

Editor's note: Reconsideration denied by Order dated July 12, 1991.

LILLIAN C. LUKE

IBLA 88-339

Decided November 13, 1990

Appeal from a decision of the Colorado State Office, Bureau of Land Management, disapproving an assignment out of oil and gas lease C-37334.

Reversed and remanded.

1. Oil and Gas Leases: Assignments and Transfers--Oil and Gas Leases: Bona Fide Purchaser--Oil and Gas Leases: Federal Onshore Oil and Gas Leasing Reform Act of 1987

The provisions of the Federal Onshore Oil Gas Leasing Reform Act of 1987 expanding the discretion of the Bureau of Land Management to deny either partial assignments or assignments of less than 640 acres out of onshore oil and gas leases on public lands (other than those in Alaska) without a showing that the assignment will further oil and gas development, do not apply retroactively to deny an assignment to a bona fide purchaser who had acquired an interest in the oil and gas lease prior to Dec. 22, 1987, the effective date of the statute.

APPEARANCES: James W. Tobak, Esq., Providence, Rhode Island, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Lillian C. Luke appeals a decision dated February 12, 1988, of the Colorado State Office, Bureau of Land Management (BLM), holding her 40-acre assignment from Petroleum Research Corporation (PRC) out of oil and gas lease C-37334 for disapproval for failure to provide information demonstrating that the assignment would further the development of oil or gas.

The Colorado State Office disapproved Luke's assignment pursuant to provisions of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FOOGLRA). Enacted on December 22, 1987, FOOGLRA amended section 30(a) of the Mineral Leasing Act (MLA), 30 U.S.C. § 187(a) (1988), by granting the Secretary of the Interior discretionary authority to deny partial assignment of an oil or gas lease assigning less than the entire lease or 640 acres if it is not demonstrated that the assignment will further oil

and gas development. 1/ In its decision, BLM determined that Luke's assignment was executed subsequent to the effective date of FOOGLRA, and that she had not demonstrated that the assignment of the 40-acre tract to her would further oil and gas development. Her assignment was therefore disapproved.

In her statement of reasons (SOR), Luke claims that she held a good faith belief that her 40-acre tract constituted the entire lease when she agreed to purchase the assignment; that she was and is a good faith, bona fide purchaser of the interests set forth in the assignment; and that forfeiture of her interest in the assignment without compensation is a "wrongful taking and in contradiction of the Fifth Amendment of the United States Constitution." Luke further states that she is a strong proponent of oil and gas development within the United States, that her assignment is viable, and that she would be willing to purchase the balance of the acreage in C0-37334 to comply with the requirements of FOOGLRA and to protect her assignment. 2/ From the record before us, we find Luke's claims of entitlement to the assignment to be meritorious.

1/ Section 5103 of the Federal Omnibus Budget Reconciliation Act, P.L. 100-203, 101 Stat. 1330-258, known as the Federal Onshore Oil and Gas Leasing Reform Act of 1987, amended sections 30(a) and 30(b) of the MLA, 30 U.S.C. § 187(a) and 187(b) (1988), as follows:

"Sections 30(a) and 30(b) of the Act * * * (30 U.S.C. 187a, 187b), are redesignated as sections 30A and 30B, respectively, and the third sentence of section 30A, as so redesignated, is amended to read as follows: The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: Provided, however, That the Secretary may, in his discretion, disapprove an assignment of any of the following, unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas:

"(1) A separate zone or deposit under any lease.

"(2) A part of a legal subdivision.

"(3) Less than 640 acres outside Alaska or of less than 2,500 acres within Alaska.

"Requests for approval of assignment or sublease shall be processed promptly by the Secretary.

Except where the assignment or sublease is not in accordance with applicable law, the approval shall be given within 60 days of the date of receipt by the Secretary of a request for such approval." [Emphasis in original.]

2/ Notice of Appeal and SOR. By order dated Sept. 29, 1989, this Board directed Luke to supplement her appeal by submitting "relevant records documenting the transactions between her assignor, PRC, and herself, [including] * * * copies of cancelled checks showing payment of valuable consideration * * * [and] whatever other documents might support her assertion of compliance with the law."

On Oct. 17, 1989, copies of the following documents were submitted by Luke: a purchase agreement with cover letter dated Nov. 11, 1986, between Luke and PRC for a 40-acre assignment out of lease C-37334, located at SE¼ SE¼ sec. 1, T. 11 N., R. 97 W., sixth principal meridian, Moffat County, Colorado; two statements of account from PRC to Luke dated Nov. 30

On September 4, 1986, the Wyoming State Office, BLM, issued an order to show cause and a suspension of approval of assignments to PRC and its affiliates, citing legal action undertaken by authorities in 16 states alleging that PRC's sale of lease assignments constituted violations of securities laws. ^{3/} The BLM order charged PRC with misrepresentations in the sale of 40-acre partial assignments, and suspended approval of further assignment of Wyoming oil and gas leases to PRC and affiliated corporations until such time as PRC could show cause why pending assignments to and from PRC should not be disapproved.

