OKLAHOMA CITY UNIVERSITY LAW REVIEW

VOLUME 47 Spring 2023 NUMBER 2

Comment

Clarifying the Statute of Limitations for Overriding Royalty Interest Holders in Oil and Gas Leases

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Introduction

When preparing to file a claim, it is usually fairly simple to look up the statute of limitations and determine if it has expired. However, there are times when it is not clear when the statute of limitations begins to accrue. Whether the date of the injury is unknown, or if the facts of a case otherwise make it unclear, courts often have to use their discretionary power to determine when and if the statute of limitations period has begun to run. This happens mainly when precedent does not provide guidance, and the statute itself does not provide specific information that might align with the facts of a case. This was true in *Claude C. Arnold Non-Operated Royalty Interest Props., LLC v. Cabot Oil & Gas Corp.*

In *Cabot*, the parties contested the date of accrual of 12 O.S. § 93(4).[[2]](#footnote-2) The Court found that the statute of limitations began running in 2012, as opposed to the defendant’s claim that it began in 1984.[[3]](#footnote-3) This situation is distinguishable from previous cases due to the difference in facts. In this specific case, the original leases filed by the plaintiff had expired, but the lessees filed new leases which operated with the same terms as the original.[[4]](#footnote-4) The plaintiff was not a grantor in the new lease, so it had no notice of the new leases being filed.[[5]](#footnote-5) When Arnold Petroleum became aware that another formation under the lease began producing, it requested the required payment.[[6]](#footnote-6) Cabot, the defendant, argued that Arnold did not have a claim for payment since the statute of limitations began running in 1984.[[7]](#footnote-7) Thus, the Court was faced with the task of determining whether the accrual date began in 1984 with the filing of the new lease or in 2012 when the injury of nonpayment occurred.[[8]](#footnote-8)

Part I of this Comment discusses the relevant history and background of the law surrounding the rights of overriding royalty interest holders in oil and gas leases, the applicable statute of limitations, and relevant contract law that influenced the Court’s reasoning. Part II analyzes the facts and procedural history, and offers an in-depth analysis of the Court’s reasoning in *Cabot*. Finally, Part III discusses why the Court reached the correct conclusion in finding that the accrual date did not begin until 2012, alongside a discussion of how overriding royalty interest holders will reap the benefits of this decision, the differing applicability of statute of limitations laws, and the benefit of applying contract law to oil and gas leases.

Background

This case provides an instance of real-time evolution of the law regarding parties’ rights and how the statute of limitations applies in unprecedented circumstances. In the state of Oklahoma,

[a]ctions for the recovery of real property, or for the determination of any adverse right or interest therein, can only be brought within the periods hereinafter prescribed, after the cause of action shall have accrued, and at no other time thereafter: . . . (4) an action for the recovery of real property not hereinbefore provided for, within fifteen (15) years.[[9]](#footnote-9)

The general rule is that “[e]very conveyance of real property acknowledged or approved, certified and recorded as prescribed by law from the time it is filed with the register of deeds for record is constructive notice of the contents thereof to subsequent purchasers, mortgagees, encumbrancers or creditors.”[[10]](#footnote-10) The statute of limitations begins to run on a cause of action when harm occurs to the plaintiff, whether the plaintiff knew of the injury or not.[[11]](#footnote-11)

While these statutes provide helpful guidance in determining an accrual date for a statute of limitations, prior case law has only addressed when a statute of limitation begins when a party is directly involved in the filing of the lease. As is discussed in Part II of this Comment, the plaintiff—Arnold Petroleum, Inc.—was not involved in filing the new lease in 1984 after the expiration of the original 1973 leases.[[12]](#footnote-12) Therefore, while the case law aided the Court in its reasoning, it also led the Court to set new precedent for future cases.

The two main cases cited as relevant precedent by the Court are *Scott v. Peters* and *Calvert v. Swinford*.[[13]](#footnote-13) Both of these cases discuss the applicability of 16 O.S. § 16 and hold that grantors of oil and gas leases are put on notice when the respective deed is filed with the county clerk.[[14]](#footnote-14) In that situation, the statute of limitations begins to run upon filing.[[15]](#footnote-15) However, here, Arnold was not a grantor of the new 1984 lease, and it had nothing to do with the filing.[[16]](#footnote-16) This unprecedented fact meant that the Court had to determine if it wanted to interpret 16 O.S. § 16 to include Arnold, or hold that the plaintiff’s injury happened when it demanded payment in 2012.[[17]](#footnote-17)

*Claude C. Arnold Non-Operated Royalty Interest Props., LLC v. Cabot Oil & Gas Corp.*

Facts

Sometime in 1973, Arnold Petroleum, Inc. obtained six oil and gas leases in Beaver County, Oklahoma, including certain formations known as the Chester and the Marmaton formations.[[18]](#footnote-18) All six of these leases were filed in the county land records, having a “primary term of three years, plus a five year extension period.”[[19]](#footnote-19) The six leases also all contained a clause that modified the lease expiration.[[20]](#footnote-20) Specifically, the clause stated “provided, however, that Lessee shall not be obligated to release any formation, horizon or zone, the production from which would conflict with any existing producing horizon, formation or zone.”[[21]](#footnote-21) The leases also allowed the lessee to surrender the leases “as to any part or parts of the leased premises by delivering or mailing a release thereof to lessor, or by placing a release of record in the proper County.”[[22]](#footnote-22) In litigation, this type of clause is considered to be highly unusual, and was termed by the parties as the “exception clause.”[[23]](#footnote-23)

