unfamiliar to the Court).

40. *Fears*, 247 S.W.3d at 735.

41. *Swinehart*, 48 S.W.3d at 877.

42. *Id.*

43. Rsrv. Petroleum Co. v. Hodge, 213 S.W.2d 456, 458 (Tex. 1948).

44. *Id.* at 485 (stating that "[b]ecause [the deeds] contained no description of the land the two mineral deeds, when delivered, were inoperative, but according to our decisions they were not so wholly void that

Hodges, a grantor filed two mineral deeds without a proper legal description, but a later-filed oil and gas lease on the same property, by the same grantor, with the proper legal description was viewed as a ratification of the earlier void deed.[45] By later affixing or ratifying a property description, the previously unenforceable contract can become enforceable.[46]

Another issue involving multiple documents is when the second document fails to reference the first document.[47] A conveyance can include multiple writings that constitute the contract as a whole; however, the most recent document must reference the previous document.[48] For example, should an oil and gas lease reference the original deed's property description, the oil and gas lease should specifically state where the original deed is filed, including a description of the original deed, the county in which the deed is filed, as well as volume and page number references.[49]

3. Farmout Agreements and the Statute of Frauds: Referencing Other Writings

As previously stated, the land description of the property to be conveyed may be included by reference.[50] Many times, the reference to some other existing writing for a legal description arises in the drafting of an area of mutual interest clause in a farmout agreement.[51] Such a clause usually provides that both parties to a farmout will be entitled to certain interests in any future leases that either party acquires.[52] Unless the right to share interests in future lease acquisitions is limited to a defined area, the agreement violates the Statute of Frauds.[53] However, by referring to other writings, such as the oil and gas leases attached to the farmout agreement, which do contain adequate legal descriptions, the area of mutual interest can be properly defined.[54] Satisfying the Statute of Frauds becomes more difficult if the

---

they could not thereafter have been made operative and effective by the insertion, if authorized by the grantors, of a correct description of the land intended to be conveyed").

45. *Id.*

46. *Id.* at 457.

47. Morrow v. Shotwell, 477 S.W.2d 538, 539 (Tex. 1972); Owen v. Hendricks, 433 S.W.2d 164, 166–67 (Tex. 1968); Taber v. Pettus Oil & Refin. Co., 162 S.W.2d 959, 961 (Tex. 1942).

48. *See* Adams v. Abbott, 254 S.W.2d 78, 80 (Tex. 1952).

49. *Deed Recording*, AM. L. & LEGAL INFO., https://law.jrank.org/pages/6018/deed-recording.html (last visited Nov. 14, 2020).

50. Wilson v. Fisher, 188 S.W.2d 150, 152 (Tex. 1945); *see also* Pick v. Bartel, 659 S.W.2d 636, 637 (Tex. 1983); Kmiec v. Reagan, 556 S.W.2d 567, 569 (Tex. 1977); *Morrow*, 477 S.W.2d at 539.

51. *See Area of Mutual Interest Agreements: Avoiding Property Description Pitfalls*, THOMPSON & KNIGHT LLP (Feb. 10, 2013), https://www.tkoilandgasupdate.com/2013/02/area-of-mutual-interest-agreements-avoiding-property-description-pitfalls.html.

52. Smith, *supra* note 8, at G-1.

53. *Id.*

54. *See* Bethea v. Wall, 362 S.W.2d 414, 416 (Tex. App.—Waco 1962, no writ) (explaining that when "[t]he description in the lease . . . does not contain within itself sufficient description, and contains no reference to any other existing writing for a further description [or] . . . no 'nucleus' or 'key' . . . to

parties also attempt to create areas of mutual interest in other adjoining, unleased areas by the use of a map or plat.[55] When properly incorporated into the agreement and adequately drawn, a map or plat can provide a good property description that complies with the Statute of Frauds; however, if not properly prepared or identified, a plat is an insufficient description.[56]

C. Applicability to Oil and Gas Agreements

Texas case law holds that a number of interests in oil and gas constitute a transaction involving real property and therefore must comply with the Statute of Frauds. These interests include: (1) oil and gas leases,[57] (2) mineral deeds when the minerals in place are severed from the surface estate,[58] (3) royalty interests regardless of whether they are payable in money or payable in kind,[59] (4) an oil payment out of a fractional share in minerals,[60] (5) farmout agreements that usually contain the obligation to convey acreage,[61] and (6) easements,[62] and operating agreements[63] dependent on the nature of the agreement.

III. TEXAS COURTS' INTERPRETATION OF LAND DESCRIPTIONS

As previously stated, while a court may allow in *some* extrinsic proof to provide guidance to the court as to whether the land description is sufficient, the ultimate decision as to the validity of the instrument is a question of law.[64] The Court will examine the property description and decide whether the description is sufficient to comply with the Statute of Frauds at the time of the conveyance's creation.[65]

---

which extraneous evidence may be directly tied to determine the interest of the lessor[,] . . . the description is insufficient").

55. Smith, *supra* note 8, at G-1.

56. Terry N. McClure, *Overlooked Formalities*, at 3 (1995), http://www.oilgas.org/Private/Content/Documents/9/UTOGMI94McClure.pdf.

57. Stephens Cty. v. Mid-Kansas Oil & Gas Co., 254 S.W. 290, 292 (Tex. 1923).

58. Grissom v. Anderson, 79 S.W.2d 619, 621 (Tex. 1935); Humphreys-Mexia Co. v. Gammen, 254 S.W. 296, 299 (Tex. 1923); *Stephens Cty.*, 254 S.W. at 292.

59. TEX. BUS. & COM. CODE ANN. § 26.01; Stovall v. Poole, 382 S.W.2d 783, 784 (Tex. App.—Waco 1964, writ ref'd n.r.e.); s*ee also* Johnson v. Tex. Gulf Coast Corp., 359 S.W.2d 91, 92 (Tex. App.—San Antonio 1962, no writ).

