



INTERIOR BOARD OF INDIAN APPEALS

Comanche Housing Authority; Chloveta A. Caudill v. Anadarko Area Director,
Bureau of Indian Affairs

22 IBIA 271 (09/09/1992)



United States Department of the Interior

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

COMANCHE HOUSING AUTHORITY AND CHLOVETA A. CAUDILL
v.
ANADARKO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 92-119-A, 92-126-A

Decided September 9, 1992

Appeals from cancellation of a lease and assessment of trespass damages.

Vacated and remanded.

1. Indians: Leases and Permits: Cancellation or Revocation--Indians: Leases and Permits: Subleases

Where a valid sublease of trust land has been made, the parties to the main lease may not defeat the rights of the sublessee by a voluntary cancellation of the lease to which the sublessee has not consented.

2. Indians: Housing: Generally--Indians: Leases and Permits: Cancellation or Revocation

Where a lease of Indian land provides that it may not be cancelled absent the consent of HUD unless HUD's interest has been terminated, a Bureau of Indian Affairs Superintendent may not approve cancellation of the lease without either evidence of HUD's consent or participation by HUD in a determination concerning termination of its interest.

3. Bureau of Indian Affairs: Generally--Indians: Leases and Permits: Generally

The Bureau of Indian Affairs is bound by the terms of leases it has approved, when the leases are not in conflict with governing regulations.

APPEARANCES: Hyman Z. Copeland, Esq., Lawton, Oklahoma, for the Comanche Housing Authority; Henry A. Ware, Esq., and Michael C. Snyder, Esq., Oklahoma City, Oklahoma, for Chloveta A. Caudill; Alan R. Woodcock, Esq., Office of the Regional Solicitor, Southwest Region, U.S. Department of the Interior, Tulsa, Oklahoma,

for the Area Director; Beverly A. Hedge, Benal Mason, Brenda K. Nibbs, Algernon Tonips, and Lowell K. Tonips, pro sese.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellants Comanche Housing Authority (Housing Authority) and Chloveta A. Caudill (Caudill) seek review of a January 6, 1992, decision of the Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA), which affirmed (1) cancellation of a lease between the Housing Authority and the owners of a parcel of trust land and (2) assessment of trespass damages against Caudill in the amount of \$3,904.02. For the reasons discussed below, the Board vacates the Area Director's decision and remands this case to him for further proceedings.

Background

By lease 29645, dated December 12, 1972, the Housing Authority leased from Ernest and Maude Mihecoby, heirs of the original allottee, a 1.25-acre portion of Comanche Allotment No. 745. 1/ The lease was approved by the Acting Superintendent, Anadarko Agency, BIA, on January 3, 1973. It provided that the land would be used for a Mutual-Help Housing Project. 2/

A house was constructed on the property sometime between 1972 and 1989. BIA records apparently do not show when it was built or who occupied it before 1989. 3/ On May 22, 1989, the Housing Authority entered

1/ The 1.25-acre parcel is described as the W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of sec. 1, T. 3 N., R. 12 W., Indian Meridian, Comanche County, Oklahoma.

2/ Paragraph 3 of the lease, "TERM," and paragraph 5, "SUBLEASES AND ASSIGNMENTS" are quoted infra. Other significant provisions include:

"4. CONSIDERATION FOR LEASE. In consideration of the Lessor entering into the lease, the Lessee agrees to pay \$250.00 with respect to each dwelling site comprising the property, such payment to be effected by crediting of the amount of \$250.00 as a mutual-help contribution to each Mutual-Help Participant or his successor in interest who will occupy each of the dwelling sites comprising the property. In addition, the Lessee shall pay the Lessor for the use of the premises rent at the rate of one dollar (\$1.00) for each 25 year term, payment to be made for each term in advance.

* * * * *

"6. IMPROVEMENTS. All improvements shall remain the property of the Lessee or its assigns until the expiration of the lease.

* * * * *

"11. SURRENDER OF POSSESSION. If upon expiration or other termination of this lease, further use rights are not granted to the Lessee or its assigns by the Lessor, said Lessee or its assigns shall, upon demand, surrender to the Lessor complete and peaceable possession of the premises."

3/ This is presumably because the Housing Authority was not required to obtain BIA approval for subleases and assignments. See discussion of paragraph 5 of the lease, infra.

into a Mutual-Help and Occupancy Agreement (MHOA) authorizing Chloveta and William Caudill to occupy the house. The MHOA provided, inter alia, that the Caudills would acquire ownership after the house had been paid for.

By letter dated March 7, 1990, the Housing Authority asked the Superintendent to approve cancellation of eight leases, including lease 29645. The letter stated: "Occupants in these homes located on trust property are not the current land owners." A completed cancellation form for lease 29645 was enclosed with the letter. It was signed by four of the five present landowners 4/ and by representatives of the Housing Authority. It stated that the reason for cancellation was: "The home at the following location [i.e., the 1.25-acre parcel] has been paid in full."

