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STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Joan Marie Hallin and John P. Hallin, and Susan Kay Bradford, Plaintiffs/Appellants, vs. Inland Oil & Gas Corporation, Defendant/Appellee.	Supreme Court Case No. 20170145 Mountrail County District Court Case No. 31-2016-CV-00029

Appeal from the Order Granting Summary Judgment to Defendant; Order for Judgment; and Judgment dated February 17, 2017
Case No. 31-2016-CV-00029
County of Mountrail, North Central Judicial District
The Honorable Richard L. Hagar, Presiding

BRIEF OF APPELLEE INLAND OIL & GAS CORPORATION

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STATEMENT OF THE ISSUES

[¶1] Whether the district court erred in finding that the Hallin and Bradford oil and gas leases were unambiguous and covered all of their respective mineral interests in the subject lands.

STATEMENT OF THE CASE

[¶2] On February 17, 2016, Appellants Joan Marie Hallin and John P. Hallin, and Susan Kay Bradford (collectively, "Hallin and Bradford") served their Complaint on Inland Oil & Gas Corporation ("Inland"), seeking to quiet title to "20 net mineral acres" located in Mountrail County, North Dakota. App. 4–7. Inland filed its Answer and Counterclaims for quiet title, a declaratory judgment, and unjust enrichment on March 7, 2016. App. 24–28. Hallin and Bradford filed an Answer to Inland's counterclaims on March 17, 2016. App. 29–31. The case was assigned to the Hon. Richard L. Hagar. Record on Appeal ("R.") #12.

[¶3] On November 1, 2016, Hallin and Bradford moved for summary judgment on its quiet title claim. R. #23. On December 5, 2016, Inland filed a cross-motion for summary judgment. R. #30. The motions were fully briefed, and neither party requested oral argument. *See* R. #25, #31, #34, #44.

[¶4] The Court issued an order on February 17, 2017 denying Hallin and Bradford's motion and granting Inland's motion for summary judgment. App. 33–38. The Court ruled that the oil and gas leases at issue in this case were unambiguous and that "as a matter of law, the Hallins and Bradford leased to Inland whatever interest they had in the subject property at the time the leases were executed." App. 37 (at ¶ 12).

[¶5] Judgment was entered on February 17, 2017, and a Notice of Entry of Judgment was served and filed on February 21, 2017. App. 39–45; R. #53. Appellants filed their Notice of Appeal on April 12, 2017. App. 46.

STATEMENT OF THE FACTS

[¶6] Joan Marie Hallin and John P. Hallin, as joint tenants, and Susan Kay Bradford each own a mineral interest in the following lands (the "subject lands") located in Mountrail County, North Dakota:

> Township 153 North, Range 92 West
> Section 14: S½SW¼
> Section 23: N½NW¼

See App. 8, 13. In March of 2007, when the oil and gas leases at issue were entered into, it was not clear whether the Hallins and Bradford each owned 30 net mineral acres or 40 net mineral acres. Inland App. 006–007. Title to the remaining, disputed 20 net mineral acres was not quieted in Hallin and Bradford until October of 2013. See Hallin v. Lyngstad, 2013 ND 168, ¶¶ 19–20, 837 N.W.2d 888.

[¶7] Lynn Moser ("Lynn"), the President of Inland, negotiated the oil and gas leases with Hallin and Bradford. Inland App. 002 (at ¶ 5). During the negotiations, Lynn informed John Hallin of the title defect impacting the Hallin and Bradford mineral interests. Id. at 002–003 (¶¶ 7–9). At the time the leases were being negotiated, it is undisputed that the Hallins believed that they owned only 30 net mineral acres in the subject lands as opposed to the 40 net mineral acres that it was ultimately determined that they own. The Hallins' understanding of their ownership at that time is reflected in an email communication they sent to Fidelity Exploration & Production Company ("Fidelity") on

Sunday, October 12, 2008. Id. at 006–007. Fidelity was the operator of oil and gas wells on a spacing unit covering the subject lands. In the email, the Hallins state:

> Dear Ms Montgomery:
>
> Thank you for your prompt response regarding the method used to calculate the decimal interest. The information you provided, explains why I was getting a result different than the one provided in Exhibit A attached to the Division Order. This difference is the result of your use of 20 net acres, while I was using 15 acres.
>
> **Our records, which are based on the distribution of the estate of Esther Brandt (Wife of Walter Brandt), indicated a ½ of undivided ¾ interest in Section 23: N½NW¼ (15 net acres) for each Joan M. Hallin and Susan K. Bradford**. This is the acreage on which the original lease with Inland Oil and Gas Corporation was based.
>
> **We have always assumed that the other ½ of the undivided ¾ interest in Section 23: N½NW¼ was owned by the descendents of Emma Lyngstad**.
>
> We have never researched this, so it could be that your title company found something we were not aware. We have no real knowledge of the history of ownership for this property, other than the information contained in the estate of Esther Brandt. However, **we have always assumed the following**:
>
> We have assumed that these rights were jointly owned at one time by siblings Albert Brandt (no descendents), Walter Brandt (descendents Joan Hallin, Susan Bradford), and Emma Lyngstad (descendents are the remaining owners of the undivided ¾ interest in Section 23: N½NW¼). Albert Brandts death preceded that of Walter Brandt and Emma Lyngstad. **We always assumed that Walter and Emma each inherited half of Alberts interest**. Since Walter and Albert were in business together, it is possible that Walter inherited all of Alberts interest and this was discovered during your title search. We believe it is important to resolve this issue before any distribution is made to avoid future problems I will call you later on Monday to discuss how we would proceed.
>
> Sincerely
>
> Joan & John Hallin

Id. at 007 (emphasis added).

[¶8] The Hallins and Bradford each ultimately leased their entire mineral interest in the subject lands, entering into oil and gas leases with Inland which provided:

> That the Lessor, . . . has granted, demised, leased and let, . . . exclusively unto [Inland], the land hereinafter described, with the exclusive right . . . to produce, … **all** that certain tract of land situated in Mountrail County, State of North Dakota, described as follows, to-wit:
>
> Township 153 North, Range 92 West
> Section 14: S½SW¼
> Section 23: N½NW¼
>
> and containing 160.00 acres, more or less.

App. 8, 13.

[¶9] Both leases contain a warranty provision that reads as follows: "Lessor hereby warrants and agrees to defend the title **to the lands herein described** . . ." App. 8 (¶ 13); App. 13 (¶ 13). Neither lease contains any reference to 30 net mineral acres or any specified fraction of lessor's mineral interest in the subject lands. See App. 8 ("all that certain tract of land . . . containing 160.00 acres, more or less"); App. 13 (containing identical language). In addition, Inland certainly had no intention of leasing anything less than all of Hallin and Bradford's interest in the lands at issue. Inland's president is a certified professional landman with over 37 years' experience in the industry, has been President of Inland since 1991, and throughout her career has negotiated thousands of oil and gas leases. Inland App. 001 (at ¶¶ 2–3). Never in her experience has she approached a mineral owner to lease anything less than the full mineral interest that the owner has in a particular tract of land. See id. at 004 (¶ 18).

[¶10] Because Inland had knowledge of the title issue affecting these mineral interests, Lynn informed Mr. Hallin during lease negotiations that, if it was later determined that the Hallins and Bradford owned 40 net mineral acres as opposed to 30 net mineral acres, Inland

was agreeable to paying additional lease bonus. Id. (at ¶ 13) ("we would pay him additional consideration for the lease if it was ever determined or agreed upon that the heirs of Walter Brandt owned more minerals"). During the lease negotiations, neither the Hallins nor Bradford ever indicated to Lynn that they only wanted to lease 30 net mineral acres, or that they wished to lease some but not all of their interest. Id. (at ¶¶ 16–18). The negotiations always included the intent to lease the entire mineral interest that the plaintiffs owned in the subject lands, as is set forth in the leases. Id.