Between 1973 and 1974, “Arnold [] assigned [the] leases to Dyco Petroleum Corporation, expressly reserving an overriding royalty interest in any oil and gas produced under the leases.”[[24]](#footnote-24) Subsequently, “Dyco assigned the leases to Harold Courson[,] the predecessor in interest of the defendant” in this case, Cabot Oil and Gas Corporation. Arnold’s overriding royalty interest remained on each assignment made.[[25]](#footnote-25) “Before the end of the leases’ primary term, Courson drilled and completed two vertical wells in the Chester formation.”[[26]](#footnote-26) The Chester formation underlies the land covered in each of the 1973 leases.[[27]](#footnote-27) These two wells have produced gas—and some oil—continuously since the 1970s, and Arnold has consistently received its overriding royalty interest payments from those wells.[[28]](#footnote-28)

After the primary term of the leases ended in 1976, the five-year extended term expired in 1981.[[29]](#footnote-29) Therefore, “Courson obtained several new leases from the mineral owners who had granted the [original six] 1973 leases.”[[30]](#footnote-30) However, these new leases were silent as to any specific geologic zone or formation.[[31]](#footnote-31) Similar to before, these leases were filed in Beaver County, but Arnold was unaware that any of this took place. In fact, Arnold was completely unaware of the new 1984 leases until 1999.[[32]](#footnote-32) Arnold only became aware of new leases once it “received a letter from Courson [saying] that he had recompleted a well in the Chester formation that had originally been drilled into the . . . Lower Chester formation by Natural Gas Anadarko, Inc. (NGA).”[[33]](#footnote-33) “NGA derived its interest in the Lower Chester formation from the 1984 leases” filed by Courson.[[34]](#footnote-34) The newly recompleted well, though in the lower portion of the Chester formation, would be producing from the original Chester formation, in which Arnold still held its overriding royalty interest.[[35]](#footnote-35) Upon discovering this, Arnold contacted Courson for further information and explanation. Courson asserted that the 1984 leases only covered the “‘lower depths’ that had expired under the 1973 leases,” but excluded anything about the Marmaton formation because Marmaton was a shallow formation.[[36]](#footnote-36) The issue surrounding the Marmaton formation remained untouched for thirteen years.[[37]](#footnote-37)

In 2011, “Courson assigned his leases to Cabot.”[[38]](#footnote-38) Immediately following the assignment, Cabot began drilling horizontal wells in the Marmaton formation, which directly neighbored the Chester formation.[[39]](#footnote-39) Within a year of Cabot’s drilling, the new wells began producing.[[40]](#footnote-40) Upon learning of the newly producing wells, Arnold requested payment from Cabot as a result of its continuing overriding royalty interest.[[41]](#footnote-41) Arnold explained “that its rights in the Marmaton formation were held [via] the 1973 leases’ [peculiar] exception clause.”[[42]](#footnote-42) The only reason the Marmaton hadn’t been producing before was “a conflict caused by a simultaneous . . . production from the . . . vertical wells in the Chester” formation drilled in the 1970’s.[[43]](#footnote-43) Arnold’s argument to Cabot for payment expressly relied on the exception clause, because “the clause allowed such a formation [the Marmaton] to be held by the conflicting production in a different zone [the Chester].”[[44]](#footnote-44) Regardless of whether the Marmaton was actively producing, the exception clause allowed Arnold to retain its interest in the non-producing formation.[[45]](#footnote-45) Cabot disagreed with Arnold’s rationale and refused to pay the overriding royalty payment.[[46]](#footnote-46)

*Procedural History*

Arnold sued in October 2012 in the District Court of Beaver County, seeking damages against Cabot for nonpayment of royalties.[[47]](#footnote-47) Arnold further “asked the district court to quiet title the overriding royalty interest as to the Marmaton.”[[48]](#footnote-48) In response, Cabot argued that Arnold’s claims were barred under 12 O.S. § 93(4), which states:

Actions for the recovery of real property, or for the determination of any adverse right or interest therein, can only be brought within the periods hereinafter prescribed, after the cause of action shall have accrued, and at no other time thereafter: . . . (4) an action for the recovery of real property not hereinbefore provided for, within fifteen (15) years.[[49]](#footnote-49)

Specifically, Cabot argued that under that statute, Arnold’s claims were no longer viable because “the applicable statute of limitations began to run with the filing of the new leases in 1984, which . . . should have put Arnold on notice of an adverse claim to the Marmaton.”[[50]](#footnote-50)

Following a four-day bench trial, Judge Jon Parsley granted judgment in favor of Arnold, holding that Arnold’s cause of action accrued on July 20, 2012 when Arnold contacted Cabot to request the overriding royalty interest payment.[[51]](#footnote-51) Accordingly, Judge Parsley quieted title and awarded Arnold $769,000 in actual damages and $493,000 in prejudgment interest. Cabot timely appealed.[[52]](#footnote-52)

