

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

James Maragos, Andrew Maragos and	)	
Vivian Zimmerman, Trustees of the	)	
George S. Maragos Residuary Trust, a/k/a	)	
The George S. Maragos Trust,	)	
	)	
Plaintiffs/Appellants,	)	Supreme Court No. 20160441
	)	
vs.	)	
	)	
Newfield Production Company,	)	
	)	
Defendant/Appellee.	)	

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Appeal from Judgment Granting Defendant’s Motion for Summary Judgment and  
Denying Plaintiffs’ Motion for Summary Judgment  
Dated November 22, 2016  
Case No. 27-2015-cv-00047  
County of McKenzie, Northwest Judicial District  
The Honorable Robin A. Schmidt, Presiding

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**BRIEF OF DEFENDANT/APPELLEE NEWFIELD PRODUCTION COMPANY**

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## **STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

[¶ 1] Whether the district court properly viewed the underlying action as one to quiet title to the royalty interest in dispute.

[¶ 2] Whether the district court properly granted Defendant's motion for summary judgment and denied the Plaintiffs' Motion for Summary Judgment given the ownership interest in dispute and the issues with naming the proper party defendant.

[¶ 3] Whether the district court properly disallowed costs, fees, and interest under North Dakota Century Code § 47-16-39.1 to the Plaintiffs based on the dispute of title that could affect distribution of royalty payments.

## **STATEMENT OF THE CASE**

[¶ 4] This is an appeal by James Maragos, Andrew Maragos and Vivian Zimmerman, Trustees of the George S. Maragos Residuary Trust, a/k/a The George S. Maragos Trust (the "Maragos Trust") from the district court's Order Granting Defendant's Motion for Summary Judgment and Denying Plaintiffs' Motion for Summary Judgment, and accompanying Judgment (hereinafter referred to as the "Order"), dismissing the complaint of the Maragos Trust. *See* Appellants' Appendix ("App.") at 18-27. This appeal raises the question of whether a dispute over royalty interests and payment may be brought against a disinterested well-operator instead of competing royalty interest holders.

[¶ 5] By complaint filed on February 18, 2015 (hereinafter the "Complaint"), the Maragos Trust initiated the instant action against Newfield Production Company ("Newfield") to determine the royalty interest ownership of the Maragos Trust and the right to corresponding royalty payments in certain lands located in McKenzie County, North Dakota. *See* App. at 4-10. The Maragos Trust contended it was the successor to a

royalty interest acquired by George S. Maragos and that Newfield, as operator of certain wells drilled on the lands at issue, improperly calculated the Maragos Trust's royalty interest with respect to oil and gas produced from the lands. *Id.* The Maragos Trust further alleged Newfield wrongfully withheld royalty payments due and owing to the Maragos Trust and sought damages pursuant to North Dakota Century Code § 47-16-39.1 for failure to pay oil and gas royalties to a mineral owner. *Id.*

[¶ 6] On June 16, 2016, the Maragos Trust filed a motion for summary judgment seeking to establish its ownership of the disputed royalty. *See App.* at 20. The motion included several title documents for review by the district court purporting to establish the right of the Maragos Trust to payment of the royalties through its ownership interest. *Id.* On July 15, 2016, Newfield filed a cross-motion for summary judgment arguing Newfield does not claim an interest in the royalty interest requested by the Maragos Trust necessary to support the instant action. *Id.* Newfield explained it is merely the operator of the wells from which proceeds of production for the royalty interest at issue are derived. *Id.* Accordingly, Newfield does not claim an interest that would be impacted by any judgment issued with respect to the royalty interest ownership claimed by the Maragos Trust. *Id.* Newfield further alleged any dispute regarding the proper ownership of the royalty interest should be brought against the entity or entities which claim conflicting ownership in the royalty interest rather than against Newfield as the well operator. *Id.*