[¶11] Since obtaining its leasehold interests in the subject lands, Inland has treated the leases as covering "all" of Hallin and Bradford's interests, in accordance with the unambiguous terms of each lease. Inland has participated in the drilling and operating of nine oil and gas wells on spacing units that include the subject lands. Id. at 005 (¶ 19). In doing so, Inland paid its proportionate share of the costs to drill and operate each of these wells, including all of the costs and expenses attributable to the 20 net mineral acres claimed by Hallin and Bradford in this action. Id. As of February 2016, Inland had paid over $763,053 in drilling and operating expenses attributable to the disputed 20 net mineral acres. Id.

STANDARD OF REVIEW

[¶12] "The standard for reviewing summary judgements is well established." Wenco v. EOG Res., Inc., 2012 ND 219, ¶ 7, 822 N.W.2d 701. As the Court has previously stated:

> Summary judgment is a procedural device for the prompt resolution of a controversy on the merits without a trial if there are no genuine issues of material fact or inferences that can reasonably be drawn from undisputed facts, or if the only issues to be resolved are questions of law. A party moving for summary judgment has the burden of showing there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. In determining whether summary judgment was appropriately granted, we must view the evidence in the light most

> favorable to the party opposing the motion, and that party will be given the benefit of all favorable inferences which can reasonably be drawn from the record. On appeal, this Court decides whether the information available to the district court precluded the existence of a genuine issue of material fact and entitled the moving party to judgment as a matter of law. Whether the district court properly granted summary judgment is a question of law which we review de novo on the entire record.

Id. (quoting Arndt v. Maki, 2012 ND 55, ¶ 10, 813 N.W.2d 564).

ARGUMENT

I. The district court correctly held that the Hallin and Bradford leases were unambiguous and covered all of the lessors' respective mineral interest in the subject lands.

[¶13] Hallin and Bradford argue that the district court "erred by interpreting the leases as deeds to ascertain and effectuate what it determined to have been the grantor's intent, rather than as contracts to give effect to the parties' mutual intent at the time of contracting." Appellants' Brief ¶13 (emphasis original). The distinction in interpretation that Hallin and Bradford attempt to create is illusory. Deeds, as well as oil and gas leases, are interpreted in the same manner as contracts. See THR Minerals, LLC v. Robinson, 2017 ND 78, ¶ 8, 892 N.W.2d 193. In THR Minerals, this Court explained that "[g]enerally, we interpret assignments **and deeds** in the same manner as contracts, with the primary purpose to ascertain and effectuate the **parties' or grantor's intent**." Id. (emphasis added).

[¶14] In Irish Oil and Gas, Inc. v. Riemer, the rules for interpreting oil and gas leases were summarized as follows:

> "The same general rules that govern interpretation of contractual agreements apply to oil and gas leases. The construction of a written contract to determine its legal effect is a question of law for the court to decide, and on appeal, this Court will independently examine and construe the contract to determine if the trial court erred in its interpretation of it. Words in a contract are construed in their ordinary and popular sense, unless used by the parties in a technical sense or given a special meaning by the parties. We also construe contracts in light of existing statutes, which

> become part of and are read into the contract as if those provisions were included in it. A contract must be read and considered in its entirety so that all of its provisions are taken into consideration to determine the true intent of the parties.

2011 ND 22, ¶15, 794 N.W.2d 715. After considering Hallin and Bradford's arguments and North Dakota law governing the interpretation of oil and gas leases, the district court could find no ambiguity in the leases. App. 43; see also N.D.C.C. § 9-07-02 ("The language of a contract is to govern its interpretation if the language is clear and explicit and does not involve an absurdity"). Summary judgment was therefore appropriate.

A. Hallin and Bradford's deed versus lease interpretation distinction is inconsistent with the court's analysis in Lario Oil & Gas Co. v. EOG Resources, Inc., 2013 ND 98, 832 N.W.2d 49.

