COLEEN GARLAND ET AL.

IBLA 88-340, 88-374, 88-375, 88-382 Decided November 3, 1989

Appeals from decisions of the Battle Mountain (Nevada) District Office, Bureau of Land Management, rejecting color-of-title applications N-39390, N-39156, N-39179, and N-47120.

IBLA 88-340 dismissed; decisions in IBLA 88-374, IBLA 88-375, and IBLA 88-382 affirmed.

1. Color or Claim of Title: Generally--Color or Claim of Title: Applications

Equitable title to land claimed under a class I color-of-title application filed pursuant to 43 U.S.C. § 1068 (1982) vests only upon the filing of the application by a qualified applicant. A patent for such land cannot be issued if outstanding, unpatented mining claims existed on the subject land prior to the filing of the color-of-title application in the absence of either a relinquishment of the mining claims or a mining contest resulting in a finding that the mining claims are null and void.

APPEARANCES: Coleen Garland, Raymond J. Seilheimer, Andrew L. and Mary D. Dumas, and John R. and Clara J. Wellborn, pro sese.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Coleen Garland, Raymond J. Seilheimer, Andrew L. and Mary D. Dumas, and John R. and Clara J. Wellborn have appealed from separate March 1988 decisions of the Battle Mountain (Nevada) District Office, Bureau of Land Management (BLM), rejecting color-of-title applications N-39390, N-39156, N-39179, and N-47120 respectively, because the lands sought were encumbered with mining claims. 1/

Each appellant filed a class I application under the Color of Title Act, as amended, 43 U.S.C. § 1068 (1982), for various lots located in

1/ We have consolidated these appeals for purposes of review due to the similar facts and identical legal issues presented.

sec. 3, T. 7 S., R. 41-1/2 E., Mount Diablo Meridian, Esmeralda County, Nevada. Garland filed application N-39390 on February 29, 1984; Seilheimer filed application N-39156 on February 6, 1984; the Dumases filed application N-39179 on February 13, 1984; and the Wellborns filed application N-47120 on August 13, 1987.

By letters dated February 27, 1987, BLM informed each appellant (except the Wellborns who had not yet filed their application) that the land claimed was encumbered with mining claims located by the Adolf Dieckman Trust or its predecessors in 1983 and currently controlled by Combined Metals Reduction Company. BLM advised appellants that no patents could be issued to appellants unless the conflicting mining claims were extinguished. BLM recommended that appellants contact Combined Metals and request that the company relinquish its claims on the lands sought in the applications. BLM reminded appellants that, if the company refused to relinquish its claims, appellants could institute a mining contest pursuant to 43 CFR 4.450 if they desired to press their color-of-title claims.

On November 18, 1987, BLM issued decisions notifying appellants that their applications were being held for rejection. BLM noted that, under the Color of Title Act, equitable title to the land vests only upon the filing of the color-of-title application and that, if a properly filed and maintained mining claim existed on the land at the time the application was filed, no color-of-title patent can be issued for the land. Here the mining claims had been located in 1983, before the applications had been filed. Accordingly, appellants were granted 30 days to show cause why their applications should not be rejected.

In March 1988 BLM, after review of appellants' responses, issued separate decisions rejecting each appellant's application. The common basis for all the rejections was BLM's conclusion that the existence of previously filed mining claims on the lands sought by appellants precluded the issuance of patents pursuant to the color-of-title applications for the lands encumbered by those mining claims. BLM elaborated further in answering appellants' responses to the show cause orders. In reply to Garland's and the Wellborns' argument that the lands applied for had qualified for color-of-title patent for many years, BLM noted that its mining records revealed that the mining claims were originally filed on March 7, 1908, and had been maintained under the mining laws continuously since then except for a 2-year span between 1981 and 1983. The claims were restaked and a new filing was made on June 18, 1983. Because equitable title under the Color of Title Act vests only upon the filing of the application, which occurred here in 1984 and 1987, respectively, BLM stated that in order for patent to issue the mining claims had to be extinguished as to the subject lands. In response to the assertion by the Wellborns that the filing of a mining claim does not convey surface rights in the land, BLM replied that the filing of a mining claim gives the claimant the right to develop the mineral resources and to use the surface to develop those resources, as well as the right to seek patent to both the surface and the mineral estates.

As an initial matter, we must dismiss appellant Garland's appeal. A statement of reasons did not accompany her notice of appeal, nor did she file a statement of reasons within 30 days after the notice of appeal was filed. See 43 CFR 4.412(a). Failure to file a statement of reasons subjects the appeal to summary dismissal pursuant to 43 CFR 4.402(a). 43 CFR 4.412(c); see Robert L. True, 101 IBLA 320 (1988). Accordingly the appeal in IBLA 88-340 is dismissed.