[¶ 7] Pursuant to its Order Granting Defendant's Motion for Summary Judgment and Denying Plaintiffs' Motion for Summary Judgment dated November 16, 2016, the district court dismissed the action. *See App.* at 18-26. After a review of the

documents submitted in support of the motions for summary judgment, the district court determined Newfield does not claim an interest in the royalty interest asserted by the Maragos Trust which would support a cause of action against Newfield under Chapter 32-17 of the North Dakota Century Code. *See App.* at 22. As a matter of law, Newfield was not the proper party against which to bring a claim of ownership. *Id.* Rather, the Maragos Trust should have brought suit against competing royalty interest owners. *See App.* at 22-23. Further, the Maragos Trust was not entitled to interest, costs, or attorney's fees because the matter involved a dispute of title and is thus exempt from North Dakota Century Code § 47-16-39.1. *See App.* at 22, 25-26. Accordingly, the district court dismissed the Complaint in its entirety by Judgment dated November 22, 2016. *See App.* at 27.

[¶ 8] The arguments of the Maragos Trust on appeal hinge on the district court's alleged mischaracterization of the instant action as a quiet title action. *See* Brief of Plaintiffs/Appellants ("Pls.' Br.") ¶¶ 18, 25, and 31. The Maragos Trust further argues Newfield is a proper party defendant, competing royalty interest owners are improper party defendants, and the Maragos Trust is entitled to costs, attorney's fees and statutory interest under North Dakota Century Code § 47-16-39.1. *See* Pls.' Br. ¶¶ 16, 22, and 29.

### **STATEMENT OF THE FACTS**

[¶ 9] The royalty interest at issue derives from the minerals in and under the following described lands located in McKenzie County, North Dakota:

Township 153 North, Range 96 West  
Section 3: S1/2NW1/4, Lots 3 and 4

(the "Subject Lands"). *See App.* at 4. Newfield is the operator of numerous wells the spacing units for which include the Subject Lands, including the Pittsburgh 1-3H,

Pittsburgh Federal 153-96-3-2H, Pittsburgh Federal 153-96-3-3H, and Pittsburgh Federal 153-96-3-11H wells. *See* App. at 5. The wells were drilled and completed between March 2010 and November 2013. *Id.*

[¶ 10] The Maragos Trust claims to be the successor of George S. Maragos entitled to a 1/8 of 1% royalty of the oil and gas produced from the Subject Lands. *See* Pls.’ Br. ¶ 17. The Maragos Trust alleges that by Assignment of Royalty dated December 14, 1937, and recorded with the McKenzie County Recorder on December 29, 1937, as Document No. 111954, H. H. Hester conveyed to George S. Maragos a 1/8 of 1% royalty of the oil and gas produced from the Subject Lands. *See* App. at 7. The Maragos Trust contends that upon the death of George S. Maragos, the administrators of the estate of George S. Maragos assigned the royalty to the Maragos Trust by Assignment of Royalty. *See* App. at 9.

[¶ 11] The assertions of the Maragos Trust contradict the division order title opinion (“DOTO”) prepared in March 2011 by a title attorney in connection with the wells and spacing units covering the Subject Lands, among others. *See* App. at 19. The DOTO analyzed the chain of title with respect to the Subject Lands and determined the Maragos Trust did not have a royalty interest in the oil and gas produced from the Subject Lands. *See id.* Due to several over conveyances found in the chain of title, the royalty interests claimed by the Maragos Trust, as well as royalty interests potentially claimed by several other parties, were found to be invalid and were credited to other royalty owners. *Id.*; *see also* App. at 15. Newfield prepared and issued division orders to the working and royalty interest owners in the wells based on the DOTO. *See* App. at 19. After the Maragos Trust failed to receive royalty payments from Newfield, the Maragos Trust

commenced the instant action seeking to establish the effectiveness of the conveyance found in the Maragos Trust's chain of title.