60. Minchen v. Fields, 345 S.W.2d 282, 287 (Tex. 1961).

61. Eland Energy, Inc. v. Rowden Oil & Gas, Inc., 914 S.W.2d 179, 186–87 (Tex. App.—San Antonio 1995, writ denied).

62. Pick v. Bartel, 659 S.W.2d 636, 637 (Tex. 1983); Anderson v. Tall Timbers Corp., 378 S.W.2d 16, 23 (Tex. 1964).

63. Hill v. Heritage Res. Inc., 964 S.W.2d 89, 134–35 (Tex. App.—El Paso 1997, pet. denied); *see also Eland Energy, Inc.*, 914 S.W.2d at 179; Crowder v. Tri-C Res., Inc., 821 S.W.2d 393, 396 (Tex. App.—Houston [1st Dist.] 1991, no writ). *Cf.* C&C Partners v. Sun Expl. & Prod. Co., 783 S.W.2d 707, 714–15 (Tex. App.—Dallas 1989, writ denied).

64. Fears v. Tex. Bank, 247 S.W.3d 729, 735 (Tex. App.—Texarkana 2008, pet. denied).

65. Stekoll Petroleum Co. v. Hamilton, 255 S.W.2d 187, 190–92 (Tex. 1953).

A. The Court's Use of Parol Evidence

The Court will first look at the instrument itself and will only use parol evidence to supplement its inquiry.[66] The Texas Supreme Court explained the role of parol evidence as follows:

> The certainty of the contract may be aided by parol only with certain limitations. The essential elements may never be supplied by parol. The details which merely explain or clarify the essential terms appearing in the instrument may ordinarily be shown by parol. But the parol must not constitute the framework or skeleton of the agreement. That must be contained in the writing. Thus, resort to extrinsic evidence, where proper at all, is not for the purpose of supplying the location or description of the land, but only for the purpose of identifying it with reasonable certainty from the data in the memorandum.[67]

One such instance where the court considered extrinsic evidence was in *Siegert v. Seneca Resources Corp*.[68] In that case, the court allowed a licensed surveyor to provide extrinsic proof.[69] The case involved a 1932 mineral reservation where the Appellants claimed that the reservation was invalid because the land description was insufficient.[70] The pertinent part of that reservation stated:

> Also 100 acres of land, now situated in Burleson County, Texas, and was formerly part of the Walter Sutherland League, and is lying in the bend of the old Brazos River, on the Burleson County side, as it now runs. This tract of land was formerly part of the Walter Sutherland League in Brazos County, Texas. But now since the Brazos River has changed its course, this land is in Burleson County, Texas, and almost surrounded by the Fisher League. An actual survey made by W.B. Francis on the 26th day of May 1931 shows the land, contained inside of the banks of the old river to be 98.2 acres of land. If one half of the old river bed should be included in the survey, then the acreage would be 130 acres of land.[71]

During the *Siegert* case, a licensed surveyor submitted an affidavit that stated that although he would not have been able to presently locate the land using the land description in the 1932 conveyance, the 1932 description would have been sufficient to locate the property *in* 1932.[72] Because the court

66. Wilson v. Fisher, 188 S.W.2d 150, 152 (Tex. 1945); *see also Pick*, 659 S.W.2d at 637 (holding that extrinsic evidence should not be used to determine the location of the property or to provide a description of the property).

67. *Pick*, 659 S.W.2d at 637.

68. Siegert v. Seneca Res. Corp., 28 S.W.3d 680, 682 (Tex. App.—Corpus Christi 2000, no pet.).

69. *Id.* at 683.

70. *Id.* at 682.

71. *Id.*

72. *Id.* at 683.

allowed extrinsic evidence, the court held that the land description was sufficient to satisfy the Statute of Frauds.[73]

The case also presents another interesting caveat to land description: the land description must have met the specificity requirement at the time of drafting.[74] Courts have recognized that landmarks change and structures are built over.[75] Because of this, Texas courts are slightly more lenient regarding the specificity requirement on particularly old land descriptions.[76]

B. Early Texas Cases

1. Wilson v. Fisher

In a classic early case, Mrs. Fisher and Mrs. Wilson each drafted a contract.[77] Both parties signed each of the contracts, which were for Mrs. Wilson's purchase of a brick duplex and garage apartment located on Lot 13, Black N/2047, Perry Heights Addition to the City of Dallas, Texas.[78] As the case describes:

> The instrument drafted by Mrs. Fisher is as follows:
>
> "July 21/43 Contract of Sale. Recd of Mrs. Josephine Wilson $300 in part payment on brick duplex & garage apt located at 4328-30 Cedar Springs on this 21st July 1943 at a price of Sixty Three Hundred & Fifty dollars including furniture at 4330 except one hexagon large table in living room, this also includes rollaway bed in garage apt. Terms all cash, abstract to be furnished by seller. Room at back not included."
>
> The one drafted by Mrs. Wilson is as follows:
>
> "Dallas, Texas July 21, 1943 Received of Mrs. Josephine G. Wilson $300.00 in cash as earnest money on the purchase of property at 4328-4330 Cedar Springs Road total consideration being $ 6,350.00, including entire furnishings of north side apartment (excepting one antique library table), furniture includes one Frigidaire and 3 Murphy beds (1 without mattress). This is a cash consideration when all papers, abstract, etc. have been examined & accepted by Josephine G. Wilson. Full possession of property to be given by Aug. 15th, 1943."[79]

Mrs. Fisher sued Mrs. Wilson for specific performance of the alleged agreement of the parties reflected in the above contracts.[80] "Each party

---

73. *Id.*
74. *Id.*
75. *See generally id.*
76. *See generally id.*
77. Wilson v. Fisher, 188 S.W.2d 150, 152–53 (Tex. 1945).
78. *Id.* at 151.
79. *Id.* at 152.
80. *Id.* at 151.

