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Context Matters: Measuring the Validity of Blanket Conveyances

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“Catch-all” or “blanket” property descriptions purport to grant all the grantor’s property in some geographic area – such as a public land survey system subdivision, county, state or even the entire country – without a specific description of the lands being conveyed.

These types of descriptions frequently appear in conveyances of security interests in real property, such as mortgages and deeds of trust in situations in which the secured party wishes to ensure that its liens encompass the entirety of the debtor’s existing – and, coupled with an after-acquired property clause, potentially future – property in a given area, regardless of whether specific legal descriptions are included.

A valid blanket property description may be used by a secured party to protect its liens from attack by unsecured or undersecured creditors or as a relatively fast and cost-effective means of increasing collateral coverage in situations in which reserve value has fallen. However, the validity of these conveyances varies based on state law, the language of the grant and the context in which it appears.

Validity of blanket descriptions in Texas

Texas courts have generally upheld blanket property descriptions as satisfying the statute of frauds and constructive notice requirements. However, the language and context of these descriptions matter. Texas courts have upheld conveyances that purported to transfer all land in a county (“any other land owned by me in Liberty County, Texas ... it is hereby conveyed”), the state (“all that certain tract or tracts, parcel or parcels, of land by me ... [in the] state of Texas”) and even the country (“[a]ll the oil, gas and mining leases, royalties and overriding royalties located anywhere within the United States”).

Whether a court will uphold a blanket description will depend on whether the language, though broad, resolves or otherwise does not create an ambiguity relative to the rest of the document. Two recent Texas Supreme Court cases are illustrative.

In 2005, the court held in *J. Hiram Moore, Ltd. v. Greer* that where a blanket property description

created an ambiguity in the conveyance, it would not be given effect as a matter of law. In the case, the conveyance at issue included both a specific description related to the mineral interests associated with a specific tract of land in which Greer owned no interest and a general description for all the property the conveyor owned in the county.

If the general grant was upheld, it would capture only land beyond what was specifically described, where the specific description conveyed nothing. The court reasoned that it could not construe the deed as written as a matter of law as “[t]he deed in effect states that Greer conveys nothing, and that she conveys everything.”

In 2017, the Supreme Court was again asked to interpret the validity of a blanket description. In *Davis v. Muller*, the court distinguished Moore and upheld a blanket conveyance.

In 1991, Cope conveyed her mineral interest in 10 vaguely described tracts in Harris County to Davis. The instrument included a general property description that read, “Grantor hereby conveys to Grantee all of the mineral, royalty, and overriding royalty interest owned by Grantor in Harrison County, whether or not same is herein above correctly described.” Mills similarly conveyed two Harris County tracts to Davis in the same manner – vague descriptions followed by the general conveyance language.

Cope and Mills later deeded these properties to Mueller who sued Davis claiming the property description in his grants were insufficient. The assertion was not that Cope and Mills did not own the property – it was that their specific descriptions were ineffective.

The court stated plainly that the specific conveyance language was insufficient to satisfy the statute of frauds. However, the general property descriptions resolved this ambiguity and, as the court reasoned, it “could not be clearer. All means all.” The general descriptions corrected the deficiencies in the specific descriptions.

In tandem, these cases reflect that while the language of a general property description is crucial, so is the effect of that language in the context in which it appears.

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Consideration by other states

Texas courts appear to have most frequently addressed blanket property descriptions. However, parties should be prepared to assess the relevant standard in other states.

While the Colorado Supreme Court held in *In re Riviera* that a recorded deed of trust that completely omits a legal description cannot provide constructive notice, the Colorado legislature, in enacting Colo. Rev. Stat. § 38-35-122, clarified that lacking a legal description of the property is not by itself sufficient to render the document invalid. Rather, the standard remains that a description is sufficient if the property can be identified from it

Identification of the property at issue and constructive notice remain salient considerations for courts. Recent Delaware case law demonstrates the importance of precise language in a general grant. In *In re Poteat*, a mortgage relating to “all that certain property situated in Town of Frankford, Sussex County, Delaware, and more particularly described in Exhibit ‘A,’ attached hereto” was found to be “grossly inadequate.” Similarly, Kansas follows Oklahoma law. In *Luthi v. Evans*, the Kansas Supreme Court held that a while a blanket conveyance is sufficient to bind the parties to the relevant agreement, it is insufficient for the purposes of constructive notice.

Missouri presents a unique case that bears attention. Missouri case law has long recognized general granting language. For example, in *Pine Lawn Bank v. Urbahns*, a Missouri Court of Appeals held that “the language ‘shall have a lien ... in any real property or leasehold owned by any maker ...’ not only sufficiently describes with particularity the real estate sought to be charged but also upon recordation of the note and collateral security agreement there can be no question of appropriation.” However, Mo. Stat. § 59.330 now requires that any mortgage or deed of trust contain “a legal description of the lands affected.”