On appeal, the Oklahoma Court of Civil Appeals agreed with Cabot and held that “Arnold’s claim accrued in 1984 upon the filing of the new leases in the county land records.”[[53]](#footnote-53) As a result, the court reversed the district court’s ruling “on the grounds that 12 O.S. 2011 § 93(4)’s 15-year statute of limitations barred Arnold’s claims as untimely.”[[54]](#footnote-54) This meant that Arnold would have had to sue Cabot no later than 1999 to keep its Marmaton rights and not violate the statute.[[55]](#footnote-55) Ultimately, Arnold petitioned the Oklahoma Supreme Court, which granted certiorari.[[56]](#footnote-56)

Upon granting certiorari, the Court sought to determine how the statute of limitations applied in the Oklahoma statute “based on purported notice of a recorded lease, where the parties’ [extensive history] of business conduct indicated neither awareness nor acknowledgement of the lease’s effect on the [Marmaton] formation at issue.”[[57]](#footnote-57) The Court focused its analysis on one central question: “when did Arnold’s cause of action arise?”[[58]](#footnote-58)

*Court’s Reasoning*

Before the Oklahoma Supreme Court, Cabot presented two main arguments. First, Cabot contended “that once the 1984 leases were filed in the Beaver County land records,” Arnold was immediately “put on notice about an adverse interest that jeopardized the ongoing validity of its overriding royalty interest.”[[59]](#footnote-59) Second, as a result of this notice, “the clock began to run on any potential cause of action to quiet title that interest” because of the statute’s 15-year statute of limitations.[[60]](#footnote-60) These arguments are what the Court of Civil Appeals relied on in ruling in favor of Cabot. However, the Court determined that the trial court—not the appellate court—reached the correct conclusion.[[61]](#footnote-61)

The Court’s analysis began by stating a precedential rule that “[a] cause of action accrues when a litigant first could have maintained his action to a successful conclusion.”[[62]](#footnote-62) Therefore, the Court needed to determine when Arnold was “injured” such that it could have successfully sued to establish its interest in the Marmaton.[[63]](#footnote-63) To aid in determining Arnold’s injury date, the Court looked first to the evidence offered at trial.[[64]](#footnote-64)

The evidence at trial established that (1) simultaneous vertical-well production from the Marmaton would have conflicted with existing development in the Chester alone, thereby permitting *both* formations to be held by production in the Chester under the plain language of the leases’ exception clause, (2) the Chester formation has produced continuously since drilling began in the mid-1970s, (3) Arnold has never stopped receiving its overriding royalty on that production, and (4) neither Cabot nor Courson ever surrendered or otherwise released their interests in the specific manner required by the 1973 leases.[[65]](#footnote-65)

Given this evidence, the Court reasoned that the filing of the 1984 leases did not alter the above-established facts. From there, it focused its analysis on the concept of being put on notice of an adverse interest.[[66]](#footnote-66) Citing Oklahoma precedent, it reasoned that the established facts cannot possibly be interpreted to prove that Arnold was put on notice to a supposed adverse interest.[[67]](#footnote-67) It referenced *Straub v. Swaim*, stating that “it is difficult to see wherein the [subsequent] recording of a defendant’s mineral deed . . . could have any effect on plaintiff’s rights or constitute notice to plaintiff of such deed.”[[68]](#footnote-68)

Due to more recent cases having what seems to be conflicting reasoning, the Court then shifted its analysis to distinguish the facts.[[69]](#footnote-69) It focused on two cases, *Scott v. Peters* and *Calvert v. Swinford*, and explained how the present case required a contrary holding.[[70]](#footnote-70) It stated that “in those [two] cases, the plaintiffs attempting to avoid the effect of the statute of limitations were the *grantors* of the mineral deeds in question.”[[71]](#footnote-71) It continued by reasoning that “[t]here, we held the statute-of-limitations period began to run when the deeds were filed with the county clerk.[[72]](#footnote-72) It is completely reasonable to expect that [a] grantor who negotiates, reads, and signs the instrument should be ‘on notice’ of what it says from the time of filing onward.”[[73]](#footnote-73) Since Arnold was not a drafter in the 1984 leases, the Court concluded that there was no injury Arnold could have reasonably been expected to uncover at any time before 2012.[[74]](#footnote-74)

From there, the Court shifted its analysis and considered the issue through the lens of contract law.[[75]](#footnote-75) The Court first referenced a past decision which established that “[a]n oil-and-gas lease ‘is a contract to be construed like any other agreement.”[[76]](#footnote-76) From this hard and fast rule, the Court considered the language of the leases, paying special attention to the “bargained-for ‘exception clause.’”[[77]](#footnote-77) The Court held that the general language of the exception clause meant that the Marmaton formation would be included in the same way that it was in the original leases.[[78]](#footnote-78) Moreover, it stated that it was impossible to then consider Arnold to be on notice about the adverse interest because in the 1984 leases, neither party seemed to consider the 1973 leases as terminated.[[79]](#footnote-79) The 1984 leases didn’t mention the Marmaton at all.[[80]](#footnote-80)

