



INTERIOR BOARD OF INDIAN APPEALS

Farmers & Merchants Bank of Tryon, Oklahoma v. Muskogee Area Director,  
Bureau of Indian Affairs

21 IBIA 106 (12/18/1991)



# United States Department of the Interior

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

FARMERS AND MERCHANTS BANK OF TRYON, OKLAHOMA  
v.  
MUSKOGEE AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS 1/

IBIA 91-29-A

Decided December 18, 1991

Appeal from a finding that an oil and gas lease had expired by its own terms.

Affirmed.

1. Administrative Procedure: Burden of Proof--Indians: Mineral Resources: Oil and Gas: Generally

In appeals arising under 25 CFR Part 2, the appellant bears the burden of proving that the agency action complained of is erroneous or not supported by substantial evidence.

APPEARANCES: Clay B. Pettis, Esq., Holdenville, Oklahoma, for the Farmers and Merchants Bank of Tryon, Oklahoma; Janet L. Spaulding, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Tulsa, Oklahoma, for the Area Director.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

On December 17, 1990, the Board of Indian Appeals (Board) received a notice of appeal filed by Clay B. Pettis, Esq., Holdenville, Oklahoma. The appeal sought review of a November 12, 1990, decision of the Muskogee Area Director, Bureau of Indian Affairs (BIA; Area Director), concerning an oil and gas lease dated January 14, 1926, and held by Jimmy Hallum, d.b.a. Oilfield Casing Pulling Company (Hallum). The notice of appeal did not identify the appellant or include a copy of the decision being appealed. The Board assumed that the appeal had been filed on behalf of Hallum. After receiving the December 17, 1990, predocketing notice, Pettis informed the Board that the appeal had been filed on behalf of the Farmers and Merchants Bank of Tryon, Oklahoma (bank), which he described as an interested party.

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1/ This case was originally docketed as Jimmy Hallum, d.b.a. Oilfield Casing Pulling v. Muskogee Area Director, Bureau of Indian Affairs. The name was changed based upon the following discussion.

The Area Director's November 12, 1990, decision states:

This relates to our letter of August 18, 1989, and ensuing correspondence with Mr. Clay B. Pettis, Attorney for the Farmers and Merchants Bank of Holdenville, concerning Departmental Oil and Gas Lease Nos. 601-7100 and 503-7986 (50489), Lucy Henshaw now Micco, Seminole 591. The leases cover mineral interests located in Section 30, Township 8 North, Range 8 East, Seminole County, Oklahoma.

You were advised that your \$10,000 bond was not sufficient according to our requirements and were originally given 30 days within which to submit the increase. The increase has not been received.

We have also been advised by the Bureau of Land Management (BLM) that there has been no production since before August 1989, and a recent lease inspection verifies that the lease is inactive. The above lease, prior to segregation, was approved for a term of "ten years from and after the approval hereof by the Secretary of the Interior, and as much longer thereafter as oil, gas, casing head gas, or any one of them, is produced in paying quantities". Therefore, in accordance with the lease terms, this is your official notice that Lease Nos. 601-7100 and 503-7986 have expired effective immediately.

Your \$10,000 Oklahoma Surety Company Bond No. B-5753 will not be released until proper disposition of the nine unplugged wells, and clearance is received from the BLM.

Briefs were filed on appeal by the bank and the Area Director. Hallum has not appeared.

The bank's interest in this matter arises from the fact that Hallum used the lease as collateral for a mortgage. For purposes of this decision only, the Board will assume that the mortgage was proper in all respects, even though no copy of it appears in the documents presented to the Board. In September 1989, the bank filed a foreclosure proceeding against Hallum and, on January 17, 1991, received an assignment of the lease in lieu of foreclosure. The assignment has not been approved by the Area Director as is required by paragraph 10 of the lease. There is no evidence that the assignment was ever presented to BIA for approval.

The Area Director contends that the bank lacks standing to appeal his decision because the bank is merely the holder of an unapproved assignment of the lease. The Area Director cites HCB Industries, Inc. v. Muskogee Area Director, 18 IBIA 222 (1990), in support of this contention, and asks that the appeal be dismissed.

The bank has not responded to this argument and has made no attempt to show that its status as a mortgagee gives it standing to bring this administrative appeal. Although it is possible that appellant's status as a mortgagee is not sufficient to give it standing, the Board prefers not to reach this issue in the absence of thorough briefing. Therefore, the Board will assume, again for the purposes of this decision only, that appellant had a sufficient interest in the lease to bring an appeal from the Area Director's November 12, 1990, decision. The Area Director's request that this appeal be dismissed for lack of standing is denied.

[1] Substantively, the bank, as the appellant in an appeal arising under 25 CFR Part 2, bears the burden of proving that the agency decision complained of was erroneous or not supported by substantial evidence. Pima Country Club, Inc. v. Acting Phoenix Area Director, 21 IBIA 33, recon. denied, 21 IBIA 70 (1991). Failure to carry this burden of proof will result in an affirmance of the Area Director's decision.

The bank states at page 1 of its opening brief:

The key point in question here is that the foreclosure suit was commenced approximately one month after the date of last production reported, being in August of 1989. Said action was not resolved until 17 January, 1991. During that time, the matter was before a Court of competent jurisdiction. Not having been released until January of 1991, Farmers & Merchants Bank should be allowed a reasonable time within which to comply with the bonding requirement cited as one of the reasons for cancellation of the lease.

The bank's position thus appears to be that it should be excused from all lease obligations while its suit was pending. No legal authority is cited for this proposition. The bank does not allege error in the Area Director's determination that a higher bond was required, arguing only that it should be given additional time to comply, and admits that there has been no production since at least August 1989.

The Area Director argues:

The habendum clause of the lease provided for a primary term of ten years from approval by the Secretary of the Interior, and as long thereafter as oil, gas, or casinghead gas is produced in paying quantities. The lease further provided:

That if, while this lease is being held by production alone, as stipulated above, the well or wells thereon shall cease to produce for any cause, lessee with the consent of the Secretary of the Interior, shall have the period of one hundred and twenty (120) days from the stopping of production within which . . . to attempt to restore production.

Production on this lease was not restored within 120 days of August, 1989 as required by the provisions of the lease. Thus, in the absence of some federal statute or regulation which would excuse the nonproduction, the lease expired under its own terms. Mobil Oil Corp. v. Albuquerque Area Director, Bureau of Indian Affairs, 18 IBIA 315 [97 I.D. 215 (1990)]. \* \* \*

The lease having expired under its own terms, the issues raised concerning [the bank's] request for additional time to post a higher bond as requested by the BIA are moot.

(Answer Brief at 5). See also Benson-Montin-Greer-Drilling Corp. v. Acting Albuquerque Area Director, 21 IBIA 88 (1991).

Because the bank's position on appeal is that the administrative proceedings should have been tolled during the pendency of the foreclosure suit, it must show error in the Area Director's failure to toll the proceedings. The bank failed initially to support its argument for tolling and, in not responding to the Area Director's arguments on appeal, has failed to show error in those arguments. Under these circumstances, the bank has failed to carry its burden of proof.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the November 12, 1990, decision of the Muskogee Area Director is affirmed.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

I concur:

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//original signed  
Anita Vogt  
Administrative Judge