In assessing whether a general conveyance will be valid or not, it is worth considering the context, including whether it is most important that the parties to an agreement be bound or whether it is important that other parties be on notice, and what case law and statutes provide regarding requirements for constructive notice.

Implications for bankruptcy

Bankruptcy courts ultimately apply the property law of the state in which assets are located in determining whether a blanket property description is valid. The result may have profound impacts on the relative positions of the parties involved. In *In re Cornerstone E&P Company*, the U.S. Bankruptcy Court for

the Northern District of Texas outlined the key legal consideration for property descriptions in mortgages under both Texas and Oklahoma law: (1) identification of property for the statute of frauds, (2) ambiguity in granting language and (3) constructive notice.

Statute of frauds

The case involved one mortgage governed by Texas law and one by Oklahoma law. Both contained blanket conveyance language purporting to cover all of the debtor’s property in a county. The court held that both were sufficient to satisfy the statute of frauds.

Under Texas law, the court cited longstanding precedent that an instrument “must furnish within itself, or by reference to some other existing writing, the means or data by which the property to be conveyed may be identified with reasonable certainty.”

The language at issue closely mirrored a common blanket property description. The mortgage covered all title, right and interest to properties “which are located on or under or which concern any Property or Properties located in counties referenced in Exhibit A....” Exhibit A included references to Hill County, where the properties at issue were located. The court held that this description was sufficient to “reasonably identify” the encumbered property.

The court analogized to an illustrative case where the Texas Supreme Court interpreted two land descriptions (separated by an “or”) in a mutual interest agreement. In *Westland Oil Development v. Gulf Oil*, the court held that one of the descriptions was sufficient under the statute of frauds while the other was not. The relevant language read:

(1) “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 ... such shall be subject to the terms and provisions of this agreement;” and

(2) “If any of the parties hereto, their representatives or assigns, acquire ... 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.”

The court held that the first description was sufficient as the agreement specifically stated a farmout was defined as the “said farmout,” creating a sufficient reference to another existing writing for the purpose of defining the property at issue. Compare this to the second description, which the court held did not sufficiently reference an existing writing.

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The court in *Cornerstone* reasoned that the reference to the “Properties located in counties referenced in Exhibit A” was more comparable to the description the Texas Supreme Court upheld, emphasizing the importance of careful and certain references in general conveyances.

The court dealt similarly with the Oklahoma mortgage documents, stating that the Oklahoma statute of frauds closely resembled the Texas standard – “identify[ing] the property to the exclusion of any other property.” The court noted that a lack of relevant precedent notwithstanding, the mortgage language satisfied the standard as it sufficiently identified the relevant property.

Ambiguity

As discussed above, courts will often uphold a blanket conveyance that resolves an ambiguity (or otherwise does not create one) but are far less likely to give effect to one that creates an ambiguity.

The plaintiffs in *Cornerstone* alleged that the blanket property description in the mortgages created an ambiguity that purported to “grant nothing and everything.” They reasoned that because the mortgage documents included specific grants of surface leases listed on Exhibit A and nonconsent interests owned by the debtor, while Exhibit A did not contain surface leases and there was no evidence of any recorded nonconsent interests, there was a fatal ambiguity. The court disagreed, emphasizing that any ambiguity was minor and that general grants in Texas are frequently given effect in Texas insofar as the deed “clearly evidence[s]” the grantor’s intent to convey such property.

Again noting the comparability to Texas law, the court found no ambiguity under Oklahoma law.

Constructive notice

Lastly, the plaintiffs alleged insufficient notice to the extent that the instruments failed to satisfy the statute of frauds. Given the court’s clear holding that the descriptions were sufficient, the court dispensed with this argument.

Oklahoma, however, breaks with Texas regarding constructive notice and recording. In making an “educated guess” as to how Oklahoma’s Supreme Court would hold on the issue, the court determined that constructive notice would require evidence sufficient for indexing in both the county grantor-grantee index and the county tract index. The court reasoned that because the property covered by the general property description beyond what was specifically provided in Exhibit A was not defined with this level of specificity, the descriptions were insufficient to put parties on constructive notice under Oklahoma law.

In assessing the validity of a blanket conveyance in a mortgage, parties should consider each of these elements closely.

Conclusion

Given the current strains on the oil and gas industry, financial uncertainty will remain a key factor for many companies. Interested parties should be cognizant of the granting language in their security instruments and how this language might be interpreted under relevant state law.

David Sweeney is a partner in Akin Gump’s Houston office. He has advised on mergers and acquisitions with an aggregate value of over \$65 billion, energy finance transactions with an aggregate value of over \$3 billion and operational matters spanning the entire hydrocarbon value chain in over 30 countries.

Niki Roberts is a counsel in Akin Gump’s Houston office. She advises companies on upstream and midstream oil and gas transactions and has more than 10 years of direct oil and gas experience in onshore, offshore and land administration.

Anthony Hilbert, an associate in Akin Gump’s Houston office, also contributed to this article. He focuses his practice on corporate and securities matters in the energy sector.