

# IN THE SUPREME COURT OF TEXAS

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No. 02-0455

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J. HIRAM MOORE, LTD., PETITIONER,

v.

MARY GREER, RESPONDENT

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ON PETITION FOR REVIEW FROM THE  
COURT OF APPEALS FOR THE THIRTEENTH DISTRICT OF TEXAS

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**Argued October 29, 2003**

JUSTICE HECHT, concurring.

The dissent discerns no principle in the Court’s decision, but there is one, and a very venerable one at that: hard cases make bad law.<sup>1</sup> The specific grant of royalty interests in Mary Greer’s deed to Steger Energy Corp. described property in a survey she did not own. One might suppose that the wrong survey was referenced by mistake, but no, Greer now tells us under oath: the specific grant conveyed nothing, which is “specifically” — her word — what she intended. Her purpose all along, if she can be believed, was to take Steger’s money and convey nothing in return. Steger’s successor in interest, J. Hiram Moore, Ltd., who bought royalty interests at market value,

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<sup>1</sup> *Northern Sec. Co. v. United States*, 193 U.S. 197, 400 (1903) (Holmes, J., dissenting) (“Great cases, like hard cases, make bad law.”); *Robinson v. Central Tex. MHMR Ctr.*, 780 S.W.2d 169, 172 n.1 (Tex. 1989) (Hecht, J., dissenting).

including Greer's deed, argues that by the literal terms of the general grant in that deed, it acquired all of Greer's royalty interests in Wharton County. Those interests substantially exceeded the interest she would have conveyed had the deed referenced the adjoining survey. If Moore is right, the record does not reflect whether it still paid market value for all of Greer's interests, as it says it did for every other interest it bought.

Moore argues that general grants must always be read literally, or land titles will become uncertain, and chaos will descend. Greer argues that general grants can never include more than small strips adjacent specifically described property, or unsophisticated, perhaps careless, grantors will be duped out of property they never intended to convey. We have squarely rejected Greer's argument in two cases,<sup>2</sup> and the argument is at least inconsistent with three others.<sup>3</sup> But we stopped short of endorsing Moore's argument in *Smith v. Allison*.<sup>4</sup> There the grantor specifically conveyed a mineral interest in two adjoining quarter-sections — 320 acres — then added, with this general language:

any and all other land and interest in land owned or claimed by the Grantor in said survey or surveys in which the above described land is situated or in [sic] adjoining the above described land.<sup>5</sup>

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<sup>2</sup> *Holloway's Unknown Heirs v. Whatley*, 131 S.W.2d 89, 90-92 (Tex. 1939); *Sun Oil Co. v. Burns*, 84 S.W.2d 442, 445, 446-447 (Tex. 1935) (quoting *Lauchheimer & Sons v. Coop*, 65 S.W. 500, 501 (Tex. Civ. App. 1901, no writ)).

<sup>3</sup> *Sun Oil Co. v. Bennett*, 84 S.W.2d 447 (Tex. 1935); *Gulf Prod. Co. v. Spear*, 84 S.W.2d 452 (Tex. 1935); *Strong v. Garrett*, 224 S.W.2d 471 (Tex. 1949); see also *Texas Consol. Oils v. Bartels*, 270 S.W.2d 708, 712 (Tex. Civ. App.—Eastland 1954, writ ref'd); *Smith v. Westall*, 13 S.W. 540 (Tex. 1890); *Wit v. Harlan*, 2 S.W. 41 (Tex. 1886).

<sup>4</sup> 301 S.W.2d 608 (Tex. 1956).

<sup>5</sup> *Id.* at 610.

As it happened, the grantor owned the surface and minerals in 1,440 acres adjoining the two specifically described quarter-sections.<sup>6</sup> We held that the general grant did not unambiguously convey all of the grantor's interest in the 1,440 acres and affirmed a judgment on a jury verdict finding that it was not her intent to do so.<sup>7</sup>

The dissenting opinion argues that the general grant was not given effect in *Smith* because it literally included the surface estate as well as the minerals and was therefore repugnant to the rest of the deed that conveyed only mineral interests. The argument is certainly a reasonable one, but I doubt seriously that *Smith* would have been decided differently if the general grant had read, "any and all other mineral interest". The inclusion of the surface estate in the general grant was troublesome, but so, too, was the inclusion of the mineral interest in two-and-one-quarter sections that could have been described as easily as the two quarter-sections in which interests were specifically conveyed if the parties had ever had the remotest notion that the additional acreage was to be part of the transaction.

Situations in which general grants cannot be given effect have not arisen frequently. The Court in *Jones v. Colle*<sup>8</sup> thought that it presented such a situation, but I agree with the dissenting opinion that *Jones* misread *Smith* and that in any event the result in *Jones* is not inconsistent with our other decisions.<sup>9</sup> But while it only rarely happens that general grants cannot be given literal

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<sup>6</sup> *Id.* at 611.

<sup>7</sup> *Id.* at 613-615.

<sup>8</sup> 727 S.W.2d 262 (Tex. 1987).

<sup>9</sup> *Post* at \_\_\_\_.

effect, I am not prepared in the unusual circumstances of this case to adopt a rigid rule that always construes general grants literally. The dissent poses five situations in which, I agree, a general grant should be construed according to its terms,<sup>10</sup> but it is just as easy to pose other circumstances in which it will seem highly unlikely that the parties fully intended what they actually said, and unjust to hold one of them to it. We should not use this case to make bad law. As long as a rule that gives effect to general grants with a few exceptions seems to manage the cases that arise, I would not change it simply because it could, possibly, prove unworkable. *Smith* did not destabilize land titles. Neither will this case.

With these few additional thoughts, I join in the Court's opinion.

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Nathan L. Hecht  
Justice

Opinion delivered: December 31, 2004

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<sup>10</sup> *Post* at \_\_\_\_.