In their statements of reasons for appeal, each appellant argues that the land was purchased in good faith and that patent to only the surface of the land, not the mineral estate, is sought. The Dumases also allege that the mining claimant has indicated its willingness to assist the color-of-title applicants in obtaining title to the surface of the lands. The Wellborns reiterate their contention that color-of-title eligibility existed for many years before the restaking and filing of the mining claims in June 1983. They argue that the filing of a mining claim does not convey the surface rights to the mining claimant and allege that no mining has occurred on these claims. They further note that there has never been any action to patent these lands by the mining claimant. Therefore, they contend that BLM's reliance on the right of the mining claimant to obtain patent as a reason for denying appellants' application for the surface rights to the land is erroneous. Each appellant requests that the Board reverse BLM's rejection of the application and order the issuance of patent to the lands.

The Color of Title Act, 43 U.S.C. § 1068 (1982), provides in relevant part:

> The Secretary of the Interior (a) shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation, * * * issue a patent for not to exceed one hundred and sixty acres of such land upon the payment of not less than $ 1.25 per acre: * * * And provided further, That no patent shall issue under the provisions of this chapter for any tract to which there is a conflicting claim adverse to that of the applicant, unless and until such claim shall have been finally adjudicated in favor of such applicant.

Application for patent pursuant to this provision of 43 U.S.C. § 1068 is referred to as a class I color-of-title claim. 43 CFR 2540.0-5(b).

[1] As BLM correctly noted, equitable title to land claimed under a class I color-of-title application vests only upon the actual filing of the application by a qualified applicant, i.e., one who has complied with the statutory requirements. Albert M. Lipscomb, 99 IBLA 217 (1987); Benton C. Cavin, 83 IBLA 107 (1984). Even if it is assumed that appellants

have met all the statutory prerequisites, 2/ equitable title to the lands claimed by Seilheimer and the Dumases would have vested on February 6, and February 13, 1984, respectively, while equitable title to the lands claimed by the Wellborns would have vested on August 13, 1987. The mining claims on the subject lands were filed on June 18, 1983, before equitable title to the land could have vested in any of appellants. Thus the issue before the Board is whether appellants are entitled to patents under the Color of Title Act for lands encumbered with pre-existing mining claims. We agree with BLM that no patent can issue for those lands unless the mining claims are voluntarily relinquished or are declared invalid through a mining contest.

It has long been recognized that an unpatented mining claim which has been properly located and perfected by the discovery of a valuable mineral deposit creates an interest in its owner which is a property right in the fullest sense. Forbes v. Gracey, 94 U.S. 762, 767 (1877); see Bruce W. Crawford, 86 IBLA 350, 92 I.D. 208 (1985); California Portland Cement Corp., 83 IBLA 11 (1984). See generally 2 American Law of Mining § 36.03 (2d ed. 1988). This property interest includes the right to possess and enjoy the surface areas 3/ as well as all minerals within the claim. 30 U.S.C. § 26 (1982). Although the owner of a perfected mining claim has the right to obtain patent to both the mineral estate and the surface estate of the claim, United States v. Etcheverry, 230 F.2d 193, 197 (10th Cir. 1956), nothing in the law requires a claimant to proceed to patent. O'Connell v. Pinnacle Mines Co., 140 F. 854 (9th Cir. 1905); California Portland Cement Corp., supra.

Thus, if the mining claims existing on the lands prior to the filing of appellants' color-of-title applications are valid, no color-of-title patents can be issued to appellants. William T. Bertagnole, 87 IBLA 34 (1985). The mining claims must be extinguished, either by voluntary relinquishment 4/ or by a determination that the claims are invalid as the result of the initiation of a mining claim contest, before patents can be issued to appellants. William T. Bertagnole, supra; see Hazel Ann Smith, 82 IBLA 230 (1984) (comparable requirements concerning land sales). Even if the mining claims are thought to be invalid, until such proceedings are instituted and the claims are actually determined to be invalid, BLM cannot dispose of the land to others. Harry Yukon, A-30762 (Aug. 23, 1967).

2/ Because BLM rejected the applications based on the existence of the mining claims, it made no determination as to whether appellants had satisfied the statutory requirements.

3/ The rights to the use of surface resources pursuant to mining claims located after 1955 are subject to some statutory restrictions which are not pertinent in the context of the present appeals. 30 U.S.C. §§ 611-613 (1982).

4/ Appellants' statements that the mining claimant has indicated its willingness to assist appellants in obtaining title to the surface embraced in their applications clearly do not demonstrate an intent on the part of the mining claimant to relinquish its claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal in IBLA 88-340 is dismissed, and the remaining decisions appealed from are affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge