

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

ICA EFiled: Jul 10 2023
12:48PM EDT
Transaction ID 70343467

JEREMY STARKS,

Defendant Below, Petitioner,

v.

Docket No. 23-ICA-128

**PUTNAM COUNTY COMMISSION,
a political subdivision of Putnam County,**

Plaintiff Below, Respondent.

RESPONDENT'S BRIEF

Come now, the Respondent, the Putnam County Commission, by and through counsel, Travis W. Hoffman, and the law firm of Tyree, Embree & Associates, PLLC for its response to Petitioner's Petition For Appeal.

**Putnam County Commission,
By Counsel.**

/s/ Travis W. Hoffman
Travis W. Hoffman, Esq. (WVSB #9674)
Tyree, Embree & Associates, PLLC
3564 Teays Valley Rd.
Hurricane, WV 25526
t: (304) 757-0021
f: (304) 757-0795
travis@tyreeembree.com

Table of Contents

I.	Table of Authorities	3
II.	Statement of the Case	4
III.	Summary of the Arguments	8
IV.	Statement Regarding Oral Argument	8
V.	Argument	9
VI.	Conclusion	16

I. Table of Authorities

<u>Case Law</u>	<u>Page</u>
<i>City of Wheeling v. Zane</i> , 154 W.Va. 34, 39, 173 S.E.2d 158, 162 (1970)	10
<i>Woman’s Club of St. Albans v. James</i> , 158 W.Va. 698, 704, 213 S.E.2d 469, 473 (1975)	11
<i>Freudenberger Oil Co. v. Simmons</i> , 75 W. Va. 337, 83 S. E. 995 (1914)	12
<i>White Flame Coal Company v. Burgess</i> , 86 W.Va. 16, 102 S.E. 690, 692 (1920)	12, 13
<i>Klien v. McCullough</i> , 245 W.Va. 284, 289, 858 S.E.2d 909, 914 (2021)	13
<i>Malamphy v. Potomac Edison Co.</i> , 140 W.Va. 269, 83 S.E.2d 755 (1954)	13
<i>Erwin v. Bethlehem Steel Corp.</i> , 134 W.Va. 900, 915, 62 S.E.2d 337, 346 (1950)	13
<i>Wellman v. Tomblin</i> , 140 W. Va. 342, 344, 84 S.E.2d 617, 619 (1954)	14
<i>Carr v. Veach</i> , 244 W.Va. 73, 79, 851 S.E.2d 519, 525 (2020)	14
<i>Findley v. State Farm Mut. Auto. Ins. Co.</i> , 213 W.Va. 80, 94, 576 S.E.2d 807, 821 (2002)	14
<i>Sally-Mike Properties v. Yokum</i> , 175 W. Va. 296, 300, 332 S.E.2d 597, 600 (1985)	15, 16
<i>Davis v. Hardman</i> , 148 W. Va. 82, 88-89, 133 S.E.2d 77, 81 (1963)	15
<i>Cotiga Development Company v. United Fuel Gas Company</i> , 147 W.Va. 484, 128 S.E.2d 626 (1962)	15
<i>McDonough Company v. E.I. DuPont DeNemours & Company, Inc.</i> , 167 W.Va. 611, 280 S.E.2d 246, 247 (1981)	15
<i>Tate v. United Fuel Gas Company</i> , 137 W.Va. 272, 71 S.E.2d 65 (1952)	13, 15, 16
<i>Mace v. Carpenter</i> , 147 W.Va. 322, 127 S.E.2d 254 (1962)	16
 <u>Statutes</u>	
W.Va. Code § 36-1-10 (1923)	13
 <u>Other Authorities</u>	
Black’s Law Dictionary 1413 (7 th ed. 1999)	14