[¶15] In interpreting the number of mineral acres covered by a series of oil and gas leases, the court in Lario relied almost exclusively on Hild v. Johnson, 2006 ND 217, 723 N.W.2d 389, a case involving the interpretation of a deed. The applicability of the deed interpretation principles from Hild to cases interpreting oil and gas leases was expressly acknowledged by the Court:

> As in *Hild*, the leases here contain a specific legal description of the land leased. Although *Hild* interpreted a deed and not a lease, we interpret grants of property "in like manner with contracts." N.D.C.C. § 47-09-11. **Therefore, the same reasoning applies to our interpretation of the lease.**

Lario, 2013 ND 98, ¶ 11, 832 N.W.2d 49 (emphasis added).

[¶16] The claim that the leases at issue in this case only cover 30 of the 40 net mineral acres that each lessor owns in the subject lands cannot be reconciled with the holding in Lario. There, a group of oil and gas leases "expressly described each lessor's respective interest in Lot 3 of Section 30 and in Lots 2 and 3 of Section 31, Township 157 North, Range 91 West." Id. at ¶ 7. The quantity of acres listed following the legal description of

the lands described the "dry acres" only, which was not the entire interest that the lessors owned in the lands identified by the legal description. Id. A subsequent set of leases attempted to cover the "wet acres" in the identified lands.

[¶17] EOG, the lessee under the initial leases, argued that while the number of acres listed after the legal description of the lands being leased was incorrect, that language could not be read to limit the EOG leases to only the "dry acres". Id. The Court agreed that the lessors under the EOG leases "conveyed their entire interest in their mineral rights when they leased their respective rights in the [identified lands]." Id. The fact that the lease only identified sufficient acres to include the "dry acres" was not relevant; the leases covered all of the lessors' interest despite the limited number of acres identified.

[¶18] Relying on Hild v. Johnson, 2006 ND 217, ¶ 16, 723 N.W.2d 389, the Court explained its reasoning as follows:

> "**A statement in a deed of the quantity of land conveyed may be considered only if all other elements of description in the deed are ambiguous or uncertain**." The description of the land was clear because the deed provided the full legal description of the particular section in its township and range. Thus, "the particular description of the land controls over the recitation that the land contains a certain number of acres 'more or less.'"
>
> As in *Hild*, the leases here contain a specific legal description of the land leased. Although *Hild* interpreted a deed and not a lease, we interpret grants of property "in like manner with contracts." N.D.C.C. § 47-09-11. Therefore, the same reasoning applies to our interpretation of the lease. **The designated acreage in an otherwise unambiguous lease is irrelevant in light of the specific description**. The lessors transferred to EOG their mineral rights in their respective interests in Lot of Section 30 and Lots 2 and 3 of Section 31, including the "wet acres," notwithstanding the acreage designation. Therefore, the district court erred by granting Lario's motion for summary judgment. We reverse, holding EOG possessed the superior leasehold interest in the "wet acres" and title should have been quieted in EOG.

2013 ND 98, ¶¶ 10–11, 832 N.W.2d 49 (internal citations omitted) (emphasis added). Like the leases in Lario, the "elements of description" in the Hallin and Bradford leases are not ambiguous. Inland's leasehold interest therefore extends, as a matter of law, to all of Hallin and Bradford's interests in the lands described in each lease.

B. Hallin and Bradford's efforts to fabricate an ambiguity fail as their interpretations are inconsistent with Lario and not rational.

[¶19] Hallin and Bradford attempt to generate an ambiguity in the leases by concocting a series of alternative lease interpretations. Appellants' Brief, ¶¶ 18–20. Each of these hypothetical ambiguities requires an irrational interpretation of the leases' "160.00 acres, more or less" language that directly contradicts the holding in Lario. Applying the analysis from Lario nullifies these efforts to fabricate an ambiguity in the leases.

[¶20] In both the Hallin and Bradford leases, "[t]he description of the land was clear because the [lease] provided the full legal description of the particular section[s] in its township and range." See Lario, 2013 ND 98, ¶ 10, 832 N.W.2d 49. The leases clearly state that they covered "**all**" of Hallin and Bradford's mineral interests in the particular sections of land. "[W]here an instrument conveys all of the tract, the significance of the conveyance is that the grantor 'intended' to convey all the land in the tract, whatever its acreage and that 'intent is not abrogated by a difference between the description of the tract and the number of acres recited in the conveyance." Id. at ¶15 (citing Hild, 2006 ND 217, ¶¶ 13–15, 723 N.W.2d 389); see also App. 43 ("There is no limiting language . . . the Hallins and Bradford leased to Inland whatever interest they had in the subject property"). Each of Hallin and Bradford's multiple lease interpretations, created in an effort to demonstrate an ambiguity, contradict Lario and must be considered irrational.

II. The district court considered and properly interpreted Nichols v. Goughnour.

[¶21] Hallin and Bradford argue that Nichols v. Goughnour, 2012 ND 178, 820 N.W.2d 740, allows them to read the oil and gas leases and the payment drafts together as one contract in order to determine the number of mineral acres covered by the lease. Reading the 30 net mineral acres reference from the drafts into the oil and gas leases covering all Hallin and Bradford's interest in the tract is the only possible way to create an "ambiguity" in the leases with respect to the number of mineral acres covered. However, this argument is not supported by Nichols or any other relevant decisions by this Court.

[¶22] While instruments can be read and construed together, that "does not mean they are to be joined into a single contract." Nichols, 2012 ND 178, ¶ 13, 820 N.W.2d 740 (citing First Nat'l Bank v. Flath, 10 N.D. 281, 287, 86 N.W. 867, 870 (1901)). Because the language of the leases is unambiguous, extrinsic evidence from the drafts cannot be used to change the leases' unambiguous reference to "all" the described tracts of land to mean something less than "all." As this Court has explained, even when the law permits a contracting party to demonstrate that the consideration it received is different than the consideration recited by the written contract, this rule "is never applied to the extent of permitting a party to show that the agreement was other than that set forth in the writing." Trengen v. Mongeon, 206 N.W.2d 284, 286 (N.D. 1973); see also id. ("the trial court properly allowed parol evidence to show a failure of consideration recited in the deed and did not allow parol evidence to vary the terms of the agreement" (emphasis added)). Hallin and Bradford rely on the draft payments from Inland in an attempt to alter the unambiguous terms of the leases, and such an argument has no support in North Dakota law.

[¶23] In addition, Nichols itself confirms that if the granting document [lease] is unambiguous, it cannot be read together with another instrument as a single contract in order to change the plain language of the lease. Nichols, 2012 ND 178, ¶ 14, 820 N.W.2d 740 ("We agree with the district court that the eight separate warranty deeds are unambiguous and cannot be read together as part of a single contract or one transaction."). Because the oil and gas leases at issue in this case are clear and unambiguous, extrinsic evidence is "not admissible to alter, vary, explain or change the [leases]." Id.

[¶24] "The parties' intent is ascertained from the writing alone if possible." THR Minerals, 2017 ND 78, ¶ 8, 892 N.W.2d 193, see also N.D.C.C. § 9-07-04. The parties' intent as to how much of their respective mineral interests were to be covered by each of their leases can be ascertained from the writing alone. The leases each cover all of lessor's interest in the described tracts of land. App. 8, 13; see also Lario, 2013 ND 98, ¶15, 832 N.W.2d 49. While Hallin and Bradford argue that the limited extrinsic evidence they choose to rely on suggests that the leases only cover 30 net mineral acres, "[e]xtrinsic evidence is properly considered only if the language of the agreement is ambiguous and the parties' intentions cannot be determined from the writing alone." Miller v. Schwarz, 354 N.W.2d 685, 689 (N.D. 1984) (citing Yon v. Great Western Development Corp., 340 N.W.2d 43, 46 (N.D. 1983)). Given the unambiguous language of the leases, the district court's decision to grant Inland's motion for summary judgment was clearly correct.

III. The need for certainty in title is critical and takes precedence over any alleged contrary intent than that set forth on the face of the oil and gas leases.

[¶25] Finding the common, standard form oil and gas leases at issue in this case ambiguous as to the number of mineral acres covered would create serious problems for anyone attempting to determine ownership from public records, and could significantly

hinder development of the natural resources of the state. Cf. N.D.C.C. 38-08-01 ("It is hereby declared to be in the public interest to foster, to encourage, and to promote the development, production, and utilization of the natural resources of oil and gas in the state"). Chief Justice Vande Walle has previously recognized the importance of certainty of title in the context of oil and gas leases. In Lario, he explained that "[t]here are instances in which the need for certainty in titles and the resulting expedience for the title examiner take precedence over the actual intent of the parties." 2013 ND 98, ¶ 17, 832 N.W.2d 49. Inland does not in any way agree that Hallin and Bradford intended to lease anything other than all of their mineral interest in the subject lands when they executed the leases in 2007. However, even if they had truly intended to lease only ¾ of the mineral interest that they owned and intentionally tried to leave 10 net mineral acres unleased, this is likewise an instance where certainty in title must take precedence over any contrary "intent" alleged by Hallin and Bradford.

[¶26] Hallin and Bradford's assertions that they intended to only lease 30 of the 40 net mineral acres they each owned requires the court to look outside the "four corners" of two unambiguous oil and gas leases, and instead rely on extrinsic evidence to determine what lands the leaseholds cover. The leases in question are standard form leases common in the oil and gas industry. The leases have not been altered or amended in any way from their standard form and contain no modifications of any sort. See App. 8–9; App. 13–14. Thousands of virtually identical leases have been executed in the state and are relied upon by lessees and lessors alike. Such leases are recorded in the offices of the county recorders and provide notice to the public of mineral interests that have been leased in tracts of land within the counties. See N.D.C.C. § 47-19-45. Title examiners review and rely upon the

recorded oil and gas leases in preparing title opinions that are necessary to accurately determine ownership of the oil and gas interests in the affected lands and assure prompt and proper payment of royalty proceeds. See Paul Upsons, "Title Opinions: Types, Basis, Format, and Intended Audience," Nuts and Bolts of Mineral Title Examination, Paper 5, Page No. 5-2 (Rocky Mt. Min. L. Fdn. 2015) ("Division order analysts use the ownership section of a title opinion to determine which parties to pay, and which interests to place in suspense.").

[¶27] If the Court were to accept Hallin and Bradford's arguments, a title examiner could never rely solely on an unambiguous oil and gas lease to determine what quantum of a lessor's mineral interest the oil and gas lease covers. Title examiners would always be required to request additional information, outside of the documents recorded with the county recorder, in order to determine whether or not every standard form "Producers 88 – Paid Up" oil and gas lease — in every tract of land, in every spacing unit, for every oil and gas well in the state — actually covered a lessor's full mineral interest in the lands subject to the lease. A review of the documents of record would no longer be sufficient to provide an accurate title opinion, and further investigation and documentation would be required to confirm that a lessor actually intended to lease their entire interest in the subject lands. While such a requirement clearly seems absurd, that is precisely the consequence of accepting Hallin and Bradford's arguments in this case.

IV. The presumption in N.D.C.C. § 47-10-13 applies.

[¶28] Hallin and Bradford take issue with the district court's reference to N.D.C.C. § 47-10-13, citing it as "proof" that the district court applied rules for interpreting deeds rather than rules for interpreting contracts. Appellant's Brief, ¶ 16. While Inland believes that

the presumption set forth in N.D.C.C. § 47-10-13 does in fact apply to interpretation of the Hallin and Bradford leases, it does not appear that the district court actually relied upon this statute in coming to its conclusion that the leases were unambiguous and covered all of Hallin and Bradford mineral interests in the subject lands. The district court's only reference to the statute is in paragraph 10 of the order where it states that "Inland relies, in part, on N.D.C.C. § 47-10-13 . . . ." App. 36 (¶ 10). There is no other reference to the statute. In arriving at its conclusion that the leases are not ambiguous, the court needed only to rely on the plain language of the statutes. See App. 37 (¶ 12).

[¶29] N.D.C.C. § 47-10-13 provides that "[a] fee simple title is presumed to be intended to pass by a grant of real property unless it appears from the grant that a lesser estate was intended." The presumption applies to "grant[s] of real property". Id. Both deeds and oil and gas leases are grants of real property. Lario, 2013 ND 98, ¶ 11, 832 N.W.2d 49. Hallin and Bradford argue that the statute is inapplicable to oil and gas leases because a lease grants only a "leasehold" which is a lesser estate than fee simple. Appellant Brief ¶ 16. However, oil and gas leases have unique characteristics that other real property leases lack, and a typical landlord/tenant lease analysis therefore does not apply. See 2 Eugene Kuntz, Kuntz, a Treatise on the Law of Oil and Gas § 18.2 (1989) ("Except in Louisiana . . . it is uniformly recognized that an oil and gas lease does not give rise to the ordinary relationship of landlord and tenant and that the rules applicable to ordinary tenancies do not necessarily apply."). While section 47-10-13 is not required to establish that the Hallin and Bradford leases unambiguously cover all of the lessors' interests in the subject lands, it nonetheless is applicable and serves as yet another basis for affirming the district court's conclusion.

[¶30] In addition, the premise behind the statute's implicit requirement to specifically state a limitation, exception, or reservation in a conveyance has been recognized by this Court for more than one hundred years:

> The presumption that an instrument executed with the formality of a deed or a contract deliberately entered into, expresses on its face its true intent and purpose, is so pervasive that he who would establish the contrary must go far beyond the ordinary rule of preponderance. To demand less would be to lose sight of the presumption, which is one of the strongest disputable presumptions known to law. Hence, courts have, with great uniformity, in this class of cases, required the proof that should destroy the recitals in a solemn instrument to be clear, specific, satisfactory, and of such character as to leave in the mind of the chancellor no hesitation or substantial doubt.

Jasper v. Hazen, 4 N.D. 1, 6, 58 N.W. 454, 456 (1894).

[¶31] The language of the Hallin and Bradford leases is clear and explicit in that it covers "all" of the lessors' interests in the oil and gas in the subject lands. E.g., App. 8. There is no reference anywhere in either lease to 30 net mineral acres. See id. There is no limiting language anywhere on the face of either lease. Hallin and Bradford's interpretation of the leases requires the Court to read a non-existent limiting term (i.e. 30 net mineral acres or ¾ of my interest) into leases that clearly cover "all" of lessors' mineral interests in the subject lands. This interpretation is not only inconsistent with the Nichols case upon which Hallin and Bradford so heavily rely, but it is also inconsistent with the holding in Lario, the presumption set forth in N.D.C.C. § 47-10-13, and precedent that dates back over one hundred years.

[¶32] If a lessor owns 40 net mineral acres in a tract of land and truly intends for their oil and gas lease to cover only a fraction of their mineral interest in those lands (in this case only 30 of their 40 net mineral acres), such an intention must be expressly stated in the lease. See Lario, 2013 ND 98, ¶ 15, 832 N.W.2d 49 ("where an instrument conveys all of

the tract, the significance of the conveyance is that the grantor 'intended' to convey all the land in the tract, whatever its acreage"). Neither lease specifically stated that the lessors were only leasing a specific number of acres or otherwise limited the interest in the listed lands that would be subject to the lease. Hallin and Bradford were clearly leasing all of the mineral interest in the lands. Id.

V. Borth v. Gulf Oil Exploration and Production Co. is distinguishable and does not support Hallin and Bradford's claim that the leases are ambiguous.

[¶33] Hallin and Bradford also rely on Borth v. Gulf Oil Exploration and Production Co., 313 N.W.2d 706 (1981), in their effort to limit the number of acres covered by the leases. Borth is distinguishable and not helpful in interpreting the leases in light of the more recent and on point decision in Lario. See generally Lario, 2013 ND 98, 832 N.W.2d 49. Unlike the leases at issue in Borth, the Hallin and Bradford leases are paid-up leases which do not require the payment of delay rentals to keep the leases in effect until a well is drilled and production obtained. The Borth lease, on the other hand, had an "unless" clause and required the payment of annual delay rentals to keep the lease in effect. Borth, 313 N.W.2d at 709.

[¶34] The Borths sought termination of the entire lease based on the "unless" clause in the lease, which is generally construed so as to automatically terminate a lease if the lessee fails to do some act required under the lease. Id. The Borths also sought termination of the lease based on failure of consideration, arguing that Gulf Oil's delay rental payments were deficient and that Gulf's predecessor failed to pay them adequate bonus payments. Id. at 708–09.

[¶35] The Court determined that because of the acceptance by the Borths of partial delay rental payments, termination of the entire lease under the lease's "unless clause" was not

warranted. Id. at 711. The Court also determined that because each of the parties were chargeable to some degree with the failure to properly ascertain the correct number of acres involved in the lease, the district court properly terminated the lease as to 20 acres and properly validated the lease as to 60 acres. Id. at 712.

[¶36] In addition to the different types of leases, this case is also distinct from Borth in that the parties did not make an affirmative mistake in ascertaining the correct number of acres; instead, the parties merely recognized and acknowledged the existence of a title defect during their lease negotiations. Hallin and Bradford's effort to link this case to Borth presumes "that each of the parties in the instant action were chargeable to some degree with the failure to properly ascertain the correct number of acres involved in the lease." Appellants' Brief, ¶28. Inland strongly disputes this contention.

[¶37] The Hallins believed at the time that they only owned 30 net mineral acres in the subject lands. Inland App. 007. Prior to signing the leases, Lynn made it clear to John Hallin that there was a defect in the title, and that this defect would need to be resolved. Id. at 002–003 (¶¶ 7–9). She read the deeds and the probates to him, detailing the full names of the parties involved and the dates of the deeds and probates. Id. at 002 (¶ 8). Lynn went on to explain to John Hallin that Inland had made a second search of the courthouse records, starting with rechecking the indexing in case they had missed something in the initial title search, but nothing was found to change the results of Inland's first title search. Id. Consistent with Inland's title search and assessment, there was indeed a defect in title that had to be subsequently resolved by a quiet title action after the leases were entered into. See generally Hallin, 2013 ND 168, 837 N.W.2d 888. Both Inland, the Hallins, and Bradford had knowledge of the title problem prior to entering into the leases.

With knowledge of the problem, the Hallins and Bradford agreed to lease their full interest in the property and warrant title to the entire interest. The Borth decision relied on principles of equity which are not applicable under these facts.

CONCLUSION

[¶38] Based on the arguments and authorities cited above, Inland respectfully requests that the Court affirm the order and judgment entered by the district court.

Dated this 30th day of June, 2017.

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

[¶39] This Brief contains 5,857 words, excluding the parts of the brief exempted by N.D.R.App.P. 32(a)(8)(A). I certify that this Brief complies with the typeface requirements of N.D.R.App.P. 32 and the type style requirements of that rule, because it has been prepared in a proportionally-spaced typeface using a Microsoft Word, Times New Roman, 12 point font.

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CERTIFICATE OF SERVICE

[¶40] I hereby certify that a true and correct copy of the Brief of Appellee Inland Oil & Gas Corporation was served on June 30, 2017, via electronic mail, upon the following:

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Dated this 30th day of June, 2017.

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