On July 10, 1990, the Acting Superintendent approved cancellation of the lease. There is no indication that Caudill was notified of the Superintendent's action or of her right to appeal. 5/

Evidently, however, Caudill was aware that a cancellation request was pending. On May 14, 1990, she filed suit against the Housing Authority and the landowners in CFR court. Caudill v. Housing Authority of the Comanche Indian Tribe, No. Civ. 90-A63 (Court of Indian Offenses for the Comanche Tribe). Caudill alleged, inter alia, that she had spent \$4,800 to bring the house up to standard living condition. In her second amended complaint in the lawsuit, filed on July 27, 1990, Caudill alleged that the Housing Authority had engaged in fraud or misrepresentation in failing to disclose that the house was located on trust land belonging to others. She further alleged that the Housing Authority had breached the MHOA and had been negligent. Finally, she alleged that the landowners had been unjustly enriched by the improvements she made to the house.

On July 13, 1990, the landowners filed suit against Caudill and her husband in CFR court. In a document titled "Forcible Entry and Detainer Affidavit," they alleged that the Caudills were indebted to them in the amount of \$2,000 in rent. Nibbs v. Caudill, No. Civ. 90-A91 (Court of Indian Offenses for the Comanche Tribe). The record does not include any further pleadings in either CFR court lawsuit.

fn. 3 (continued)

In its opening brief before the Board, the Housing Authority states that the original tenants were evicted because of non compliance with the agreement under which they occupied the house (Housing Authority's Opening Brief at 2).

4/ The current landowners are Beverly A. Hedge, Benal Mason, Brenda K. Nibbs, Algernon Tonips, and Lowell K. Tonips. All except Lowell Tonips signed the cancellation form.

5/ Caudill was clearly an interested party entitled to notice under 25 CFR 2.7(a). She was also known to the decisionmaker because her name and address were included in the Housing Authority's request for cancellation. Under 25 CFR 2.7(b), her right to appeal the cancellation continued until she was given the proper appeal information.

By letter of August 16, 1991, to Caudill, the Superintendent stated:

In the absence of a formal agreement between you and the owners of the property and the approval of the cancellation agreement by this office, you are and have been trespassing [on] the property since July 10, 1990. You are hereby directed to vacate the premises within thirty (30) days of your receipt of this letter. In addition to vacating the property, you are assessed trespass damages in the amount of \$3,904.02 calculated for the period of July 10, 1990, through July of 1991.

(Superintendent's Aug. 16, 1991, Decision at 2). The decision did not inform Caudill of her right to appeal.

Both the Housing Authority and Caudill appealed to the Area Director from the August 16 decision. The Housing Authority argued, *inter alia*, that the lease cancellation had been based on a mistake of fact. It stated that it had twice requested BIA to rescind the cancellation based on that mistake. Caudill argued, *inter alia*, that her due process rights had been violated because she was not given notice of or allowed to participate in the cancellation proceedings. Both appellants argued that the lease cancellation was invalid because the Department of Housing and Urban Development (HUD) had not consented.

The Area Director issued a decision in the appeals on January 6, 1992. His decision letter, addressed to Caudill, stated in part:

The responsibility for notifying and obtaining any necessary clearance from you or HUD was the responsibility of the Housing Authority as it had a contractual relationship with you and is the agent of HUD. The staff of the Housing Authority possesses the knowledge and skills necessary to administer its program. Further, they are familiar with the requirements for the processing of lease cancellations; the identity of its Occupant/Participant; its obligations and responsibilities to them and how a lease cancellation would affect their rights. * * * Since the cancellation action was voluntary and initiated by the lessee of record (Housing Authority), the Superintendent, Anadarko Agency, approved the cancellation because there were no reasons known to him to withhold approval.

The request of the [Housing Authority] to the Anadarko Agency to rescind the lease cancellation was without merit. The [Housing Authority] was merely attempting to correct its error of securing approval to its voluntary lease cancellation request. Rescinding the cancellation would have had a detrimental impact upon the rights of the vested property owners. * * *

* * * * *

Based on our analysis of the facts, the voluntary lease cancellation was proper and is sustained.

ASSESSMENT OF TRESPASS DAMAGES:

Issues of trespass are generally dealt with by the courts and, therefore, are not actions subject to Departmental appeal. [6/] Consequently, the assessment of trespass damages stands and you are to deliver possession of the premises to the vested title owners and remit the monies due.

(Area Director's Jan. 6, 1992, Decision at 4-5).