II. Statement of the Case

On the 26th day of August, 1947, the United States of America granted and conveyed unto Diamond Alkali Company, a corporation, that certain 1426 acre tract, more or less, situate in Union and Buffalo Districts, Putnam County, West Virginia (hereinafter “the original 1426 acre tract”). A copy of the August 26, 1947 Deed is recorded in the Office of the Clerk of Putnam County, West Virginia, in Deed Book 88, Page 319. (See Appendix Record Pg. 151-160). By Deed dated February 10, 1967, Diamond Alkali Company granted and conveyed unto the County Court of Putnam County, West Virginia, a specific 100 acre tract out conveyance from the original 1426 acre tract, as well as the non-exclusive right to the use of an easement for the purpose of ingress and egress to and from said 100 acre tract. A copy of the February 10, 1967 Deed is recorded in the Office of the Clerk of Putnam County, West Virginia, in Deed Book 164, Page 397. (See Appendix Record Pg. 161-166).

The February 10, 1967 Deed conveying the 100 acre tract to the County Court of Putnam County contained a possibility of reverter clause which stated, “It is expressly understood and agreed by the parties hereto that the land hereby conveyed is to be held and used by the party of the second part for public recreation and other public purposes, and if the party of the second part attempts to dispose of all or any part of said land, or to use all or any part thereof for other than a public purpose, then, upon the happening of either or any such event or events, title to the land hereby conveyed shall revert to the party of the first part, its successors and assigns, who shall have the right forthwith to re-enter and take possession of said land without process of law.” (See Appendix Record Pg. 164).

Upon information and belief, in or about 1967, Diamond Alkali Company merged with Shamrock Oil and Gas Corporation to create Diamond Shamrock Corporation. By Deed dated April

22, 1977, Diamond Shamrock Corporation, granted and conveyed via special warranty deed the residue of the original 1426 acre tract to Michael E. Cory and Jeanette L. Cory, as joint tenants with a right of survivorship. A copy of the April 22, 1977 Deed may be found in Office of the Clerk of Putnam County, West Virginia, in Deed Book 223, Page 332. (See Appendix Record Pg. 17-23).

Mr. and Mrs. Corey's April 22, 1977 Deed specifically stated, in relevant part, that:

"There is excepted from this conveyance 300 acres, more or less, of surface within the foregoing boundaries which have heretofore been conveyed in two tracts as follows:

1. Tract of 100 acres, more or less, from Diamond Alkali Company to the County Court of Putnam County, West Virginia by deed dated February 10, 1967 and recorded in the office of the aforesaid Clerk in Deed Book No. 164, page 397. "

(See Appendix Record Pg. 22).

The April 22, 1977 Deed further specifically stated that "[t]his conveyance is made subject to all existing leases of record and to any easements or rights-of-way of record or visible on the ground, made by the party of the first part or its predecessors in title. Without limiting the generality of the foregoing, this conveyance is made subject to the non-exclusive easement for the 40 foot access road granted to the County Court of Putnam County by the aforesaid deed of February 10, 1967[.]" (See Appendix Record Pg. 22).

Michael E. Cory died on July 16, 1994. By Deed dated May 18, 2016, Jeanette L. Corey, granted and conveyed her interest in the original tract unto Anthony A. Saylor and Cheryl F. Saylor. A copy of the May 18, 2016 Deed may be found in Office of the Clerk of Putnam County, West Virginia, in Deed Book 550, Page 958. (See Appendix Record Pg. 24-29). The Saylor May 18, 2016 Deed likewise excepted from the conveyance that "Tract of 100 acres, more or less, from Diamond

Alkali Company to the County Court of Putnam County, West Virginia by deed dated February 10, 1967 and recorded in the office of the aforesaid Clerk in Deed Book No. 164, page 397.” (See Appendix Record Pg. 27-28).

The May 18, 2016 Deed further specifically stated that “[t]his conveyance is made subject to all existing leases of record and to any easements or rights-of-way of record or visible on the ground, made by the party of the first part or its predecessors in title. Without limiting the generality of the foregoing, this conveyance is made subject to the non-exclusive easement for the 40 foot access road granted to the County Court of Putnam County by the aforesaid deed of February 10, 1967[.]” (See Appendix Record Pg. 28).

By Deed dated November 25, 2020, Anthony A. Saylor and Cheryl F. Saylor granted and conveyed their interest in the original tract to WVA Land LLC, an Ohio Limited Liability Corporation. A copy of the November 25, 2020 Deed may be found in Office of the Clerk of Putnam County, West Virginia, in Deed Book 593, Page 985. (See Appendix Record Pg. 30-33).

The November 25, 2020 Deed also excepted from the conveyance the “Tract of 100 acres, more or less, from Diamond Alkali Company to the County Court of Putnam County, West Virginia by deed dated February 10, 1967 and recorded in the office of the aforesaid Clerk in Deed Book No. 164, page 397.” (See Appendix Record Pg. 32).

The November 25, 2020 Deed further stated that “[t]his conveyance is made subject to all existing leases of record and to any easements or rights-of-way of record or visible on the ground, made by Diamond Shamrock Corporation or its predecessors in title. Without limiting the generality of the foregoing, this conveyance is made subject to the non-exclusive easement for the 40-foot access road granted to the County Court of Putnam County by the aforesaid deed of February 1, [sic]

1967[.]” (See Appendix Record Pg. 32-33).

By Deed dated May 20, 2022, WVA Land, LLC granted and conveyed its interest in the original tract to the Petitioner, Jeremy S. Starks. A copy of the May 20, 2022 Deed may be found in Office of the Clerk of Putnam County, West Virginia, in Deed Book 606, Page 369. (See Appendix Record Pg. 34-39). The Petitioner’s May 20, 2022 Deed, like each of the deeds in the chain of title before it, excepted from the conveyance the “Tract of 100 acres, more or less, from Diamond Alkali Company to the County Court of Putnam County, West Virginia by deed dated February 10, 1967 and recorded in the office of the aforesaid Clerk in Deed Book No. 164, page 397.” (See Appendix Record Pg. 37).

The May 20, 2022 Deed further stated that “[t]his conveyance is made subject to all existing leases of record and to any easements or rights-of-way of record or visible on the ground, made by Diamond Shamrock Corporation or its predecessors in title. Without limiting the generality of the foregoing, this conveyance is made subject to the non-exclusive easement for the 40-foot access road granted to the County Court of Putnam County by the aforesaid deed of February 1, [sic] 1967[.]” (See Appendix Record Pg. 37).

Nonetheless, by letter dated June 3, 2022, the Petitioner, Jeremy Starks, stated he was giving the Respondent notice of his intention to exercise the automatic reversionary interest in the Respondent’s 100 acre tract and informed the Respondent “that its lease is terminated and/or revoked effective Friday, June 10, 2022.” (See Appendix Record Pg. 42-44).

On the 8th day of June, 2022, the Respondent filed its *Petition for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction* requesting a temporary restraining order directing that the Petitioner be refrained from interfering with or attempting to deprive the

Respondent from the use and enjoyment of the subject 100 acre tract, as well as the easement associated therewith. The parties initially appeared before the Court on the 13th day of June, 2022, for hearing on the petition for preliminary injunction. Upon inquiring of both parties, the parties mutually agreed to the entry of the preliminary injunction.

Upon review of the briefs submitted by both the parties and after hearing oral argument, the Circuit Court entered an *Order Granting Permanent Injunction* on the 27th day of February, 2023.

III. Summary of the Arguments

1. The Petitioner alleged that the Circuit Court erroneously applied the rules of deed construction in determining the reversionary interest in the subject property did not pass with the land from Diamond Shamrock Corporation in the conveyance of the remaining property. However, the Petitioner is incorrect.

Diamond Shamrock Corporation expressly, in plain and unambiguous language, excepted out or withheld from its conveyance to Mr. and Mrs. Corey, the Petitioner's predecessor in title, the "[t]ract of 100 acres, more or less, from Diamond Alkali Company to the County Court of Putnam County, West Virginia by deed dated February 10, 1967 and recorded in the office of the aforesaid Clerk in Deed Book No. 164, page 397." Diamond Shamrock Corporation did not convey its interest in the possibility of reverter clause to the subject 100 acre tract owned by the County Court of Putnam County to Mr. and Mrs. Corey. Accordingly, Mr. and Mrs. Corey could not and did not convey such interest to the subsequent purchasers, including the Petitioner.

IV. Statement Regarding Oral Argument

The Respondent is of the opinion that this is an issue of deed construction and that oral argument is not necessary as this matter may be resolved on the briefs and record below.

V. Argument

A. The Circuit Court correctly held that the 1977 Deed exempted and reserved the possibility of reverter interest in the Grantor, Diamond Shamrock Corporation.

I. The subject 1977 Deed clearly and unambiguously excepted and reserved from the conveyance the possibility of reverter interest in the subject property.

The Respondent, the Putnam County Commission is the fee simple determinable owner of the subject 100 acre tract and the right of way easement for the purpose of ingress and egress to said 100 acre tract. The February 10, 1967 Deed specifically grants and conveys the subject 100 acre tract and easement to Putnam County.

Although the February 10, 1967 Deed did contain a possibility of reverter clause, the Petitioner does not own or possess the possibility of reverter future interest. The West Virginia Supreme Court of Appeals has explained:

It has been said that the right of entry is not an estate, not even a possibility of reverter; it is simply a chose in action. [Internal citations omitted]. The interest remaining after the creation of a fee on condition may properly be described as a right of entry for condition broken or a contingent right of entry. [Internal citations omitted]. ...‘The right of re-entry for breach of a condition, annexed to an estate in fee simple, is sometimes referred to as a possibility of reverter. The expression ‘revert’, however, signifies a return to the grantor of the ownership or possession by operation of law, and is not properly applicable to his reacquisition of the ownership or possession by entry or its equivalent. The right of re-entry in such a case might, consequently, so long as the condition has not been broken, more appropriately be referred to merely as a contingent right of re-entry.’ Though there is a difference between a possibility of reverter and a right of re-entry for condition broken, the two are sometimes used interchangeably or synonymously and a characteristic of each is that it is inheritable.

... [T]he distinction between a possibility of reverter and a right of re-entry for breach of condition is set forth in this language: ‘As defined in the preceding section, the

possibility of reverter is readily distinguished from other future interests. * * *. It is distinguished from the right of entry for breach of condition factually only by the use of different language in the instrument of conveyance. In terms of legal operation of the two future interests, the principal distinction is clear: the possibility of reverter takes effect in possession immediately and automatically upon the happening of the event named, whereas, on the happening of the event named in a common-law condition subsequent, the possessory estate does not vest immediately in the one having the right of entry for breach of condition. He must first elect to terminate the granted estate before the possessory estate vests in him.'

City of Wheeling v. Zane, 154 W.Va. 34, 39, 173 S.E.2d 158, 162 (1970).

The reverter clause contained in Putnam County's February 10, 1967 Deed stated, "[i]t is expressly understood and agreed by the parties hereto that the land hereby conveyed is to be held and used by the party of the second part for public recreation and other public purposes, and if the party of the second part attempts to dispose of all or any part of said land, or to use all or any part thereof for other than a public purpose, then, upon the happening of either or any such event or events, title to the land hereby conveyed shall revert to the party of the first part, its successors and assigns, who shall have the right forthwith to re-enter and take possession of said land without process of law." (Appendix Record 164). Thus, because the reverter clause in Putnam County's February 10, 1967 Deed takes effect in possession immediately and automatically upon the happening of the event named, it is by definition a possibility of reverter interest.

The West Virginia Supreme Court has explained that:

A fee simple determinable is created by any limitation which creates an estate in fee simple and provides that the estate shall automatically expire upon the occurrence of the stated event. [Internal citations omitted]. The potential residuum is a possibility of reverter in the grantor. [Internal citations omitted]. An intent to automatically terminate the estate upon the happening of the named event is usually manifested by a limitation which contains the terms 'until', 'so long as', or 'during', or which contains a provision that upon the happening of the event, the land is to revert to the conveyor. [Internal citations omitted]. It is obvious, then, that the 'so long as' language of the devise in question would have created an uncomplicated fee simple

determinable estate except for the ‘in the event’ clause. Assuming the ‘in the event’ language was not an attempt on the part of the testator to devise a possibility of reverter, the language might be interpreted as creating an executory interest. 1 Simes, Future Interests, Section 221, page 249.