The Court found that Cabot possessed title opinions cautioning the presence of numerous unusual provisions in the lease, but Cabot “‘entirely ignored’ [those] warning[s] until after it began drilling . . . in the Marmaton.”[[81]](#footnote-81) The Court reasoned that had it taken heed of those warnings, it would have known of Arnold’s clear right to royalties in that formation. In emphasizing this point, the Court held that it “cannot give a defendant the benefit of some other contract he in hindsight might wish he had made. We can only interpret the plain language of the contract now before us.”[[82]](#footnote-82) Similarly, the Court refused to allow Cabot to unilaterally surrender or rewrite the 1973 leases via the 1984 leases.[[83]](#footnote-83) Cabot had continued paying royalties to Arnold for the Chester formation under those leases, and as Chief Justice Gurich succinctly wrote: “Cabot does not get to decide [‘which part of the lease was released and which part wasn’t’] in a way that goes against the plain words of the 1973 agreement and the parties’ decades-long course of conduct.”[[84]](#footnote-84) Thus, the Court gave great deference as to the language of the agreement, the intent of the contracting parties, and the business conduct of the parties in regard to the leases.[[85]](#footnote-85)

Ultimately, the Court explained that from the filing of the new lease in 1984 to 2012, nothing could have alerted Arnold of an adverse interest in the Marmaton formation.[[86]](#footnote-86) By looking at the language of the lease and the exception clause, the Court reasoned that since the language allowed production from the Chester formation that conflicted with production of other zones, including the Marmaton, Arnold’s interest in the Marmaton could not have been injured under the statute until 2012, when Cabot began producing from that formation and refused to pay the royalties.[[87]](#footnote-87) There was no other plausible injury that could have taken place prior.[[88]](#footnote-88) Thus, the Court found Arnold’s lawsuit to be timely filed since its cause of action accrued in 2012.[[89]](#footnote-89)

Argument

The Oklahoma Supreme Court correctly vacated the Court of Civil Appeals’ opinion, affirming the trial court’s judgment by determining that the statute of limitations did not begin to run until Cabot refused payment in 2012. Given that the issues provided by the facts are generally unprecedented, the Court’s conclusion provides sound reasoning, resulting in the expansion of equity in overriding royalty interests in oil and gas leases.

*Rights of An Overriding Royalty Interest Holder*

Though not explicitly discussed within the majority opinion, the Oklahoma Supreme Court properly applied the law as to an individual’s overriding royalty interest continuing through lease assignments.[[90]](#footnote-90) However, it would have been beneficial for the Court to include a discussion of that relevant law in their reasoning. In reading through the opinion of this case, an initial thought might be that Cabot’s argument is correct, insofar as that the filing of the 1984 leases should have put Arnold on notice of an adverse interest of their overriding royalty interest.[[91]](#footnote-91) There is more to this argument than is discussed, and though it might not have made a difference in the Court’s decision, the idea of an overriding royalty interest continuing after lease expirations is an important precedent to keep in mind so as to not muddle the rights of interest owners.[[92]](#footnote-92) In the present case, one could simply ask: why didn’t Arnold’s overriding royalty interest expire when the primary term or the extension term of the 1973 leases expired?

Recall that in the 1973 leases, the primary term was listed at three years, with an extension term of five years.[[93]](#footnote-93) This would mean that the primary term ended in 1976 and the extended term ended in 1981.[[94]](#footnote-94) Only after these periods had ended did Harold Courson file new leases in regard to the Chester and Marmaton formations.[[95]](#footnote-95) This might cause one to think that Arnold’s rights under the 1973 leases had diminished. However, there is a difference between the termination of a lease and the expiration of a lease.[[96]](#footnote-96) As stated by the court in *Olson v. Continental Resources, Inc.*, “[an] overriding royalty interest does not survive termination of [a] lease.”[[97]](#footnote-97) However, the court in *Olson* continued by holding that “the rights of an overriding royalty owner in future leases are protected if the assignment contains a clause providing the override applies to extensions or renewals of the original lease from which it is carved.”[[98]](#footnote-98)

In the present case, as can be noted from earlier in this Comment, when Arnold first assigned the 1973 leases, it expressly reserved “an overriding royalty interest in any oil and gas produced under the leases.”[[99]](#footnote-99) Otherwise, once the leases expired following the primary and extended terms in 1981, its interest might have expired concurrently.[[100]](#footnote-100) Furthermore, neither party terminated the leases, which would have extinguished Arnold’s rights to the overriding interest.[[101]](#footnote-101) Rather, the new leases filed by Harold Courson in 1984 could be considered renewals of the 1973 leases.[[102]](#footnote-102) Thus, Arnold’s royalty rights were validly held through each assignment of the new leases. While the Court reached the correct conclusion regarding this underlying issue, a discussion and application of the law might have provided guidance for any future confusion regarding the rights of an overriding royalty interest holder and the assignment of the respective oil and gas lease.

*The Applicability of the Statute of Limitations to Oil and Gas Leases*

In its decision, the Court clarified when notice is reasonably expected versus when it is not. Oklahoma law provides that “[e]very conveyance of real property acknowledged or approved, certified and recorded as prescribed by law from the time it is filed with the register of deeds for record is constructive notice of the contents thereof to subsequent purchasers, mortgagees, encumbrancers or creditors.”[[103]](#footnote-103) The case law cited by the Court explicitly follows this statute, but it details why those cases are not applicable to the present case, thus making this case revolutionary regarding notice and when the applicable statute of limitations begins.

The Court began by citing *Calvert v. Swinford.*[[104]](#footnote-104) There, the plaintiffs sold their property in Noble County but intended to keep the mineral interests.[[105]](#footnote-105) However, in the process of the sale, the terms were changed, which removed their mineral interests.[[106]](#footnote-106) When they attempted to recover their mineral interests twelve years later, the Court found that since they were grantors of the deed, they could not recover, as they had a duty to ensure the requested terms were in the deed.[[107]](#footnote-107) They also had the opportunity to review the deed once it was filed.[[108]](#footnote-108) The plaintiffs argued that 16 O.S. § 16 excludes the word “grantors” in its rule, therefore allowing the statute of limitations to accrue at a different time than the filing of a deed with the county clerk.[[109]](#footnote-109) In response, the Court held that while the Oklahoma statute doesn’t expressly list the word “grantor” as being included in the list of persons to whom a recorded deed provides notice of its contents, other states with similar statutes have held the law to apply to grantors.[[110]](#footnote-110) For example, some states use language making such statutes applicable to those “whose duty it is to search the records.”[[111]](#footnote-111) Other states impose the duty on “all persons” (Arkansas) and on the “general public” (Hawaii).[[112]](#footnote-112) Similarly, the Oklahoma courts have found grantors to be on notice when their deed is filed with the county clerk.[[113]](#footnote-113)

Alongside *Calvert*, the Court also cited *Scott v. Peters* to reinforce the idea that the grantors are automatically on notice of filings with the county clerk.[[114]](#footnote-114) There, a deed for property—which did not include a mineral interest reservation—was filed with the county clerk, remaining uncontested for twelve years.[[115]](#footnote-115) The Court held that the statute of limitations began to accrue when the original deed was filed, because the plaintiff was on notice that mineral rights were not included in the deed.[[116]](#footnote-116)

Based on this precedent, this case is clearly distinguishable. Arnold could not have reasonably been put on notice to an adverse interest in its royalties by the filing of the 1984 deeds. Arnold, with the original assignment of the 1973 leases, expressly reserved its right to the royalties which were to continue throughout the leases’ duration.[[117]](#footnote-117) When Courson renewed the leases in 1984, “Arnold had no role in drafting or recording” of the leases.[[118]](#footnote-118) As far as Arnold was concerned, its rights were still retained in the new leases, as it continued to receive royalty payments on the Chester formation.[[119]](#footnote-119)

From these facts, it would have been unreasonable and inequitable for the Court to apply 16 O.S. § 16 and find that Arnold was put on notice by the filing of leases it was unaware of. A party properly assigning land and expressly retaining an interest in royalties should not be punished as a result of a lessee’s unilateral decision to avoid portions of a lease they dislike. Even if the Court had chosen to interpret the Oklahoma statute to mean “all persons” like other states, the result would have been inequitable. It is perfectly reasonable to interpret other states’ application of their respective statutes to include grantors of leases, or any person who should have a duty to search the record. However, the statute should never be interpreted to include lessors holding an express interest.

It is worth raising a potential counter argument to the above-asserted claim. If Oklahoma courts chose to interpret 16 O.S. § 16 to include “all persons” as being on notice with the filing of a deed with the county clerk, it might not always be highly unreasonable. Courts could hold that any interested parties are responsible for ensuring that their interests in a deed are secure. However, the Court reached the correct conclusion by not imposing this rationale on Arnold for two important reasons. First, Arnold was completely unaware of the filing of the 1984 leases until 1999.[[120]](#footnote-120) In fact, when Arnold did inquire about the leases in 1999, the Marmaton formation at issue was not mentioned, so there was no reason for Arnold to think there was an adverse interest as to the Marmaton.[[121]](#footnote-121) Second, even though it was unaware of the new leases, it was still receiving royalty payments on the formations—just as it had been under the original leases.[[122]](#footnote-122) Therefore, even if the Court chose to impose a duty on Arnold to check the lease filings, it would have been unreasonable in this case because business continued between the parties as usual.[[123]](#footnote-123) All of this is said notwithstanding the exception clause that was agreed upon in the original lease, which is discussed below.

*The Court’s Application of Contract Law Makes Oil and Gas Equitable*

In affirming that an oil and gas lease is a contract to be construed like any other agreement, the Court has made it easier for future parties to be bound by what they agree to in oil and gas leases, eliminating the ability of defendants to quietly chip away at the rights of overriding royalty interest holders.[[124]](#footnote-124) This will help limit lawsuits for remorseful lessors who failed to preserve their royalty rights, while also promoting equity in requiring that lessees comply with the terms of the lease—including royalty payments. Even though the exception clause in the lease was noted as being unusual, the Court appropriately applied contract principles to bind Cabot into paying the royalty interests to Arnold.

