



INTERIOR BOARD OF INDIAN APPEALS

Bulletproofing, Inc. v. Acting Phoenix Area Director, Bureau of Indian Affairs

20 IBIA 179 (08/13/1991)



United States Department of the Interior

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

BULLETPROOFING INC., AND RICHARD MEDLIN, ITS PRESIDENT
v.
ACTING PHOENIX AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 91-33-A

Decided August 13, 1991

Appeal from a determination that an unapproved lease of tribal trust land was invalid.

Affirmed.

1. Indians: Leases and Permits: Generally

Under 25 U.S.C. §§ 177 and 415 (1988), any lease of Indian trust or restricted land that is not approved by the Secretary of the Interior or his authorized representative is void ab initio, has no force or effect, and grants no rights to either the attempted lessor or lessee.

2. Board of Indian Appeals: Jurisdiction

The Board of Indian Appeals is not a court of general jurisdiction and has only those powers delegated to it by the Secretary of the Interior. It has not been delegated authority to grant equitable relief against an Indian tribe.

APPEARANCES: George W. Johnson, Esq., Las Vegas, Nevada, for appellants; Wayne C. Nordwall, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for appellee.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellants Bulletproofing, Inc., and Richard Medlin, its President, seek review of a November 16, 1990, decision of the Acting Phoenix Area Director, Bureau of Indian Affairs (Area Director; BIA), stating that a lease between appellants and the Las Vegas Paiute Tribe (Tribe) was invalid

because it was not approved by the Secretary of the Interior. The decision directed appellants to vacate the premises within 30 days. For the reasons discussed below, the Board affirms that decision.

Background

On April 20, 1990, appellants and a representative of the Tribe executed a lease for a 15,000 square-foot building located in the Tribe's industrial park. The lease stated that appellants would use the building for the manufacture of armored car components. It further stated that the lease term was 4 months, subject to appellants' option to renew for a 5-year term. The lease was not approved by any Department of the Interior official.

In June 1990, appellants informed the Tribe that they wanted to renew the lease. In July, they fell behind in their rental payments. Evidently, no formal lease renewal document was ever executed although appellants remained on the property and, by November 1990, had brought their lease payments current.

By letter of November 8, 1990, the tribal chairperson requested assistance from BIA in removing appellants from the premises. On November 16, 1990, the Area Director wrote to appellants, informing them that the lease was invalid because it was not approved by the Secretary of the Interior in accordance with 25 U.S.C. § 415 (1988) ^{1/} and 25 CFR 162.5. He stated that the Tribe did not wish to continue a relationship with appellants because of the rental payment problems. He then directed appellants to remove their property and vacate the premises within 30 days.

Appellants' notice of appeal from the Area Director's letter was received by the Board on December 18, 1990. Both appellants and the Area Director filed briefs.

Discussion and Conclusions

Appellants argue that Paragraph II (iv) of the lease required the Tribe to obtain the approval of BIA and that it was therefore the Tribe's fault the lease was not approved. They contend that:

25 U.S.C. Sec. 177 and 25 U.S.C. Sec. 415 cannot be used in support of an actionable wrong, which wrong in this case was to have a lease drafted by the Tribe's attorneys, acceptance of money by the Tribe pursuant to a lease, and further encourage [appellants] to make costly up-grades to the premises in question. Certainly, the lease in question, under these circumstances, is and must be a valid lease. Certainly, under these circumstances and facts,

^{1/} All further references to the United States Code are to the 1988 edition.

the United States must be deemed to have approved or consented to the Lease/Alienation of the Tribal land.

(Appellant's Reply Brief at 3). As relief, appellants request

that an Order be entered (1) directing the Las Vegas Paiute Tribal Council to present the lease and its exercised option to the United States Department of [the] Interior, Bureau of Indian Affairs or (2) in the alternative, to factually determine whether this alleged industrial park is the kind of enterprise which is subject to the requirements of the United States Department of the Interior, Bureau of Indian Affairs, or whether this is a business enterprise as foreseen to be privately entered into by the Las Vegas Paiute Tribal Council under its own authority.

(Appellants' Opening Brief at 8-9).

A declaration from the Phoenix Area Realty Officer states that the Las Vegas Paiute Industrial Park is located on trust land within the exterior boundaries of the Las Vegas Paiute Reservation.

25 U.S.C. § 177, derived from the Indian Non-Intercourse Act of June 30, 1834, 4 Stat. 730, provides: "No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution." Congress has subsequently authorized the leasing of Indian lands, subject to the approval of the Secretary of the Interior. 25 U.S.C. § 415 provides: "Any restricted Indian lands, whether tribally or individually owned, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, residential, or business purposes * * *."

[1] In Smith v. Acting Billings Area Director, 17 IBIA 2310, 235 (1989), the Board stated: "[A]ny lease of Indian trust or restricted land that is not approved by the Secretary of the Interior or his authorized representative is void ab initio, has no force and effect, and grants no rights to either the attempted lessor or lessee."

The lease in this case is clearly void.

[2] Further, as the Area Director argues, the Board has no authority to order the Tribe to submit the lease for approval. The Tribe is not a party to this appeal. Further, even if the Tribe were a party, the Board would still lack authority to grant the relief sought by appellant. The Board is not a court of general jurisdiction and has only those powers delegated to it by the Secretary of the Interior. It has not been delegated authority to grant equitable relief against an Indian tribe.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Phoenix Area Director's November 16, 1990, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

I concur:

//original signed
Kathryn A. Lynn
Chief Administrative Judge