Woman’s Club of St. Albans v. James, 158 W.Va. 698, 704, 213 S.E.2d 469, 473 (1975). Thus, because the February 10, 1967 Deed to the County Court of Putnam County contains a limitation which is a possibility of a reverter in the grantor, the County Court of Putnam County was granted a fee simple determinable in the subject property.

The issue is whether Diamond Shamrock Corporation subsequently granted the possible future interest, the possibility of reverter interest, in Putnam County Commission’s 100 acre tract to Michael E. Corey and Jeanette L. Corey. The answer is no. Diamond Shamrock Corporation did not grant to Mr. and Mrs. Corey the possible future interest in the subject property. To the contrary, Diamond Shamrock specifically excluded and withheld all potential future rights and interest in the Putnam County Commission’s 100 acre tract from the April 22, 1977 conveyance to Mr. and Mrs. Corey.

After conveying the 100 acres to County Court of Putnam County, West Virginia, Diamond Shamrock Corporation granted and conveyed the residue of the 1426 acres to Michael E. Corey and Jeanette L. Corey, as joint tenants with a right of survivorship, by special warranty Deed dated April 22, 1977. However, Mr. and Mrs. Corey did not receive the entirety of the 1426 acres. Mr. and Mrs. Corey’s Deed specifically provided that “[t]here is **excepted** from this conveyance 300 acres, more or less, of surface within the foregoing boundaries which have heretofore been conveyed in two tracts as follows:

1. Tract of 100 acres, more or less, from Diamond Alkali Company to the County Court

of Putnam County, West Virginia by deed dated February 10, 1967 and recorded in the office of the aforesaid Clerk in Deed Book No. 164, page 397.”

(Emphasis added.) Appendix Record Pg. 22.

Thus, there was excepted out from Mr. and Mrs. Corey’s Deed, as well as each subsequent deeds in the chain of title, including the Petitioner’s Deed, the “Tract of 100 acres, more or less, from Diamond Alkali Company to the County Court of Putnam County, West Virginia by deed dated February 10, 1967 and recorded in the office of the aforesaid Clerk in Deed Book No. 164, page 397.” Appendix Record Pg. 22.

An “exception” in a Deed acts to withhold title in the grantor to that which is excepted from a conveyance. Our Supreme Court has long held that “**[a]n exception by a grantor having title is a mere withholding of title to part of the property described in the deed. Hence, if he declares in the deed that he does not grant or undertake to convey part of such property, he excepts the designated part.**” The form of an exception is immaterial. It may be effected by the use of any words expressing intention to except. *Freudenberger Oil Co. v. Simmons*, 75 W. Va. 337, 83 S. E. 995, [Internal citations omitted]. An exception may appear in any part of a deed. It may be inserted between the habendum and the warranty, and in the same paragraph with the former. *Id.*” *White Flame Coal Company v. Burgess*, 86 W.Va. 16, 102 S.E. 690, 692 (1920). Emphasis added.

Stated otherwise,

[a]n “exception” in a deed is a clause withdrawing some part of the property conveyed from the grant, usually a property interest that is already in existence, while a “reservation” creates or reserves some new interest in the grantor(s):

An exception withdraws from the operation of the conveyance some part of the thing granted, which, but for the exception, would have passed to the grantee under the general description; while the reservation is the creation in behalf of the

grantor of some new right issuing out of the thing granted,—that is to say, something which did not exist as an independent right. [Internal citations omitted.] See also, *Tate v. United Fuel Gas Co.*, 137 W. Va. 272, 280, 71 S.E.2d 65, 70 (1952) (in “a deed of conveyance,” an exception allows the grantor to “withdraw[] from the operation of the conveyance that which is in existence, and included under the terms of the grant...,”

Klien v. McCullough, 245 W.Va. 284, 289, 858 S.E.2d 909, 914 (2021). Emphasis added. (“The language used in the deed ... created an exception and the land or rights, whichever they are, never vested in the plaintiff in this suit, as the grantor withheld title to that part of the land described in the deed.”) See *Malamphy v. Potomac Edison Co.*, 140 W.Va. 269, 83 S.E.2d 755 (1954)(citing *White Flame Coal Company*, 86 W.Va. at 20, 102 S.E. 690. “If the exception be valid, the thing excepted remains with the grantor, with the like force and effect as if no grant had been made’. * * *.’ (Internal citations omitted).” *Erwin v. Bethlehem Steel Corp.*, 134 W.Va. 900, 915, 62 S.E.2d 337, 346 (1950). In short, that which is excepted from a Deed, does not pass to the grantee, but is instead withheld by and remains with the grantor, with the like and effect as if no grant had been made.

Accordingly, Mr. and Mrs. Corey could not have possibly conveyed such interest to a subsequent purchaser. West Virginia Code § 36-1-10 states, “[a] deed which purports to convey a greater right or interest in real property than the person making it may lawfully convey shall operate as an alienation of such right or interest in such real property as such person might lawfully convey. The application of the doctrine of estoppel by deed, and the liability of the grantor, his heirs and personal representatives upon the covenants, if any, contained in such conveyance shall be determined according to the rules of law applicable to other deeds.” W.Va. Code § 36-1-10 (1923). “In other words, a person cannot convey a greater interest in land than that person owns. This maxim is a bedrock of real property law because ‘a grantee acquires nothing more than the grantor owns and

can convey, particularly where the title of grantor appears in deeds of record, and grantor's intentions are expressed in his deed.’ *Wellman v. Tomblin*, 140 W. Va. 342, 344, 84 S.E.2d 617, 619 (1954).” *Carr v. Veach*, 244 W.Va. 73, 79, 851 S.E.2d 519, 525 (2020).

Diamond Shamrock Corporation withheld any right it had to the 100 acre subject tract, i.e. the possibility of reverter clause, in itself by operation of the exceptions contained in the 1977 Deed to Mr. and Mrs. Corey. Thus, neither the Coreys nor any of subsequent grantees of the subject parcel, including Mr. Starks, were ever vested with any interest in the 100 acre subject tract.

For these reasons, the Petitioner lacks the requisite standing or authority to even attempt to deprive the Respondent of the use and enjoyment of its land. “Standing is defined as ‘[a] party’s right to make a legal claim or seek judicial enforcement of a duty or right.’ Black’s Law Dictionary 1413 (7th ed. 1999).” *Findley v. State Farm Mut. Auto. Ins. Co.*, 213 W.Va. 80, 94, 576 S.E.2d 807, 821 (2002). The West Virginia Supreme Court of Appeals has held that:

[s]tanding is comprised of three elements: First, the party attempting to establish standing must have suffered an “injury-in-fact”—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent and not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct forming the basis of the lawsuit. Third, it must be likely that the injury will be redressed through a favorable decision of the court.

Syl. Pt. 5, *Id.*

Therefore, even assuming *arguendo* that the possibility of reverter clause was invoked by the Respondent’s alleged failure to use the 100 acre tract for “public recreation and other public purposes”, which it is not, the 100 acre tract would revert back to the grantor, Diamond Shamrock Corporation, not the Petitioner, Jeremy Starks. The authority to invoke the reverter clause rests solely with Diamond Shamrock Corporation. Thus, because the Petitioner possesses no interest in

the subject 100 acre tract, he lacks the requisite standing to deprive the Respondent of the use and enjoyment of its land.

ii. The Circuit Court did not err in relying on the language of the 1977 Deed in interpreting the said deed.

As stated above, Diamond Shamrock Corporation specifically withheld in its-self any potential future interest or rights, i.e. the possibility of reverter, in Putnam County's 100 acre tract. Our Court has explained that when confronted with the question of whether a legal instrument has conveyed a property right, a court's job "is to ascertain the true intent of the parties as expressed by them in the deed, lease or other written instrument under consideration." *Sally-Mike Properties v. Yokum*, 175 W. Va. 296, 300, 332 S.E.2d 597, 600 (1985) (quoting *Davis v. Hardman*, 148 W. Va. 82, 88-89, 133 S.E.2d 77, 81 (1963)). "The language of the instrument itself, and not surrounding circumstances, is the first and foremost evidence of the parties['] intent. Resort to rules of construction and aids to interpretation, including extrinsic evidence, is proper where the language of an instrument is ambiguous and subject to more than one meaning." *Sally-Mike Properties*, 175 W. Va. at 300, 332 S.E.2d at 601.

Stated otherwise, "[a] valid written instrument which expresses the intent of the parties in plain and unambiguous language is not subject to judicial construction or interpretation but will be applied and enforced according to such intent." Syl. pt. 1, *Cotiga Development Company v. United Fuel Gas Company*, 147 W.Va. 484, 128 S.E.2d 626 (1962); see also *McDonough Company v. E.I. DuPont DeNemours & Company, Inc.*, 167 W.Va. 611, 280 S.E.2d 246, 247 (1981); *Davis v. Hardman*, 148 W.Va. 82, 89, 133 S.E.2d 77, 81 (1963); Syl. pt. 4, *Tate v. United Fuel Gas*

Company, [137 W.Va. 272, 71 S.E.2d 65 (1952)]; Syl. pt. 2, *Mace v. Carpenter*, 147 W.Va. 322, 127 S.E.2d 254 (1962).” *Sally-Mike Properties, v. Yokum*, 175 W.Va. 296, 300, 332 S.E.2d 597, 601 (1985).

In the present instance, Diamond Shamrock Corporation expressly, in plain and unambiguous language, excepted out or withheld from its conveyance to Mr. and Mrs. Corey the “[t]ract of 100 acres, more or less, from Diamond Alkali Company to the County Court of Putnam County, West Virginia by deed dated February 10, 1967 and recorded in the office of the aforesaid Clerk in Deed Book No. 164, page 397. ” In short, Diamond Shamrock Corporation did not convey its interest in the possibility of reverter clause to the subject 100 acre tract owned by the County Court of Putnam County to Mr. and Mrs. Corey. Thus, the Circuit Court did not err in relying on the language of the Deed to in determining the intent of the parties.

VI. CONCLUSION

For each of the aforementioned reasons, the Respondent respectfully request this Honorable Court affirm the Circuit Court’s ruling.

**Putnam County Commission,
By Counsel,**

/s/ Travis W. Hoffman
Travis W. Hoffman, Esq. (WVSB# 9674)
Tyree, Embree and Associates, PLLC
3564 Teays Valley Road
Hurricane, West Virginia 25526
(304)757-0021
(304) 757-0795 fax
travis@tyreeembree.com

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

JEREMY STARKS,

Defendant Below, Petitioner,

v.

No. 23-ICA-128

**PUTNAM COUNTY COMMISSION,
a political subdivision of Putnam County,**

Plaintiff Below, Respondent.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Respondent's Brief has been served upon the following parties either via electronic filing and by United States Postal Service, on this the 10th day of July, 2023.

O. Gay Elmore, Esq.
121 Summers St.
Charleston, WV 25301
Counsel for Jeremy Starks

Alfred Bailey Shikany, Esq.
200 Park Avenue
Suite 400
Beachwood, OH 44122
Co-Counsel for Jeremy Starks

M. Shane Harvey, Esq.
Jackson Kelly, PLLC
500 Lee Street East
Suite 1600
Charleston, WV 25301
Counsel for PCGC USPSA

/s/ Travis W. Hoffman

Travis W. Hoffman, Esq. (WVSB# 9674)

Tyree, Embree and Associates, PLLC

3564 Teays Valley Road

Hurricane, West Virginia 25526

(304)757-0021

(304) 757-0795 fax

travis@tyreeembree.com