In a contract, “[i]f the language is clear and explicit and does not involve uncertainty, the words used are to be understood in their ordinary and popular sense.”[[125]](#footnote-125) Here, the terms of the lease were clear. Though the exception clause was not typical, the Court was correct in giving effect to the “bargained-for” clause.[[126]](#footnote-126) Cabot’s intentional refusal to review the specific terms of the lease did not entitle it to retain royalty payments owed to Arnold.[[127]](#footnote-127) It is a staple of contract law that the intent of the parties should be given strong deference.[[128]](#footnote-128) Given the language of the contract and the conduct of the sophisticated parties, Cabot fully intended to act under all terms of the lease.[[129]](#footnote-129)

If Cabot wanted to depart from the terms of the lease, it should not have continued to comply with the original terms, including continuing to pay Arnold the Chester royalty payments.[[130]](#footnote-130) To effectively surrender a lease, “such act or acts must be inconsistent with the continuance of such former . . . interest, and, moreover, must be actually accepted and acted upon by the other, and, in fact, all the parties concerned.”[[131]](#footnote-131) This could not be further from what took place here. Cabot continued to pay royalties to Arnold based on the Chester, which—up until 2011—was the producing formation that triggered payment.[[132]](#footnote-132) Accordingly, Arnold continued to accept the payments, implying that the parties intended to continue under the contractual terms.[[133]](#footnote-133) The fact that the Marmaton was not at issue until 2011 makes no difference because it was still covered by the exception clause in the language of the contract.[[134]](#footnote-134) It would not promote justice to allow a party to continue business under a contract until a term is triggered that they disagree with. In holding that the parties’ conduct played a determinative role in deciding the date of accrual for the statute of limitations, the Court showed how important and relevant contract principles are in many other areas of law.[[135]](#footnote-135)

Conclusion

In *Cabot*, the Court correctly concluded that the proper accrual date was in 2012, not 1984.[[136]](#footnote-136) Likewise, this conclusion sets a strong precedent that 16 O.S. § 16 does not apply to lessors that expressly retain their overriding royalty interest, and who might be unaware of subsequent leases filed with the county clerk. The case makes clear that courts in Oklahoma cannot reasonably expect a plaintiff to state a claim for an injury that has yet to happen, as Cabot was attempting to prove by claiming the accrual date began in 1984. The holding provides clarification to the applicability of Oklahoma statutes, which ultimately expands equity in oil and gas leases. Further, *Cabot Oil & Gas Corp.* will aid overriding royalty interest owners in understanding the rights that they have in a lease, even after the lease expires.