### **LAW AND ARGUMENT**

#### **I. The District Court Properly Characterized the Instant Action as One to Quiet Title Because the Maragos Trust Requested the Court Determine Adverse Claims to Real Property Interests.**

[¶ 12] The Maragos Trust's arguments on appeal hinge on the district court's alleged mischaracterization of the instant action as a title dispute. However, the district court properly characterized the action as a suit to quiet title. In North Dakota, a suit to quiet title is a statutory action. *See* N.D.C.C. § 32-17-01. "An action to quiet title is a direct action for the purpose of determining what, if any, interest each of the parties have in the land involved." *State v. Amerada Petroleum Corp.*, 71 N.W.2d 675, 679 (N.D. 1955). Because the statute is remedial in nature, it "should be liberally construed and held to embrace any case coming fairly within [its] scope." 65 Am. Jur. 2d *Quieting Title* § 7.

[¶ 13] The Maragos Trust argues the district court mischaracterized the action as a title dispute because Newfield never asserted the "failure to recognize the Maragos Trust interest is due to . . . a claim of title by a third party." *See* Pls.' Br. ¶ 18. To the contrary, Newfield has repeatedly explained the royalty interests for the wells at issue were determined through preparation of a DOTO by a title attorney. *See* App. at 19. The DOTO for the Subject Lands reviewed the record title ownership of the minerals and the oil and gas leases covering the wells to determine how the royalty interest should be paid. The DOTO ultimately determined that due to various over conveyances in the chain of title, the royalty interest claimed by the Maragos Trust was not valid and was allocated to



third parties. *See* App. at 15-17. Further, the Maragos Trust has asserted other parties have been credited with the disputed royalty interest. *See* Pls.' Br. ¶ 18.

[¶ 14] Additionally, the Maragos Trust argues the district court erred in characterizing the action as one to quiet title because the Maragos Trust never “asserted that this action is one involving a title dispute or that this action is one to quiet title.” *Id.* However, it is a well-established principle of modern pleading that the nature of a cause of action is determined by the allegations contained in the complaint. *See Rivinius v. Huber*, 74 N.D. 773, 774, 24 N.W.2d 911, 912 (1946). Regardless of what a pleading may be called, the character of a pleading is determined by the facts alleged. *Id.* Although the Maragos Trust has not labeled the action as one to quiet title, this Court is not bound by the Complaint’s label.

[¶ 15] The Maragos Trust’s allegations are based solely on an unpaid royalty interest, which is an interest in real property. *See* App. at 21; *see also GeoStar Corp. v. Parkway Petroleum, Inc.*, 495 N.W.2d 61, 67 (N.D. 1993); *Yttredahl v. Fed. Farm Mortg. Corp.*, 104 N.W.2d 705 (N.D. 1960); *Payne v. A.M. Fruh Co.*, 98 N.W.2d 27 (N.D. 1959); *Aure v. Mackoff*, 93 N.W.2d 807 (N.D. 1958); *Corbett v. LaBere*, 68 N.W.2d 211 (N.D. 1955). Additionally, the Maragos Trust alleged the sole issue before the district court was to determine the effectiveness of the conveyance found in the Maragos Trust’s chain of title. *See* App. at 23. In seeking a judgment for the value of the disputed interest, the Maragos Trust is essentially asking the Court to declare “the validity, superiority and priority” of its claim relative to the claims of third parties not party to this suit. *See Amerada Petroleum Corp.*, 71 N.W.2d 675 at 679. In other words, the Maragos Trust has asked the Court to quiet title to the interest. *See id.*

[¶ 16] In reviewing the facts alleged and the remedy sought in the Complaint, the Maragos Trust is clearly requesting the Court determine the ownership to the royalty interest and quiet title in the 1/8 of 1% royalty interest claimed by the Maragos Trust. *See* N.D.C.C. Ch. 32-17. Accordingly, the district court properly characterized the action as one to quiet title.

