

May 18, 2018

An ALM Publication

TEXAS

ATASCOSA COUNTY

FRAUD

Real Estate; Misrepresentation

Widow claimed son defrauded her out of mineral rights

Amount **\$7,563,242****CASE** Mary Lou Hensarling v. John Arthur Hensarling, No. 15-11-0968-CVA**COURT** Atascosa County District Court, 218th, TX**DATE** 5/18/2018**JUDGE** John D. Gabriel**PLAINTIFF****ATTORNEY(S)** Corey F. Wehmeyer; Santoyo Moore Wehmeyer P.C.; San Antonio TX for Mary Lou Hensarling
Benjamin G. Robertson; Santoyo Moore Wehmeyer P.C.; San Antonio TX for Mary Lou Hensarling**DEFENSE****ATTORNEY(S)** Jeffrey R. Akins; San Antonio, TX for John Arthur Hensarling

FACTS & ALLEGATIONS In 2009, plaintiff Mary Lou Hensarling, 82, was part of a corporation for the Hensarling family ranches that cover more than 368 acres in Atascosa County and are in the Eagle Ford Shale. She claimed that her son, John Arthur

Hensarling, conveyed the surface and mineral rights of the family ranches from a family corporation to himself, and she was unaware of it. Oil and gas production began in 2012. She claimed that he defrauded her out of hundreds of thousands of dollars in mineral lease bonuses, mineral royalties and other payments.

Mrs. Hensarling sued her son for breach of fiduciary duty, fraud by nondisclosure, fraud by misrepresentation and real estate fraud.

In 1992, an uncle of Mrs. Hensarling's husband had died, and under the family's probate attorneys' interpretation of the will, the surface and mineral rights descended to Mrs. Hensarling's husband and then to her. A family corporation was created, with John as president and treasurer. On John's recommendation, Mrs. Hensarling transferred the mineral and surface rights, along with other property, into the corporation for what John said were income tax purposes. At that time in 1992 and 1993, the conveyed property was valued at \$300,000. John told his mother he would look out for her interests and use these assets to take care of her.

In late 2001, Mrs. Hensarling suffered a series of aneurysms and was in a coma for three months. She subsequently executed a general power of attorney

and medical power of attorney in favor of her son. He had provided the documents and told her again that he would take care of her.

Mrs. Hensarling claimed that her son subsequently conveyed the surface and mineral rights to himself in 2009, and he did so without her knowledge. When he later received a lease bonus, royalty payments and payment for a pipeline easement, he did not disclose these payments to her, she claimed.

Plaintiff's counsel told the jury that John burned 30 banker's boxes of documents in his backyard, including financial records and almost all documents relating to the family corporation, within a few months of transferring the mineral rights to himself.

John denied any breach of fiduciary duty or fraud. He maintained that an oil company landman had approached him in 2011 and told him that the uncle's will had been misread, and that the mineral and surface rights had descended, not to Mrs. Hensarling, but to John and his brothers.

John further maintained that, when he conveyed the rights from the corporation to himself in 2009, he did so only after fully explaining the transaction to his mother and obtaining her consent.

In 2016, the trial court in this case issued the first interpretation by any court of the will that had been probated in 1992. The court agreed with Mrs. Hensarling's counsel that the mineral and surface rights descended to Mrs. Hensarling. John filed a motion for reconsideration, but the court did not rule on it before trial.

INJURY Mrs. Hensarling sought \$105,000 for the lease bonus, \$672,207 for royalties and \$25,000 for

the pipeline easement payment. The jury was asked about these damages five times, at least once for each of the separate causes of action.

The jury was also asked how much the defendant's profits from breach of fiduciary duty were. On this question, the plaintiff asked the jury to find \$802,207.

The plaintiff sought punitive damages of at least \$1,604,414 and attorney fees of \$250,000 through trial.

John maintained that he was under the impression that he and his brothers owned the mineral and surface rights in question when he received the royalty payments and pipeline easement payment. He acknowledged that he received the lease bonus before the landman contacted him and not after.

RESULT The jury rendered a plaintiff's verdict, finding breach of fiduciary duty, fraud by nondisclosure, fraud by misrepresentation and real estate fraud by the defendant. The jury also found actual awareness of falsity and found either fraud or malice, by clear and convincing evidence.

The amounts found by the jury total \$7,563,242, including actual damages, punitive damages and attorney fees through trial. Some of the amounts may be duplicative or mutually exclusive.

It is unclear whether the court will rule on the motion to reconsider its interpretation of the will.

EDITOR'S NOTE This report is based on information that was provided by plaintiff's and defense counsel.