1. \* Juris Doctorate Candidate, Oklahoma City University School of Law, May 2023. I would first and foremost like to dedicate this work to my parents. Without their constant love, support, and encouragement, I would not be where I am today. I am eternally thankful and blessed for all of the opportunities they have worked so hard to give me, both as a law student and as an individual. A special thank you goes to my wonderful fiancé, Holden, for always believing in me and pushing me to be my best. I also want to shoutout my siblings, Jaime, Kayden, and Kaeley, for being so supportive throughout all these years. They have shaped me into who I am today and I am forever grateful. Lastly, I would like to thank the members and board of the Oklahoma City University Law Review for making this publication possible. [↑](#footnote-ref-1)
2. . Claude C. Arnold Non-Operated Royalty Int. Properties, L.L.C. v. Cabot Oil & Gas Corp., 2021 OK 4, 485 P.3d 817. [↑](#footnote-ref-2)
3. . *Id*. ¶ 19, 485 P.3d at 823. [↑](#footnote-ref-3)
4. . *Id*. ¶ 6, 485 P.3d at 819. [↑](#footnote-ref-4)
5. . *Id*. ¶ 6, 485 P.3d at 819. [↑](#footnote-ref-5)
6. . *Id*. ¶ 7, 485 P.3d at 819-20. [↑](#footnote-ref-6)
7. . *Id.* ¶ 8, 485 P.3d at 820. [↑](#footnote-ref-7)
8. . *Id.* [↑](#footnote-ref-8)
9. . Okla. Stat. Ann. tit. 12, § 93(4) (West, Westlaw through Second Regular Session and First and Second Extraordinary Sessions of the 58th Legislature 2022). [↑](#footnote-ref-9)
10. . Okla. Stat. Ann. tit. 16, § 16 (West, Westlaw through Second Regular Session and First and Second Extraordinary Sessions of the 58th Legislature 2022). [↑](#footnote-ref-10)
11. . *Cabot Oil & Gas Corp.*, ¶ 12, 485 P.3d at 821. [↑](#footnote-ref-11)
12. . *Id*. ¶ 16, 485 P.3d at 822. [↑](#footnote-ref-12)
13. . *See generally*, Calvert v. Swinford, 2016 OK 105, 382 P.3d 1037,Scott v. Peters,2016 OK 108, 388 P.3d 699. [↑](#footnote-ref-13)
14. . *See, e.g.*, *id.* [↑](#footnote-ref-14)
15. . *See id.* [↑](#footnote-ref-15)
16. . *Cabot Oil & Gas Corp.*, ¶ 16, 485 P.3d at 822. [↑](#footnote-ref-16)
17. . *Id.* [↑](#footnote-ref-17)
18. . *Id*. ¶ 3, 485 P.3d at 818. [↑](#footnote-ref-18)
19. . *Id*. ¶ 3, 485 P.3d at 818-19. [↑](#footnote-ref-19)
20. . *Id.* ¶ 4, 485 P.3d at 819. [↑](#footnote-ref-20)
21. . *Id.* [↑](#footnote-ref-21)
22. . *Id.* [↑](#footnote-ref-22)
23. . *Id.* [↑](#footnote-ref-23)
24. . *Id*. ¶ 5, 485 P.3d at 819. [↑](#footnote-ref-24)
25. . *Id.* [↑](#footnote-ref-25)
26. . *Id.* [↑](#footnote-ref-26)
27. . *Id.* [↑](#footnote-ref-27)
28. . *Id.* [↑](#footnote-ref-28)
29. . *Id*. ¶ 6, 485 P.3d at 819. [↑](#footnote-ref-29)
30. . *Id.* [↑](#footnote-ref-30)
31. . *Id.* [↑](#footnote-ref-31)
32. . *Id.* [↑](#footnote-ref-32)
33. . *Id.* [↑](#footnote-ref-33)
34. . *Id.* [↑](#footnote-ref-34)
35. . *Id.* [↑](#footnote-ref-35)
36. . *Id.* [↑](#footnote-ref-36)
37. . *Id.* [↑](#footnote-ref-37)
38. . *Id.* ¶ 7, 485 P.3d at 819. [↑](#footnote-ref-38)
39. . *Id.* [↑](#footnote-ref-39)
40. . *Id.* [↑](#footnote-ref-40)
41. . *Id.* ¶ 7, 485 P.3d at 819-20. [↑](#footnote-ref-41)
42. . *Id.*  [↑](#footnote-ref-42)
43. . *Id.* ¶ 7, 485 P.3d at 820. [↑](#footnote-ref-43)
44. . *Id.* [↑](#footnote-ref-44)
45. . *Id.* [↑](#footnote-ref-45)
46. . *Id*. ¶ 8, 485 P.3d at 820. [↑](#footnote-ref-46)
47. . *Id.* [↑](#footnote-ref-47)
48. . *Id.* [↑](#footnote-ref-48)
49. . Okla. Stat. tit. 12 § 94(4). [↑](#footnote-ref-49)
50. . *Cabot Oil & Gas Corp.*, ¶ 8, 485 P.3d at 820. [↑](#footnote-ref-50)
51. . *Id.* [↑](#footnote-ref-51)
52. . *Id*. ¶¶ 8-9, 485 P.3d at 820. [↑](#footnote-ref-52)
53. . *Id*. ¶ 9, 485 P.3d at 820. [↑](#footnote-ref-53)
54. . *Id*. [↑](#footnote-ref-54)
55. . *Id*. [↑](#footnote-ref-55)
56. . *Id*. [↑](#footnote-ref-56)
57. . *Id*. [↑](#footnote-ref-57)
58. . *Id*. ¶ 12, 485 P.3d at 821. [↑](#footnote-ref-58)
59. . *Id*. ¶ 13, 485 P.3d at 821. [↑](#footnote-ref-59)
60. . *Id.* [↑](#footnote-ref-60)
61. . *Id.* [↑](#footnote-ref-61)
62. . *Id*. ¶ 12, 485 P.3d at 821 (quoting MBA Com. Constr., Inc. v. Roy J. Hannaford Co., 1991 OK 87, ¶ 13, 818 P.2d 469, 473). [↑](#footnote-ref-62)
63. . *Id*. ¶ 12, 485 P.3d at 821. [↑](#footnote-ref-63)
64. . *Id.* ¶ 14, 485 P.3d at 821. [↑](#footnote-ref-64)
65. . *Id.* [↑](#footnote-ref-65)
66. . *Id.* [↑](#footnote-ref-66)
67. . *Id.* [↑](#footnote-ref-67)
68. . *Id*. (citing Straub v. Swaim, 1956 OK 97, ¶ 9, 296 P.2d 147, 149). [↑](#footnote-ref-68)