tendered into court the amount of money alleged to be due the other."[81] "The trial resulted in a judgment for specific performance. The Court of Civil Appeals at Dallas, by majority opinion, held the alleged agreement was not sufficiently specific to identify the property. . . ."[82] In addition to holding that the agreement did not identify the property, the court stated that the agreement was within the Statute of Frauds and not enforceable either in a suit for specific performance or for damages.[83] The court further held that Mrs. Wilson would take nothing by her suit except for the amount she had paid into the registry of the court and tendered to Mrs. Fisher.[84] The Texas Supreme Court affirmed the judgment of the Court of Civil Appeals.[85] In the Court's opinion, the only questions presented were: (1) whether or not the agreement signed by Mrs. Wilson and Mrs. Fisher was within the Statute of Frauds, and if so, (2) whether the description of the property to be sold was sufficiently specific as to identify the property with reasonable certainty.[86] The Court explained that a contract to sell real property was clearly within the Statute of Frauds and following such reasoning, held that the description was "palpably insufficient to support a suit either for specific performance or for damages."[87] It noted a number of facts that indicated that the description was insufficient.[88] First, neither of the instruments specifically indicated that Mrs. Fisher was the owner of the property.[89] Additionally, the lot and block number and amount of land were not stated, nor was the property designated as any particular named tract or located in connection with any named city, county, or state.[90]

In reaching its decision in this case, the Texas Supreme Court reviewed the historical development of precedent in Texas regarding legal descriptions of land.[91] Mrs. Wilson cited a line of cases including: *Morrison v. Dailey*,[92] *Fulton v. Robinson*,[93] *Cunyus v. Hooks Lumber Co.*,[94] *Sorsby v. Thom*,[95] and *Kruger v. W.K. Ewing & Co.*[96] This line of cases held that a description of land by the particular name it is known by in the locality is sufficient to satisfy the Statute of Frauds.[97] For example, in *Morrison*, the Court held a reference

81. *Id.*
82. *Id.*
83. *Id.*
84. *Id.*
85. *Id.* at 154.
86. *Id.* at 153.
87. *Id.* at 154.
88. *Id.*
89. *Id.* at 153–54.
90. *Id.* at 154.
91. *Id.* at 152–53.
92. Morrison v. Dailey, 6 S.W. 426 (Tex. 1887).
93. Fulton v. Robinson, 55 Tex. 401 (1881).
94. Cunyus v. Hooks Lumber Co., 48 S.W. 1106 (Tex. 1899).
95. Sorsby v. Thom, 122 S.W.2d 275 (Tex. App.—Galveston 1938, writ dism'd).
96. Kruger v. W.K. Ewing & Co., 139 S.W.2d 836 (Tex. App.—El Paso 1940, no writ).
97. Wilson v. Fisher, 188 S.W.2d 150, 153 (Tex. 1945).

in a memorandum to "the James Perry Tract of Land" was sufficient because it designated the owner of the property and specified it as a particular named tract in a known locality.[98]

2. Morrison*,* Fulton*, and Its Predecessors—Locality Rule Cases*

The *Morrison* decision followed a similar, previous decision—*Fulton*.[99] In *Fulton*, the Court upheld the validity of a receipt which recited that the money received was "in part[ial] payment of a certain tract of land, being my own headright, lying on Rush creek, in the cross timbers."[100] The *Fulton* Court concluded that the reference to the grantor's headright furnished the means by which the identity of the land might be made certain.[101] The Supreme Court cited similar cases on point with *Morrison* and *Fulton*, such as *Cunyus*, where the contract entitled "Kountze, Tex. . . . [was] to sell one certain tract of land, known as the Vanmeter Survey,"[102] *Sorsby*, where the description was "Rock Island Plantation,"[103] and *Krueger*, where the property was described as "the San Gabriel Apartments."[104]

In *Wilson*, the Texas Supreme Court found no reference to any particular named tract to bring the case under *Morrison*, nor to a headright as in *Fulton*, or any other writing by which the land might be identified.[105] Instead, it examined early cases with facts similar to *Wilson*, such as *Jones v. Carver*,[106] *Rosen v. Phelps*,[107] *Penn v. Texas Yellow Pine Lumber Co.*,[108] and *Osborne v. Moore*.[109]

98. Morrison v. Dailey, 6 S.W. 426, 426 (Tex. 1887); *see also* Living Christ Church, Inc. v. Jones, 734 S.W.2d 417 (Tex. App.—Dallas 1987, writ denied) (holding that a description of land by a particular name that is known locally, when supported by evidence as to the common name, may be a sufficient description). *But see* Dunworth Real Est. Co. v. Chavez Props., No. 04-0700237-CV, 2008 WL 36222, at *1, *5 (Tex. App.—San Antonio Jan. 2, 2008, no pet.) (holding that the description "Airport Security Parking" contained in a hand-written memorandum argued to be the commonly known name of the property by the buyer was an inadequate description because there was no city, state, or county listed; there was ambiguity as to whether the description referred to the land or the business; and the description did not refer to all the land owned by seller in the area).

99. Fulton v. Robinson, 55 Tex. 401, 404 (1881).

100. *Id.*

101. *Id.*

102. Cunyus v. Hooks Lumber Co., 48 S.W. 1106, 1107 (Tex. 1899).

103. Sorsby v. Thom, 122 S.W.2d 275, 275 (Tex. App.—Galveston 1938, writ dism'd).

104. Kruger v. W.K. Ewing & Co., 139 S.W.2d 836, 838 (Tex. App.—El Paso 1940, no writ).

105. Wilson v. Fisher, 188 S.W.2d 150, 153 (Tex. 1945).

106. Jones v. Carter, 59 Tex. 293 (1883).

107. Rosen v. Phelps, 160 S.W. 104 (Tex. App.—Fort Worth 1913, writ ref'd).

108. Penn v. Tex. Yellow Pine Lumber Co., 79 S.W. 842 (Tex. App.—Galveston 1904, writ ref'd).

109. Osborne v. Moore, 247 S.W. 498 (Tex. 1923).

3. Jones*,* Rosen*,* Penn*, and* Osborne*—Limits on Parol Evidence*

In *Jones*, the contract was to survey "a piece of land, supposed to be forty acres."[110] The grant or size of the grant from which the tract was to be taken was not mentioned, nor was the county or state where the land was located.[111] The Court held that parol evidence was not admissible to show what land the parties intended.[112] In *Rosen*, the agreement concerned the exchange of two parcels of land.[113] One party agreed to convey "a certain three thousand acres in Bosque County, Texas" with no designation of the owner or data as to the location in the county.[114] The other party agreed to convey certain lots described only by lot and block number.[115] The conveyance had no reference to the city, county, or state in which they were found.[116] Although prior to execution, the parties inspected the lots, studied a plat of the acreage, and undoubtedly knew the exact lands involved, the court refused to enlarge the contract by extrinsic evidence and held the description insufficient.[117] Likewise, the court in *Penn* held that the description in a memorandum of "the 6,100 acres under consideration" was insufficient.[118] It held that the appellant could not show by parol proof what land was "under consideration."[119]