**II. The District Court Properly Granted Newfield’s Motion for Summary Judgment and Denied the Maragos Trust’s Motion for Summary Judgment.**

**A. Newfield Is Not a Proper Party Defendant Because Newfield Does Not Claim a Competing Royalty Interest.**

[¶ 17] In granting summary judgment in favor of Newfield, the district court correctly determined Newfield is not a proper party defendant. In an action to determine adverse claims to real property, such as the royalty interest here, “[a]n action may be maintained by any person having an estate or an interest in, or lien or encumbrance upon, real property . . . *against any person claiming an estate or interest in, or lien or encumbrance upon, the same*, for the purpose of determining such adverse estate, interest, lien, or encumbrance.” N.D.C.C. § 32-17-01 (emphasis added). Newfield does not claim an interest in the 1/8 of 1% royalty interest asserted by the Maragos Trust that would support a cause of action solely against Newfield.

[¶ 18] As set forth in Comment No. 50 of the DOTO, none of the conveyances given partial credit, or having failed completely, include a reference to Newfield as a potential owner of the royalty interest. *See* App. at 15-17. Further, none of the Maragos Trust’s chain of title documents can be construed to confer a claim by Newfield in the royalty interest claimed by the Maragos Trust. *See id.* The district court determined the record is devoid of any documents establishing Newfield and the Maragos Trust have

competing claims to the royalty interest in dispute. *See* App. at 21-23. Accordingly, Newfield is not the proper party to the Maragos Trust's claim of ownership of the royalty interest.

[¶ 19] The Maragos Trust argues that because it did not execute a division order, Newfield is indeed a proper party defendant. *See* Pls.' Br. ¶ 21. To support this contention, the Maragos Trust cites *Acoma Oil Corporation v. Wilson*, wherein a well operator was sued by mineral owners for the recovery of underpayments. 471 N.W.2d 476 (N.D. 1991). In *Acoma*, the well operator paid out 100% of the proceeds owed to four mineral interest owners pursuant to a title opinion and division orders executed by three of the four mineral interest owners. *Id.* at 484. While underpaid revenue owners generally seek payment from overpaid revenue owners and not from the operator of the well, the underpaid mineral interest owner in *Acoma* who did not execute a division order was permitted to recover underpayments from the operator. *Id.*

[¶ 20] However, unlike the Maragos Trust, the mineral interest owner in *Acoma* previously established its right to receive payment from the well operator in a separate, prior, action to quiet title. *Id.* In the present case, the Maragos Trust has not yet established any right to the 1/8 of 1% royalty interest. Although the Maragos Trust is attempting to do so in the present action, Newfield is not the proper party defendant against which to seek such relief.

[¶ 21] The fact the Maragos Trust did not execute a division order is inconsequential given the Maragos Trust has failed to establish any right to the disputed royalty interest. The Maragos Trust should have established its right to the disputed royalty by commencing an action "against any person claiming an estate or interest in, or

lien or encumbrance upon, the same.” *See* N.D.C.C. § 32-17-01. Newfield does not have a competing claim to the royalty interest in dispute. *See* App. at 14. Therefore, the Maragos Trust incorrectly commenced the instant action against Newfield and the district court properly determined Newfield is not the correct party defendant.

**B. The District Court Properly Determined the Maragos Trust’s Claim Should Have Been Brought against Competing Royalty Interest Owners Because Ownership Rights Must be Determined Between Parties Claiming Competing Interests.**

[¶ 22] The Maragos Trust’s claim should have been brought against competing royalty interest owners, not Newfield as operator of the wells. Underlying issues with respect to the validity of competing ownership interests are determined between the interested parties to the interests. *See* N.D.C.C. Ch. 32-17. Precedent set by this Court provides guidance as to why claims regarding revenue interests are more appropriately brought against competing interest owners. Although the guidance was in relation to the underpayment of a royalty owner, the same rationale applies to allegations of an incorrect title opinion and royalty interest payments being credited to the wrong party.

[¶ 23] In requiring ownership claims to be brought against competing royalty interest owners, this Court was concerned with reducing the possibility of an operator making royalty payments more than once or to an improper party. *See Acoma*, 471 N.W.2d at 485 (quoting *Gavenda v. Strata Energy, Inc.*, 705 S.W.2d 690, 691-92 (Tex. 1986)). An order of this Court in favor of the Maragos Trust would be contrary to this objective. The practical effect of the Maragos Trust’s request is that Newfield, as operator of the well, could potentially pay the royalty payment twice – once through any applicable division orders and again to the underpaid party through a quiet title suit. *See id.* (quoting *Gavenda*, 705 S.W.2d at 691-92). Even though the risk of double payments

has been mitigated by Newfield holding the royalty interest payments in suspense, the underlying rationale for not seeking determination of interests and payment directly from an operator still applies.

[¶ 24] The Maragos Trust argues it is not required to bring suit against the parties claiming competing interests because it did not execute “a division order agreeing that its revenue was zero.” Pls.’ Br. ¶ 23. As discussed above, a suit against the well operator for underpayments in the absence of a division order is appropriate if there was a preceding action to quiet title. There has been no prior action to determine the ownership of the royalty interest, so such determination would be required in this suit prior to determining whether the Maragos Trust is entitled to the royalty payments stemming from the interest.

[¶ 25] The Maragos Trust also argues “there is no adverse or competing claim to the interest” or any “interests which can be divested because there is no royalty owner other than the Maragos Trust who owns the 1/8% royalty.” Pls.’ Br. ¶ 24. However, the Maragos Trust acknowledged Newfield has no doubt credited the interest to another party, which is further evidenced through the DOTO comment discussing the failed conveyances. *See* App. at 15-17. Further, asking this Court to determine there “is no royalty owner other than the Maragos Trust who owns the 1/8% royalty” is essentially asking the Court to quiet title as to the ownership interest.

[¶ 26] Contrary to the Maragos Trust’s assertion, royalty interest owner(s) whose interest would be affected are necessary parties, as any judgment would not be binding against them. *See Cudworth v. Cudworth*, 312 N.W.2d 331, 334 (N.D. 1981) (finding that if an absent party had an interest in a suit, the party “cannot be bound by the

judgment, i.e., that it is not res judicata as to, or legally enforceable against, a nonparty.”). As justification for not including the additional parties in this action, the Maragos Trust argues bringing suit against adverse claimants would be “economically unfeasible.” Pls.’ Br. ¶ 27. Although there may be expenses associated with commissioning a title opinion and serving necessary parties, North Dakota law requires actions to determine adverse claims to real property be brought against *any* person claiming an estate or interest in the real property. *See* N.D.C.C. § 32-17-01 (emphasis added). Additionally, Newfield has provided the Maragos Trust with information regarding various parties credited with fractions of the royalty interest at issue. *See* App. at 15-17. The Maragos Trust also retained an expert in this matter to review the chain of title. Such information was then used to support the summary judgment motion submitted to the district court. *See* App. at 22. Clearly, the Maragos Trust has relevant information to allow for initiation of a proper quiet title action.

[¶ 27] Further, North Dakota Century Code § 32-17-06 mitigates the burden associated with actions to quiet title by permitting persons claiming an interest in property who are not in possession and whose interest does not appear on record to be proceeded against as “persons unknown.” Adopting the Maragos Trust’s position for not naming required parties would lead to absurd situations whereby a claimant could divest an adverse claimant of its property interest, without notice, simply because of the expense associated with bringing an action to quiet title. Accordingly, the district court properly held the Maragos Trust’s claims should have been brought against competing royalty interest owners.

**III. The District Court Properly Denied the Maragos Trust’s Request for Costs, Fees, and Statutory Interest Under North Dakota Century Code § 47-16-39.1 Because the Instant Action Involves a Title Dispute.**

[¶ 28] Contrary to the assertions made by the Maragos Trust, the district court properly denied the Maragos Trust’s request for costs, fees, and statutory interest under North Dakota Century Code § 47-16-39.1. North Dakota Century Code § 47-16-39.1 sets forth an obligation under an oil and gas lease to pay royalties to a mineral owner or a mineral owner’s assignee. Payment of interest is required if an operator under an oil and gas lease fails to make payments to a mineral interest owner or mineral owner’s assignee within a set period of time. *See* N.D.C.C. § 47-16-39.1. However, Section 47-16-39.1 does not apply “in the event of a dispute of title existing that would affect distribution of royalty payments.”

[¶ 29] The problem the North Dakota Legislature attempted to address through the passage of North Dakota Century Code § 47-16-39.1 was “the unjustified refusal or failure of a lessee oil company to make royalty payments to their lessor mineral owners.” *Imperial Oil of N.D., Inc. v. Consol. Crude Oil Co.*, 851 F.2d 206, 212 (8th Cir. 1988). Additionally, one of the complaints the legislators focused on when enacting the statute was “the practice of some operators placing mineral owners’ royalty interests ‘in suspense’ for the slightest of reasons so the money could be used by them ‘interest free’ for other purposes.” *Tank v. Burlington Res. Oil & Gas Co., LP*, 4:10-CV-088, 2013 WL 3766526, at \*15 (D.N.D. July 16, 2013). “In allowing an exception for title disputes, the discussion in the legislative history centered around disputes of ownership of minerals that could not reasonably be resolved within a short period of time and likely would require court action.” *Id.*

[¶ 30] Prior to discovering the title issue, Newfield distributed the royalty interests in good faith pursuant to the information contained in the DOTO and later division orders. After Newfield was notified of the royalty interest claimed by the Maragos Trust and the underlying title dispute, Newfield began holding in suspense the payments which the Maragos Trust claims it is entitled. Holding payments in suspense to avoid payment of royalties to an improper owner is very different from nonpayment of royalty interests as contemplated under Section 47-16-39.1 of the North Dakota Century Code. Holding payments in suspense to avoid payment of royalties to an improper owner is also very different from placing royalty interests in suspense so the money can be used interest free for other purposes.

[¶ 31] The Maragos Trust relies almost entirely on *Tank v. Burlington Resources Oil & Gas Co., LP*, to seek the costs, fees, and interest allowed under North Dakota Century Code § 47-16-39.1. *See Tank*, 2013 WL 3766526. In *Tank*, a plaintiff mineral owner brought suit against a well operator alleging a failure to make timely payment of royalty production. *Id.* at \*1. The well operator held royalty payments in suspense after obtaining a title opinion which identified two mortgages encumbering the subject lands. *Id.* at \*3. The defendants claimed the superiority of the mortgages could affect a party's ownership if the mortgage was foreclosed upon in the future. *Id.* at \*13.

[¶ 32] The district court held the mortgages were insufficient to create a title dispute because there was no “existing” dispute of ownership and “no real potential for defendants being exposed to multiple liability.” *Id.* at \*15. Unlike *Tank*, the dispute of ownership in the present case is “existing” because it is not dependent on a party's future action. The Maragos Trust presently seeks a judgment that would essentially divest other



royalty interest owners of their interest. Given the potential for changes in ownership of the interest, there is a real potential Newfield will be exposed to multiple liability. If this Court rules in favor of the Maragos Trust, Newfield could be forced to pay the disputed royalty twice - once pursuant to the DOTO and again by a judgment issued by the relevant court.

[¶ 33] This action involves a clear dispute of ownership and an award of costs, interest, and fees is not appropriate. *See Acoma*, 471 N.W.2d at 486 (Plaintiff was not entitled to interest under North Dakota Century Code Section 47-16-39.1 on a portion of the proceeds because there was a dispute as to mineral interests.) Accordingly, the district court properly determined the Maragos Trust is not entitled to interest, costs, or attorney's fees under North Dakota Century Code § 47-16-39.1.

### **CONCLUSION**

[¶ 34] For the reasons set forth above, Newfield respectfully requests the Court affirm the order and judgment entered by the district court.

DATED this 24th day of February, 2017.

FREDRIKSON & BYRON, P.A.

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 24, 2017, I electronically filed with the Clerk of the North Dakota Supreme Court the foregoing Brief by E-mail, and served the Brief by E-mail on the following:

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