69. . *Id*. ¶ 15, 485 P.3d at 822. [↑](#footnote-ref-69)
70. . *Id*. [↑](#footnote-ref-70)
71. . *Id*. (citing *Scott v. Peters*, 2016 OK 108, 388 P.3d 699, and *Calvert v. Swinford*, 2016 OK 100, 382 P.3d 1028). [↑](#footnote-ref-71)
72. . *Id.* [↑](#footnote-ref-72)
73. . *Id.* [↑](#footnote-ref-73)
74. . *Id*. ¶ 16, 485 P.3d at 822. [↑](#footnote-ref-74)
75. . *Id*. ¶ 17, 485 P.3d at 822. [↑](#footnote-ref-75)
76. . *Id*. (quoting Pitco Prod. Co. v. Chaparral Energy, Inc., 2003 OK 5, ¶ 12, 63 P.3d 541, 545). [↑](#footnote-ref-76)
77. . *Id*. ¶ 17, 485 P.3d at 822. [↑](#footnote-ref-77)
78. . *Id.* ¶ 16, 485 P.3d at 822. [↑](#footnote-ref-78)
79. . *Id.* [↑](#footnote-ref-79)
80. . *Id.* [↑](#footnote-ref-80)
81. . *Id*. ¶ 17, 485 P.3d at 822. [↑](#footnote-ref-81)
82. . *Id.* (quoting Bank of Okla. N.A. v. Red Arrow Marina Sales & Serv., Inc., 2009 OK 77, ¶ 40, 224 P.3d 685, 700). [↑](#footnote-ref-82)
83. . *Id*. ¶ 18, 485 P.3d at 822. [↑](#footnote-ref-83)
84. . *Id.* ¶ 19, 485 P.3d at 823. [↑](#footnote-ref-84)
85. . *Id.* ¶ 20, 485 P.3d at 823. [↑](#footnote-ref-85)
86. . *Id*. ¶¶ 19-20, 485 P.3d at 823. [↑](#footnote-ref-86)
87. . *Id.* [↑](#footnote-ref-87)
88. . *Id.* [↑](#footnote-ref-88)
89. . *Id.* [↑](#footnote-ref-89)
90. . *Id.* ¶ 20, 485 P.3d at 823. [↑](#footnote-ref-90)
91. . *Id*. ¶ 13, 485 P.3d at 821. [↑](#footnote-ref-91)
92. . *Id.* [↑](#footnote-ref-92)
93. . *Id.* ¶ 3, 485 P.3d at 818-19. [↑](#footnote-ref-93)
94. . *Id.* ¶ 6, 485 P.3d at 819. [↑](#footnote-ref-94)
95. . *Id*. [↑](#footnote-ref-95)
96. . *Olson v. Cont’l Res., Inc.*, 2005 OK CIV APP 13, 109 P.3d 351. [↑](#footnote-ref-96)
97. . *Id.* ¶ 11, 109 P.3d at 354. [↑](#footnote-ref-97)
98. . *Id.* ¶ 13, 109 P.3d at 355. [↑](#footnote-ref-98)
99. . *Cabot Oil & Gas Corp.*, ¶ 5, 485 P.3d at 819. [↑](#footnote-ref-99)
100. . *Id.* [↑](#footnote-ref-100)
101. . *Id*. ¶ 16, 485 P.3d at 822. [↑](#footnote-ref-101)
102. . *Id.* [↑](#footnote-ref-102)
103. . Okla. Stat. tit 16 § 16. [↑](#footnote-ref-103)
104. . Calvert v. Swinford, 2016 OK 100, 382 P.3d 1028. [↑](#footnote-ref-104)
105. . *Id*. ¶ 4, 382 P.3d at 1031. [↑](#footnote-ref-105)
106. . *Id.* [↑](#footnote-ref-106)
107. . *Id*. ¶¶ 7, 9, 382 P.3d at 1031, 1032. [↑](#footnote-ref-107)
108. . *Id*. ¶ 7, 382 P.3d at 1031. [↑](#footnote-ref-108)
109. . *Id.* ¶ 12, 382 P.3d at 1033. [↑](#footnote-ref-109)
110. . *Id.* [↑](#footnote-ref-110)
111. . Craig v. Craig, 372 So.2d 16, 21 (Ala. 1979) (referencing Ala. Code § 35–4–63 (West, Westlaw through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner). [↑](#footnote-ref-111)
112. . Ark. Code Ann. § 14–15–404 (West, Westlaw through the 2022 Third Extraordinary Session of the 93rd Arkansas General Assembly); Markham v. Markham, 909 P.2d 602, 609 (Haw. Ct. App. 1996). [↑](#footnote-ref-112)
113. . *Calvert*, ¶ 17-18, 382 P.3d at 1035-36. [↑](#footnote-ref-113)
114. . *Cabot Oil & Gas Corp.*, ¶ 15, 485 P.3d at 822. [↑](#footnote-ref-114)
115. . *Scott*, ¶ 11, 388 P.3d at 701-02. [↑](#footnote-ref-115)
116. . *Id*. ¶ 19, 388 P.3d at 704. [↑](#footnote-ref-116)
117. . *Cabot Oil & Gas Corp.*, ¶ 5, 485 P.3d at 819. [↑](#footnote-ref-117)
118. . *Id*. ¶ 16, 485 P.3d at 822. [↑](#footnote-ref-118)
119. . *Id.* [↑](#footnote-ref-119)
120. . *Id*. ¶ 6, 485 P.3d at 819. [↑](#footnote-ref-120)
121. . *Id.* [↑](#footnote-ref-121)
122. . *Id*. ¶ 16, 485 P.3d at 822. [↑](#footnote-ref-122)
123. . *Id*. [↑](#footnote-ref-123)
124. .  *Id.* ¶ 17, 485 P.3d at 822 (quoting Pitco Prod. Co., ¶ 12, 63 P.3d 541, 545). [↑](#footnote-ref-124)
125. . Malicoate v. Standard Life & Accident Ins. Co., 2000 OK CIV APP 37, 999 P.2d 1103 (referencing Okla. Stat. Ann. tit. 15 § 152 et seq.). [↑](#footnote-ref-125)
126. . *Id*. ¶ 17, 485 P.3d at 822. [↑](#footnote-ref-126)
127. . *Id.* [↑](#footnote-ref-127)
128. . Hirsch Holdings, L.L.C. v. Hannagan-Tobey, L.L.C., 2008 OK CIV APP 79, ¶ 13, 193 P.3d 970, 973. [↑](#footnote-ref-128)
129. . *Cabot Oil & Gas Corp.*, ¶¶ 16-17, 485 P.3d at 822. [↑](#footnote-ref-129)
130. . Collins v. Chappell, 333 P.2d 578, 582 (Okla. 1958). [↑](#footnote-ref-130)
131. . *Id.* [↑](#footnote-ref-131)
132. . *Cabot Oil & Gas Corp.*, ¶ 16, 485 P.3d at 822. [↑](#footnote-ref-132)
133. . *Id*. [↑](#footnote-ref-133)
134. . *Id.* [↑](#footnote-ref-134)
135. . *Id.* ¶ 20, 485 P.3d at 823. [↑](#footnote-ref-135)
136. . *Id*. [↑](#footnote-ref-136)