The Housing Authority's notice of appeal from this decision was received by the Board on February 3, 1992; Caudill's notice of appeal was received on February 11, 1992. The appeals were consolidated upon docketing. Appellants filed separate briefs. The Area Director also filed a brief.

Discussion and Conclusions

Appellants challenge the Area Director's decision on a number of grounds. The Board concludes that it need not address all of appellants' arguments because it finds that the Area Director's decision must be vacated because of the failure to involve either Caudill or HUD in the cancellation proceedings.

[1] Caudill's rights in this matter arise under the MHOA. This document does not specifically state whether it is a sublease or an assignment. The lease authorizes both, providing at paragraph 5:

SUBLEASES AND ASSIGNMENTS. The primary purpose of this lease is to provide Participants in the Mutual-Help Housing Project with sites for housing. The Lessee is hereby authorized to make subleases and assignments of its leasehold interests in connection with its development and operation of the Mutual-Help Housing Project. During the term of any sublease, should the participant be or become an owner of the land it is hereby agreed that a merger of interest shall not occur.

The last sentence of this provision suggests that agreements such as Caudill's MHOA are to be deemed subleases rather than assignments. The Board is persuaded by its review of the MHOA that it is more in the nature

6/ The Board is unaware of any statute or regulation which renders BIA trespass decisions final for the Department. Absent such a provision, these decisions are appealable under 25 CFR Part 2. See 25 CFR 2.3; cf. Welch v. Minneapolis Area Director, 17 IBIA 56 (1989).

7/ Shortly after the Area Director's decision was issued, the landowners filed a second suit against Caudill in CFR court seeking, inter alia, her eviction, trespass damages, and rent. Tonips v. Caudill, No. 92-A03 (Court of Indian Offenses for the Comanche Tribe).

of a sublease than an assignment--that is, it grants an interest less than that held by the lessee. The Board concludes that the MHOA is a sublease rather than an assignment.

Most subleases of Indian lands, in order to be valid, must be approved by BIA and consented to by all parties to the lease. 25 CFR 162.12(a). However, "[w]ith the consent of the Secretary, the lease may contain a provision authorizing the lessee to sublease the premises, in whole or in part, without further approval." 25 CFR 162.12(b). The lease in this case contains such a provision. In effect, section 5 of the lease constitutes the advance consent of the parties and the advance approval of BIA to the sublease to Caudill. The Board finds that Caudill has the same status as a sublessee that she would have if her sublease had been specifically approved by BIA and specifically consented to by the parties to the lease.

Normally, in the case of a voluntary cancellation of a lease, as opposed to a forfeiture or a cancellation for cause, the rights of a sublessee are not affected unless the sublessee consents. See, e.g., Goldberg v. Tri-States Theater Corp., 126 F.2d 26, 28 (8th Cir. 1942): "[I]t is a well settled rule in equity that a surrender by a lessee, where no right of forfeiture has accrued, will not ordinarily be allowed to defeat the interests or equities of third persons in the term." See also Byrd v. Peterson, 66 Ariz. 253, 186 P.2d 955, 958 (1946):

It seems to be universally held by the courts that the rights of [a] subtenant will not be destroyed or impaired by a surrender of the main lease. It would be unconscionable where the express terms of a sublease have not been violated to allow the landlord and lessee to terminate the original lease by their mutual consent over the protest of the subtenant.

Accord 49 Am. Jur. 2d Landlord and Tenant § 512 (1970); 51C C.J.S. Landlord and Tenant § 129(b) (1968).

None of the parties discuss this rule. However, the Area Director argues that BIA had a trust responsibility to the individual landowners to maximize the return from their land and therefore was required to cancel the lease upon a showing that the lessee's interest had terminated (Area Director's Brief at 17). There is no doubt that BIA has a trust duty to the landowners here. That duty, however, did not relieve BIA of the obligation to respect the rights of other parties. Caudill had rights which derived ultimately from the lease which BIA approved. The Board sees no reason why the general rule discussed above should not apply to a lease of trust land. It holds, therefore, that where a valid sublease of trust land has been made, the parties to the main lease may not defeat the rights of the sublessee by a voluntary cancellation of the lease to which the sublessee has not consented.

[2] Both appellants argue that the lease cancellation was void because HUD did not consent to the cancellation. They base their argument on paragraph 3 of the lease, which provides:

3. TERM. Lessee shall have and hold the described premises with their appurtenances for a term of 25 years beginning on the date first above written [i.e., December 12, 1972]. This lease shall automatically and without notice renew for an additional term of 25 years on the same terms and conditions contained herein. This lease may not be terminated by either or both parties during the initial or renewal term of the lease without the consent of the [Public Housing Administration] or until the [Public Housing Administration's] interest in the project has been terminated.

