



INTERIOR BOARD OF INDIAN APPEALS

Benjamin D. Vieau v. Commissioner of Indian Affairs

6 IBIA 150 (10/05/1977)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ADMINISTRATIVE APPEAL OF BENJAMIN D. VIEAU
v.
COMMISSIONER, BUREAU OF INDIAN AFFAIRS

IBIA 77-40-A

Decided October 5, 1977

Appeal from a decision by the Commissioner, Bureau of Indian Affairs, upholding cancellation of a residential lease.

Affirmed.

APPEARANCES: Benjamin D. Vieau, pro se.

OPINION BY ADMINISTRATIVE JUDGE HORTON

On February 26, 1971, Benjamin D. Vieau, appellant, entered into a residential lease agreement with the Oneida Tribe of Indians of Wisconsin. This lease, No. B-630(71), was duly approved by an agent of the Secretary of the Interior. The basic purpose of the lease was to allow the Indian lessee to construct and maintain a dwelling on the leased premises at the rate of \$10 for every 25 years.

As stated in Provision No. 5 of the lease agreement, the Tribe's primary consideration in awarding the above lease was "the improvement of housing for Indian families." Accordingly, Provision No. 16 of the lease provided in pertinent part the following:

16. CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS-

It is herein understood and agreed that the lessees shall within a period of two (2) years from the effective date of this lease, cause permanent type residential improvements to be constructed and completed on the leased premises.

Appellant admits that the only construction accomplished by him since the effective date of the lease has been the completion of a driveway.

Following appellant's failure to respond to a show cause notice regarding proposed cancellation of his lease, issued by the Great Lakes Agency on July 29, 1976, and subsequent to passage of a resolution by the Oneida Business Committee supporting cancellation of

appellant's lease, the Area Director of the Bureau of Indian Affairs, Minneapolis Area Office, officially notified appellant on September 8, 1976, that Lease No. B-630(71) was canceled as of that date pursuant to 25 CFR 131.14. The reason given for cancellation was appellant's failure to comply with Provision No. 16 of the lease by not constructing "permanent-type residential improvements" on the leased property.

In a decision dated January 25, 1977, the Commissioner of Indian Affairs affirmed the cancellation action of the Area Director. Among other things, the Commissioner's decision advised appellant as follows:

Statements in your letter of September 10, 1976, indicate that you put a lot of work into building a driveway, cutting down trees and other things * * *. A constructed driveway and landscaping could be considered, at most, as improvements that are incidental to residential use. They are not absolutely necessary for residential use. In other words, they do not, in and of themselves, establish residency.

The very essence of the lease was to establish a residence on the property. However, we find no evidentiary data in the record including your own statements that any permanent building qualifying as a residential house has ever been constructed or placed on the premises. Also, there is no indication that the property is being used or occupied for residential purposes under the conditions intended and set forth in the lease.

Appellant was granted an appeal from the Commissioner's decision to the Board and additional time within which to file a statement in support of his position. No such formal statement has been filed. From various correspondence contained in the record appellant's position appears to be as follows: 1) the work performed by appellant on the land satisfied the terms of the lease, 2) if more was required than he accomplished, then the tribe and BIA were at fault for not providing him proper guidance, and 3) if the cancellation must stand, appellant desires reimbursement for the cost of improvements made on the leased premises.

In construing the terms of a lease ordinary significance must be given to the words used. In this case, we agree with the BIA and the Oneida Tribe that it would be totally inconsistent with the specific terms and purposes of the residential lease to consider the limited tasks undertaken by appellant on the leased premises as constituting fulfillment of the lessee's legal requirements. Appellant's first ground for appeal is therefore denied.