Lastly, the Texas Supreme Court reviewed the *Osborne* case, which it found to be "parallel in essential points" to *Wilson*.[120] In that case, a memorandum of a contract referenced a house to be purchased on "North Oak St."[121] Neither the contract nor a check given to secure it stated the owner of the property, nor the town, city, county, or state in which the house was located.[122] The Court thus held the contract and check insufficient to describe the house under the Statute of Frauds.[123]

Although the review of the early Texas Statute of Frauds cases in *Wilson* is not exhaustive, the case provides a guideline as to sufficiency standards for legal descriptions in the past.[124] The lesson to be learned is that it typically does not matter if the seller and buyer know the location of the land

110. *Jones*, 59 Tex. at 294.
111. *Id.*
112. *Id.* at 296.
113. Rosen v. Phelps, 160 S.W. 104, 105 (Tex. App.—Fort Worth 1913, writ ref'd).
114. *Id.*
115. *Id.*
116. *Id.*
117. *Id.* at 106.
118. Penn v. Tex. Yellow Pine Lumber Co., 79 S.W. 842, 844 (Tex. App.—Galveston 1904, writ ref'd).
119. *Id.* at 844.
120. Wilson v. Fisher, 188 S.W.2d 150, 154 (Tex. 1945).
121. Osborne v. Moore, 247 S.W. 498, 498 (Tex. 1923).
122. *Id.* at 499.
123. *Id.* at 500.
124. *Fisher*, 188 S.W.2d at 152.

concerned; rather, the test is whether a third party can find the land upon the ground based upon the information presented.[125] Despite the fact that the rule requires the land to be identified with "reasonable certainty," the courts appear to apply a more rigorous standard similar to "beyond a reasonable doubt."[126] For drafters of oil and gas instruments, specificity and attention to detail are essential.

C. The Court's Interpretation of Legal Descriptions Using Other Writing

Not only should a drafter be concerned with the language of the description, the drafter should also avoid voidance by ensuring that plats and maps properly describe the land conveyed. When properly incorporated into the agreement and adequately drawn, a map or plat can provide a good property description that complies with the Statute of Frauds; however, if not properly prepared or identified, a plat is an insufficient description.[127] According to one drafter of such agreements, care should be taken to outline the plat along recognizable survey lines and include within it a specific description of the exact lands covered by section, block, survey, and county signed by all parties to the agreement.[128] The description should be adequate enough that a third party familiar with the area could, using the plat, locate the property with reasonable certainty.[129]

1. Westland Oil Development Corp. v. Gulf Oil Corp.

Probably the most frequently cited case involving references to other writings and legal descriptions in the area of mutual interest clauses is *Westland Oil Development Corp. v. Gulf Oil Corp.*[130] In that case, a 1966 letter agreement read as follows:

> If any of the parties hereto, their representatives or *assigns*, acquire any additional leasehold interests affecting any of the lands covered by said farmout agreement, or any additional interest from Mobil Oil Corporation under lands in the area of the farmout acreage, such shall be subject to the terms and provisions of this agreement.[131]

---

125. *See id.*; *see also* Compton v. Tex. Se. Gas Co., 315 S.W.2d 345, 348–49 (Tex. App.—Houston 1958, writ ref'd n.r.e.).

126. *See generally Fisher*, 188 S.W.2d at 152.

127. McClure, *supra* note 56, at 3.

128. *Id.*

129. *See* Apex Fin. Corp. v. Garza, 155 S.W.3d 230 (Tex. App.—Dallas 2004, pet. denied).

130. Westland Oil Dev. Corp. v. Gulf Oil Corp., 637 S.W.2d 903 (Tex. 1982).

131. *Id.* at 905.

The Texas Supreme Court analyzed the letter agreement as an attempt to create two separate descriptions of land.[132] The first description covered "leasehold interests affecting any of the lands covered by said farmout" and the second description covered "lands in the area of the farmout acreage."[133] The Court held that the first description was legally sufficient to satisfy the Statute of Frauds because the words "said farmout" referenced a farmout agreement that was attached to the letter agreement and contained an adequate legal description.[134] However, the Court also held that the second description violated the Statute of Frauds because "lands in the area of the farmout acreage" simply meant lands in close proximity to the farmout acreage and was not legally sufficient.[135] The Court could not locate anything within the 1966 letter agreement identifying the word "area" as the "Rojo Caballos Area" claimed by *Westland*.[136]

The rationale of *Westland* is that it is permissible, but dangerous, to rely on "other existing writing[s]" in describing the lands covered by an agreement.[137] Additionally, if maps and plats are used, they should be carefully drawn and should include a written description of the lands covered.

2. Long Trusts v. Griffin

In this 2006 Texas Supreme Court case, the Griffins and other predecessors entered into letter agreements with the Trusts.[138] The letter agreements stated that the investors would pay a specified percentage of the costs for "drilling, completing, and operating the wells, and if [they] were producers, the Trusts would assign or credit to the investors a specified undivided interest in the working interest" that the Trusts owned in the wells.[139] Most of the wells produced oil, and thereafter disputes arose between the Griffins and the Trusts.[140] Neither party could agree on issues, such as when the investors should receive assignments, the billing practices, the specific provisions of the assignments, and what percentage each party would have of an eleven million dollar settlement of a "take or pay" lawsuit the Trusts had filed involving the wells in question.[141]

---

132. *Id.* at 909.
133. *Id.* at 905.
134. *Id.* at 909.
135. *Id.* at 905.
136. *Id.* at 910.
137. *See* Preston Expl. Co., v. Chesapeake Energy Corp., 669 F.3d 518, 522 (5th Cir. 2012).
138. Long Trusts v. Griffin, 144 S.W.3d 99, 103 (Tex. App.—Texarkana 2004, pet. granted), *rev'd*, 222 S.W.3d 412 (Tex. 2006).
139. *Id.*
140. *Id.*
141. *Id.*

The Texas courts struggled with the correct outcome of the case.[142] First, the trial court found that the letter agreements were valid.[143] Then, the Court of Appeals of Texarkana did not discuss whether the agreement letters were valid, but instead held that they were enforceable because each side had "acted in full recognition and acceptance of the validity of the letter agreements for more than twenty years."[144] Finally, the Supreme Court reversed this decision finding that the assignment letters did not comply with the Statute of Frauds.[145]

In the Supreme Court's view, the controlling issue was that the exhibits that the letters incorporated did not contain sufficient information.[146] At issue were two letter agreements between the parties: a 1978 agreement and a 1982 agreement.[147] The pertinent information of the 1978 letter agreement stated that the leases were located "'in the Northeast portion of Rusk County, Texas, and consist[ed] of 50+ leases covering approximately 2100+ net mineral acres in the Dirgin and Oak Hill Fields area' as 'described in the attached Exhibit 'A.'"[148]

The exhibit attached to the letter also only listed "the lessor name, the survey name, the term, and the net acreage for each lease issue."[149] The Court found that this information was insufficient to identify the exact location of the conveyed land to a reasonable certainty and that the agreement was voidable for uncertainty.[150]

The Court then considered the 1982 letter agreement, which did not fare much better.[151] The pertinent language of the 1982 letter agreement stated that the leases were:

> "[L]ocated in the Northcentral portion of Rusk County, Texas, in the North Henderson Field Area, and consist[ed] of 143 leases covering approximately 2100 net mineral acres" as "described in the attached Exhibit 'A.'" It also stated that "[a]ll of the acreage as shown on Exhibit 'A' (attached) is dedicated to a Gas Contract with Tejas Gas Corporation."[152]

The Court observed that no "Exhibit A" was attached to the 1982 agreement.[153] In a last ditch effort to save the leases, the Tejas Gas Corporation contract was also admitted into evidence in hopes that that

142. *Id.*
143. *Id.*
144. *Id.* at 105.
145. Long Trusts v. Griffin, 222 S.W.3d 412, 416 (Tex. 2006).
146. *Id.*
147. *Id.*
148. *Id.* (alteration in original).
149. *Id.*
150. *Id.*
151. *Id.* at 417.
152. *Id.* at 416 (alteration in original).
153. *Id.*

writing would contain a sufficient land description.[154] However, the Tejas contract stated that the contract covered the land described in both "Exhibit 'A'" and "Exhibit 'B,'" but the issue was that "Exhibit 'A'" only contained point headings and the pertinent information below each was left blank.[155] To compound the problem, the Court noted that "Exhibit 'B'" only contained a plat, which alone was insufficient to satisfy the Statute of Frauds.[156] The Court likewise found the 1982 agreement unenforceable.[157] The case illustrates that even if a drafter attempts to make multiple references to other land descriptions to ensure validity, the documents that he or she references must themselves satisfy the Statute of Frauds.[158]

D. Judicial Exceptions to the Statute of Frauds

The Statute of Frauds exists to create order and stability in real property.[159] While the rule is applicable to oil and gas leases, and thus a conveyance is voidable if it is non-compliant, there are a few narrow exceptions when a conveyance of real property will be upheld even if it does not satisfy the Statute of Frauds.[160] Exceptions worthy of note here are partial performance, estoppel, and reformation.[161]

1. Partial Performance

Partial performance is a judicially created equitable remedy.[162] While the doctrine may be used to validate a conveyance that fails to comply with the Statute of Frauds, drafters should not rely on this doctrine as a substitute for careful drafting.[163] In order to establish partial performance, the individual asserting the claim of partial performance must show that:

> (1) [*T*]*hey* had performed acts unequivocally referable to the agreement[;] (2) that the acts were performed in reliance on the agreement[;] (3) that as a result of the acts they had experienced substantial detriment[;] (4) that they have no adequate remedy for their loss[;] and (5) that [the seller] would

154. *Id.*
155. *Id.* at 417.
156. *Id.*
157. *Id.*
158. *See id.*
159. *See* TEX. PROP. CODE ANN. § 5.021.
160. *See infra* Part III.D (discussing that both partial performance and equitable estoppel are narrow exceptions for an insufficient property description).
161. *See infra* Part III.D.1–2 (examining both partial performance and equitable estoppel).
162. *See* TEX. BUS. & COM. CODE ANN. § 26.01; Thomas v. Miller, 500 S.W.3d 601, 609 (Tex. App.—Texarkana 2016, no pet.) (citing Bookout v. Bookout, 165 S.W.3d 904 (Tex. App.—Texarkana 2005, no pet.)).
163. *See* Nagle v. Nagle, 633 S.W.2d 796, 799–800 (Tex. 1982); Exxon Corp. v. Breezevale Ltd., 82 S.W.3d 429, 438 (Tex. App.—Dallas 2002, pet. denied); Birenbaum v. Option Care, Inc., 971 S.W.2d 497, 503 (Tex. App.—Dallas 1997, pet. denied).

> reap an unearned benefit such that not enforcing the agreement would amount to a virtual fraud.[164]

Drafters should be aware that courts are reluctant to provide relief on the ground of partial performance because doing so would leave the Statute of Frauds obsolete and create chaos in the world of real property conveyances.[165] However, in an era where the oil industry is booming off and on, the courts may assent to allowing this doctrine to be asserted more frequently.

2. Estoppel

Estoppel, which functions very similarly to partial performance, is yet another judicially created relief and exception to the Statute of Frauds.[166] Courts, however, are even more reluctant to rely upon this doctrine to validate real property documents in fear of superseding the Statute of Frauds.[167] As with partial performance, drafters should be careful in relying upon this doctrine to save a poorly drafted instrument because courts have applied this doctrine quite inconsistently.[168]

In one case, the defendant denied that the plaintiff and defendant had an area of mutual interest agreement.[169] However, the plaintiff introduced testimony that a representative for the defendant stated that the plaintiff had such an agreement.[170] The court denied the claim on the grounds that estoppel is not an independent cause of action.[171] Because of this holding, the court precluded the plaintiff from relying upon the doctrine of estoppel to enforce the alleged agreement.[172]

In a similar case, the Court of Appeals of Fort Worth came to a different conclusion.[173] This case involved a deed for land and the court found that the deed was valid.[174] It held:

---

164. *Thomas*, 500 S.W.3d at 609.

165. *See Nagle*, 633 S.W.2d at 799–800; *Exxon Corp.*, 82 S.W.3d at 438; *Birenbaum*, 971 S.W.2d at 503.

166. Wyde v. Francesconi, 566 S.W.3d 890, 897 (Tex. App.—Dallas 2018, no pet.).

167. *See* Stephen Foster, *Exceptions to the Statute of Frauds*, FOSTER & FOSTER, P.L.L.C., https://www.stephenfosterlaw.com/business/contracts/breach-of-contract/exceptions-statute-of-frauds/ (last visited Nov. 14, 2020).

168. *Compare* Crowder v. Tri-C Res., Inc., 821 S.W.2d 393 (Tex. App.—Houston [1st Dist.] 1991, no writ) *with* Clifton v. Ogle, 526 S.W.2d 596, 602 (Tex. App.—Fort Worth 1975, writ ref'd n.r.e.).

169. *Crowder*, 821 S.W.2d at 393.

170. *Id.*

171. *Id.*

172. *Id.*; *see also* Hermann Hosp. v. Nat'l Standard Ins. Co., 776 S.W.2d 249, 254 (Tex. App.—Houston [1st Dist.] 1989, writ denied); Sun Oil Co. (Delaware) v. Madeley, 626 S.W.2d 726, 734 (Tex. 1981).

173. *Crowder*, 821 S.W.2d at 393. *Cf. Clifton*, 526 S.W.2d at 602.

174. *Clifton*, 526 S.W.2d at 602.

> Equitable estoppel or estoppel by misrepresentation is the effect of the voluntary conduct of a person whereby he is precluded, both at law and in equity, from asserting rights against another person relying on such conduct; and it arises where a person, by his acts, representations, or admissions, or even by his silence when it is his duty to speak, intentionally or through culpable negligence induces another to believe that certain facts exist, and the other person rightfully relies and acts on such belief, and will be prejudiced if the former is permitted to deny the existence of such facts.[175]

The difference between these two cases may be that the court found actual fraud in the latter, but in the former, there was less evidentiary support of actual fraud.[176] Regardless of the reasoning for the different results, it is still true that drafters should not rely on the doctrine of estoppel to save conveyances rendered voidable by insufficient land descriptions.

3. Reformation

A third noteworthy "exception" to the technicalities of the Statute of Frauds is the equitable remedy of reformation. Succinctly, reformation exists to correct a mutual mistake made in the preparation of a written instrument so the instrument reflects the original agreement of the parties.[177] While most often seen as an equitable remedy with respect to breach of contract, reformation does have application where an instrument's legal description has failed.[178] Obviously, a practitioner should not rely on reformation, even as a safety net; however, in certain instances, it can save a troublesome lease or deed from catastrophic failure.

An illustrative example of the use of reformation with reference to a deed is *Dillon v. Rosalie Dahl Estate Trust* decided by the Fourteenth District Court of Appeals in Houston.[179] In 1988, Rosalie Dahl conveyed the property wherein she was living to her two daughters and son-in-law.[180] The grantees paid for the deed preparation.[181] Apparently, the grantees' lawyer used the property description from the original deed which conveyed the property to Mrs. Dahl; however, that description was erroneous and had been later corrected.[182] None of the parties recognized the error.[183] In 1995, Mrs. Dahl regretted her decision to convey the property and sought to have it returned,

---

175. *Id.*
176. *Compare Crowder*, 821 S.W.2d at 393 *with Clifton*, 526 S.W.2d at 602.
177. Cherokee Water Co. v. Forderhause, 741 S.W.2d 377, 379 (Tex. 1987).
178. *See* Dillon v. Rosalie Dahl Est. Tr., No. 14-01-01240-CV, 2003 WL 1565959 (Tex. App.—Houston [14th Dist.] Mar. 27, 2003, pet. denied) (mem. op.).
179. *Id.*
180. *Id.* at *1.
181. *Id.*
182. *Id.* at *2.
183. *Id.*

suing the grantees.[184] Again, none of the parties recognized the erroneous description.[185] Later, in 1997, discovering the improper description, Mrs. Dahl took matters into her own hands, executing a "corrected deed," which reconveyed the property to a trust of which she was the beneficiary.[186]

Unsurprisingly, this led to litigation.[187] Initially, the trial court held the 1988 deed to be void, erasing the subsequent history from the title.[188] The Court of Appeals disagreed. The court recognized, based on the behavior of both parties, that a mutual mistake had occurred with respect to the description.[189] The court stated, "[a] mutual mistake of fact in a deed may be grounds for reformation when the mistake constitutes a material inducement to the transaction."[190] The court further recognized that a mutual mistake in a deed may be granted where the parties, under mutual mistake, include the incorrect property.[191] The court ultimately allowed the property description to be reformed.[192]

It is important to note that a suit for reformation is typically governed by the four-year statute of limitations.[193] The four-year statute is tolled at execution of the instrument.[194] The practitioner is cautioned that *Dillion* includes the Court's consideration of an equitable delay to application of the statute of limitations; however, the later Supreme Court case *Cosgrove* states that parties are charged as a matter of law with knowledge of an unambiguous deed's material omissions from the deed upon execution, and the statute of limitations runs from that date.[195] In doing so, the Supreme Court specifically addressed *Sullivan v. Barnett*, the case upon which *Dillon*'s reading of the statute of limitations was based.[196] Therefore, while reformation is a tool to repair the damage of a problematic description, it must be used quickly.

IV. THE STATUTE OF FRAUDS IMPLICATIONS IN TODAY'S OIL INDUSTRY

With the increased oil and gas activity in Texas in recent years, practitioners have continued to run afoul of the Statute of Frauds in a variety of interesting ways. The boomtown atmosphere and entry onto the scene of

184. *Id.*
185. *Id.*
186. *Id.* at *1.
187. *Id.*
188. *Id.*
189. *Id.* at *3.
190. *Id.* at *2 (citing Tex. Jur. 3d *Deeds* § 167 (1998)).
191. *Id.*
192. *Id.* at *5.
193. *Id.* at *4; *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 16.051.
194. *See* Cosgrove v. Cade, 468 S.W.3d 32, 34–35 (Tex. 2015) (stating that "[a] grantor who signs an unambiguous deed is presumed as a matter of law to have immediate knowledge of material omissions").
195. *Id.* at 37.
196. *Dillon*, 2003 WL 1565959, at *4; *Cosgrove*, 468 S.W.3d at 36–37.

relatively inexperienced oil and gas landmen, company personnel, and attorneys appear to have diminished the close scrutiny required for legal descriptions in oil and gas instruments.[197] The following are only a few examples.

A. The Signing Party and Wade v. XTO Energy

In recent years, it has become common for oil and gas companies seeking to obtain leases in or adjacent to population centers or in vast areas of the countryside to conduct "signing part[ies]."[198] Such events usually involve free barbeque for the participants, a promotional talk by the representative of the oil company, and the presentation of leases to be signed by the attending landowners in return for bonus checks.[199]

In a 2013 case, the plaintiff homeowners lived in a subdivision in Tarrant County.[200] The oil company engaged an agent to send out lease offers by mail to obtain oil and gas leases on property in the subdivision.[201] The plaintiffs signed a lease but did not turn it in.[202] After a time, the plaintiffs received a second, better offer, but the plaintiffs did not execute the new lease.[203] The plaintiff's husband attended a signing party hosted by the company agent and brought both the executed and unexecuted leases with him.[204] He was prepared to sign the new lease and asked if his wife needed to come up to the party to sign it as well.[205] The agent, however, told him their signatures to the new lease were unnecessary because they could just use the signature page from the prior lease and "not to 'worry about it.'"[206] The new lease form left blanks for the block and lot owned by the plaintiffs in the Overton Woods Addition to the City of Fort Worth.[207] While the new lease form did not include the block and lot number, the bonus check plaintiffs received at the party did contain a stub that included the block and lot number of the plaintiff's property.[208] This stub, however, also showed that the check was preprinted and dated two days prior to the signing party.[209]

---

197. *See generally* Moore v. Bearkat Energy Partners, LLC, No. 10–17–00001–CV, 2018 WL 683754, at *1 (Tex. App.—Waco Jan. 31, 2018) (holding that the contract between landman and landowner did not comply with the Statute of Frauds because of a deficient land description).

198. *See* Wade v. XTO Energy, Inc., No. 02-12-00007-CV, 2013 WL 257361, at *1–2 (Tex. App.—Fort Worth Jan. 24, 2013, no pet.) (mem. op.).

199. *See id.*

200. *Id.* at *1.

201. *Id.* at *4.

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

After the party, the oil company stopped payment on the bonus check for the new lease.[210] The plaintiff sued for breach of contract and specific performance.[211] After a jury trial and verdict in favor of the plaintiffs, the trial court entered a judgment notwithstanding the verdict for the defendant.[212] On appeal, the Fort Worth Court of Appeals affirmed the judgment of the trial court.[213] The court held that even though the parties knew and understood what property they were leasing, "the lease had to furnish within itself or by reference to another writing the means to identify the leased premises with reasonable certainty."[214] The court refused to "look to the bonus check stub, [previous] offer letters, or other extrinsic documents not referenced in the lease to supply the necessary legal description."[215] In so many words, the plaintiffs "signed a lease which they did not accept and allegedly accepted a lease, without a property description, that they did not sign."[216]

The moral of the holding in this case is that practitioners and landowners do need "to worry about" proper lease forms and legal descriptions.

B. Depth Restrictions and Limitations

In the new world of oil and gas exploration, it has become commonplace for some leases, assignments, and even deeds to contain a reservation or conveyance of ownership as to certain depths and horizons.[217] Problems arise, however, when those depths and horizons are generally described by reference to a particular formation (i.e. the "Cline Shale Formation") without a more specific description as to how that formation is to be identified with "reasonable certainty."[218] While not directly addressing the Statute of Frauds, a very recent case from the Waco Court of Appeals provides some direction.[219] In *Key Production Co.*, the trial court determined that Quality Operating, Inc. was "the present owner of certain depths of mineral interests in three leases" obtained by its predecessor in interest.[220] Quality Operating's predecessor in title assigned the leases to Key's predecessor.[221] The Waco Court of Appeals held that "the language 'insofar as and only insofar as' first used in the assignment unambiguously established and defined the

210. *Id.* at *2.
211. *Id.* at *1.
212. *Id.*
213. *Id.* at *6.
214. *Id.* at *4.
215. *Id.*
216. *Id.*
217. *See* Burford & Snell, *supra* note 7, at 18.
218. Tex. Builders v. Keller, 928 S.W.2d 479, 481 (Tex. 1996); *see also* Neary v. Mikob Props., Inc., 340 S.W.3d 578, 584 (Tex. App.—Dallas 2011, no pet.).
219. Key Prod. Co. v. Quality Operating, Inc., No. 10-10-00379-CV, 2013 WL 1286672, at *3 (Tex. App.—Waco Mar. 28, 2013, no pet. h.) (mem. op.).
220. *Id*. at *1.
221. *Id.* at *3.

geographic area and the second use of the [same] phrase . . . then described the depths that were to be conveyed in the agreement."[222] While the case directly addresses the ambiguity of the conveyance, a telling and helpful explanation appears for the practitioner seeking to reserve or convey depths within a specified formation.[223] In explaining its holding, the court noted that "the Smackover Formation is defined by a geographic location on the surface combined with a depth range below the surface," and pointed out that "[t]he definition of the Smackover Formation is contained in a recorded instrument referenced in the Gasoven Assignment."[224] As a result, the Statute of Frauds was never an issue in the case because the Smackover Formation was clearly defined in an existing recorded instrument referenced by the assignment.[225]

C. Description of Lands Covered by Wells and Proration Units in Retained Acreage and Continuous Development Clauses and Letter Agreements

Almost all modern oil and gas leases include retained acreage and continuous development clauses.[226] These—often very specific—clauses state that, either at the end of the primary term or cessation of continuous development, the lease will terminate except as to a specified number of acres assigned to each producing proration unit on the lease.[227] Likewise, letter agreements for the acquisition of oil and gas properties refer to a specific number of acres covered by the acquired well proration units.[228] The lack of a means to describe or identify the actual acreage assigned to a proration unit can be fatal.[229]

In the recent case of *May v. Buck*, the Dallas Court of Appeals examined a letter agreement between two oil operators in which Buck would assign to May certain mineral rights and a "100 acre spacing centered around the David Morris Gas Unit #1 in Leon County, Texas."[230] The court was confronted by the problem: Where is the hundred acres?[231] Testimony at the trial revealed that the one hundred acres could simultaneously be described as a circle, square, or oblong feature.[232] Along with the shape disparity, it was also disputed as to whether or not the "David Morris Gas Unit #1" referred to the

---

222. *Id*. at *5.
223. *See generally id.*
224. *Id.* at *5 n.2 (footnotes omitted).
225. *Id.* at *5–6.
226. J. Derrick Price & John Hernandez, *Retained Acreage Clauses—Recent Cases and Issues*, 35 STATE BAR OF TEX., ADVANCED OIL, GAS & ENERGY RESOURCES LAW ch. 15, at 1 (2017).
227. *Id.*
228. *See* Lisa K. Vaughn, *The Trouble with Letter Agreements: A Litigator's Perspective*, 28 STATE BAR OF TEX., ADVANCED OIL, GAS & ENERGY RESOURCES LAW ch. 12, at 1 (2010).
229. *Id.* at 1–2.
230. May v. Buck, 375 S.W.3d 568, 572 (Tex. App.—Dallas 2012, no pet.).
231. *Id.*
232. *Id.* at 573.

unit itself or to just the wellbore.[233] The trial court found that the letter agreement did not satisfy the Statute of Frauds, and the court of appeals affirmed.[234] The Dallas Court of Appeals held that a legal description "must not only furnish enough information to locate the general area as in identifying it by tract survey and county, it [should also] contain information regarding size, shape, and boundaries."[235] The court noted that there was no information in the letter agreement, or any other document, about the shape or boundaries of the one hundred acres in the David Morris Gas Unit #1.[236]

An exception to the rule in *May v. Buck* may be found in a prior opinion by the Texarkana Court of Appeals in *Tiller v. Fields*.[237] In that case, the court found that a pooling provision, although not specific with respect to the details of a pooling arrangement, did not violate the Statute of Frauds because the statute "is met where the contract, instrument or agreement[] gives either party the unqualified right or power to make a selection or determination of the details without the necessity of further agreement or approval of the other party."[238]

In referencing the size of well proration units, practitioners are well advised to devise some method or description by which the well unit can be determined or, at the least, grant one party or the other the unqualified discretion to make the determination at a later date without further agreement.[239]

D. Memoranda of Oil and Gas Leases

Most oil companies elect to file memoranda of leases in lieu of the actual leases themselves in order to prevent disclosure of the lease terms to the general public.[240] In some counties, these memoranda are often incomplete.[241] In such cases, the date, parties, and recording information of the actual lease are abbreviated or omitted.[242] In other instances, instead of memoranda, some companies have filed "affidavits" regarding their leases.[243]

---

233. *Id.* at 575; *see* Burford & Snell, *supra* note 7 for a more complete discussion on the "thorny" issue of wellbore assignments.

234. *May*, 375 S.W.3d at 572.

235. *Id.* at 575 (quoting Reiland v. Patrick Thomas Props. Inc., 213 S.W.3d 431, 437 (Tex. App.—Houston [1st Dist.] 2006, pet. denied).

236. *Id.* at 576.

237. Tiller v. Fields, 301 S.W.2d 185, 190 (Tex. App.—Texarkana 1957, no writ).

238. *Id.*

239. *See id.*

240. Buddy Cotton, *Memorandum of Oil and Gas Lease—Whys and Wherefores*, THE MINERAL RIGHTS FORUM (May 2011), https://www.mineralrightsforum.com/t/memorandum-of-oil-and-gas-lease-whys-and-wherefores/24863.

241. *See id.*

242. *See id.*

243. *See id.*

The mineral owner lessors do not sign these affidavits.[244] There are no reported cases to date, but the claims in this area can certainly be expected in the future. The practice of obtaining legal descriptions from tax rolls and use of lease affidavits, instead of memoranda with complete legal descriptions, is almost sure to cause problems with the Statute of Frauds at some point as the oil industry in the United States continues to move forward despite the current fall in oil prices.

V. CONCLUSION

Although there have been many cases involving the Texas Statute of Frauds in the history of Texas jurisprudence regarding legal descriptions of land, all of the cases appear to follow a central theme: The writing must by itself, or by clear reference to another existing writing, provide the information to identify the property conveyed with reasonable certainty.[245] As a result, legal descriptions should be drafted and scrutinized carefully. An insufficient description alone usually voids the conveyance.[246] It is a harsh remedy that oil and gas practitioners should avoid at all costs. Hopefully, this Article will assist the practitioner in doing so.

244. *See id.*

245. Tex. Builders v. Keller, 928 S.W.2d 479, 481 (Tex. 1996); *see also* Neary v. Mikob Props., Inc., 340 S.W.3d 578, 584 (Tex. App.—Dallas 2011, no pet.).

246. Apex Fin. Corp. v. Garza, 155 S.W.3d 230, 237 (Tex. App.—Dallas 2004, pet. denied) (citing Gates v. Asher, 280 S.W.2d 247, 248–49 (Tex. 1955)); *see also* Fears v. Tex. Bank, 247 S.W.3d 729, 735 (Tex. App.—Texarkana 2008, pet. denied).