HUD is the successor to the Public Housing Administration. See 42 U.S.C. § 3534 (1988). There is no evidence that HUD's consent was obtained prior to cancellation of the lease. Appellants argue that, for that reason alone, the cancellation must be vacated. As the Area Director notes, however, HUD's consent is not necessary if its "interest in the project has been terminated."

The Area Director argues that HUD's interest terminated when the debt on the house was satisfied. As support for this argument, he cites two provisions of the MHOA concerning transfer of ownership to the participant upon satisfaction of the debt.

The introduction to the MHOA provides: "After completion of all of the Participants' houses, the Participant will occupy one of the homes as a lessee, subject to certain conditions, until such time as the house is paid for, at which time he will acquire ownership." Subsection 5(c) provides:

When payment of the debt is completed, the [Housing] Authority will grant, assign, and/or convey to the Participant the maximum interest in the Participant's house and grounds that it can give, and the Authority and the Participant will each release the other from any further obligations under this Agreement, except that the Participant may not, so long as the annual contributions contract between the [Housing] Authority and the [Housing Assistance Administration] [8/] remains applicable to any of the houses undertaken by the Participants listed in Attachment "A," [9/] transfer any of his rights in the house and grounds without the consent of the [Housing] Authority.

8/ "Annual contributions" are mentioned in the introduction to the MHOA, which states that the Housing Authority "will use, in paying back * * * borrowed money, payments called 'annual contributions' which it will receive from the Housing Assistance Administration * * * an agency of the United States Government."

The Board assumes that the Housing Assistance Administration has been absorbed by HUD.

9/ No copy of Attachment "A" is included in the record.

Neither of these provisions specifically states that HUD's interest terminates upon payment of the debt on the house. The exception in subsection 5(c) suggests, although by no means makes clear, that HUD might retain an interest in this house until all houses in the project are paid off. The fact is, however, that the documents available to the Superintendent did not specify when HUD's interest in the house terminated. Nor was HUD consulted either for its consent or for a statement as to whether or not its interest had terminated.

The Area Director argues that, because the Housing Authority was the only party with contractual privity with HUD, the Housing Authority bore the responsibility of obtaining HUD's consent or its determination that it had no further legal interest in the property. Further, the Area Director argues, it was reasonable for the Superintendent to assume that the Housing Authority had done so before it submitted its cancellation request to BIA.

The Board agrees that the Housing Authority should have obtained the proper clearance from HUD, not to mention Caudill, prior to submitting its cancellation request to BIA. However, the Board finds that it was not reasonable for the Superintendent to assume, without any evidence, that the Housing Authority had done these things. The Superintendent was responsible for determining that the cancellation request was in order before he acted on it. Since the request included no evidence of contact with either HUD or Caudill, the Superintendent should have returned it to the Housing Authority for completion. Alternatively, he should have himself sought the participation of HUD and Caudill.

[3] BIA is bound by the terms of a lease it has approved, provided there is no conflict between the lease and the governing regulations. E.g., Pittsburg & Midway Coal Mining Co. v. Acting Navajo Area Director, 21 IBIA 45 (1991); Abbott v. Billings Area Director, 20 IBIA 268 (1991). No party argues that there is any such conflict here. ^{10/} The Board finds that BIA is bound by the provision of lease 29645 giving advance approval of subleases and must therefore respect the rights of Caudill in proceedings to cancel the lease. The Board finds further that BIA is bound by the provision of the lease which requires HUD's consent to cancellation unless

^{10/} Such an argument with respect to the provision giving advance approval of the sublease to Caudill would have little force in light of 25 CFR 162.12(b), specifically authorizing such provisions.

The Board is not aware of any explicit regulatory authority for a provision requiring HUD's consent to cancellation of leases of individually owned land. Cf. 25 CFR 162.14 (last sentence), explicitly authorizing such provisions in leases of tribal land. The Area Director does not contend, however, that the lease provision here is invalid because it is in violation of the regulations. Under the circumstances, the Board would be extremely reluctant to reach such a conclusion.

HUD's interest has terminated. 11/ Under the circumstances of this case, the Superintendent lacked authority to approve cancellation of the lease.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Anadarko Area Director's decision is vacated, and this matter is remanded to him for further proceedings in accordance with this opinion. 12/

//original signed

Anita Vogt
Administrative Judge

I concur:

//original signed

Kathryn A. Lynn
Chief Administrative Judge

11/ The Board does not hold that BIA is precluded from making its own determination that HUD's interest has terminated. The Board does hold, however, that BIA may not make such a determination unless HUD has been given an opportunity to state its position.

12/ On Sept. 4, 1992, while this appeal was under active consideration, the Area Director filed a motion to dismiss the Housing Authority's appeal, Docket No. IBIA 92-119-A, on grounds of mootness. The motion is denied.