Effective December 1, 1986, the Colorado State Office approved an assignment of the entirety of oil and gas lease C-37334, encompassing 2,102.60 acres located in secs. 1, 13, 23, 24, 25, 26, and 30, T. 11 N., R. 97 W., sixth principal meridian, Moffat County, Colorado, to PRC.

After receiving notice from the Wyoming State Office of PRC's questionable business practices and inquiries pertaining to the status of various assignments from PRC, the Colorado State Office issued notice on January 14, 1987, that it was also suspending approval of assignments to PRC, and from PRC or its related companies. Unfortunately, BLM's actions did not prevent PRC from continuing to attract prospective assignees and selling interests in 40-acre assignments out of C-37334. BLM eventually received at least 12 partial assignments of that lease:

fn. 2 (continued)

and Dec. 31, 1986, showing one \$800 payment by Luke to PRC; a cancelled check in the amount of \$866 dated Dec. 15, 1986, payable to PRC; a Federal express receipt showing a shipment to PRC by Lillian Luke dated

Jan. 15 and received by PRC on Jan. 16, 1987; and a copy of the Dec. 26, 1987, assignment which Luke filed with BLM on Jan. 27 and with the Moffat County Recorder on Jan. 29, 1988.

Luke also submitted the following "other documents" in support of her assertions: two cancelled checks payable to BLM dated prior to her agreement with PRC; a Federal express receipt showing a shipment to BLM by Luke on Oct. 21 and received by BLM on Oct. 22, 1986; a map from PRC to Luke depicting her purchase; an undated cover letter from PRC to Luke; three money order receipts, two to Minerals Management Service and one to the County Recorder in Moffat County, Colorado, all dated Jan. 27, 1988; and certified mail receipts of the same date to the same agencies.

^{3/} Securities agencies in Alabama, Alaska, Arizona, California, Georgia, Idaho, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Carolina, North Dakota, and Washington have issued cease and desist or similar orders to PRC and other companies affiliated with or owned by Donald Marshall. The earliest agency action occurred in Minnesota on Jan. 27, 1984; and the Wyoming State Office decision listed the Arizona Corporation Commission as being the agency most recently initiating legal action against PRC. On Jan. 23, 1986, the Arizona commission issued a final Opinion and Order directing PRC to cease and desist from sales activities within Arizona borders.

four were filed in August, 1987; eight more were received in early 1988. ^{4/} Among the early 1988 assignments was that of Lillian Luke.

PRC arranged sales of 40-acre tracts within C-37334 through use of a purchase agreement. The purchaser of a 40-acre tract usually agreed to pay annual rental of \$1 per acre directly to BLM, and consideration to PRC for the promise to deliver an executed assignment document. The purchase agreements between PRC and the potential assignees were generally executed well in advance of the date PRC executed the assignment documents. Luke's purchase agreement was executed on November 14, 1986, 2 weeks prior to BLM's approval of the assignment of C-37334 to PRC, and PRC did not execute Luke's assignment until December 26, 1987, 2 weeks short of a full year after her final installment payment was due.

[1] Section 30 of the MLA, 30 U.S.C. § 187 (1988), provides that Federal oil and gas leases may not be assigned except with permission of the Secretary of the Interior. Prior to the 1987 FOGLRA amendments, 30 U.S.C. § 187(a) (1982) provided that the Secretary could only disapprove of an assignment or sublease upon a finding that there was a "lack of qualification of the assignee or sublessee," a "lack of sufficient bond," or when there was a lease assignment "of a separate zone or deposit under the lease, or of a part of a legal subdivision." *Id.* When it enacted FOGLRA in 1987, Congress enlarged the Secretary's discretion to disapprove oil and gas lease assignments, allowing the Secretary to disapprove assignments of less than 640 acres outside Alaska or less than 2,500 acres within Alaska, if the assignment was for less than the entire lease unless it is demonstrated that the assignment would further the development of oil or gas. P.L. 100-203, Sec. 5103, 101 Stat. 1330-258. See note 1. As BLM noted in its decision denying Luke's assignment, this law became effective December 22, 1987.

It appears from BLM's decision that it disapproved the assignment because it was executed 4 days after the effective date of the FOGLRA amendments. BLM did not consider whether Luke was a bona fide purchaser, and was therefore entitled to the assignment despite PRC's questionable practices.

Section 27 of the MLA, 30 U.S.C. § 184 (1988), was amended on September 21, 1959, and September 2, 1960, to provide protection to purchasers of leases or assignees who, in good faith and for good and valuable consideration, purchase interests in leases which are cancelled or forfeited by a lessor or assignor as a result of violations of the MLA. The 1960 amendments, 30 U.S.C. § 184(h)(2) (1988) provide, in pertinent part:

The right to cancel or forfeit for violation of any of the provisions of this chapter shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, interest in a lease, option to acquire a lease or an

^{4/} BLM letter to Tina Abdella dated Apr. 13, 1988.

interest therein, or permit, which lease, interest, option, or permit was acquired and is held by a qualified person, association, or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease, interest, option, or permit was acquired, or of his predecessor in title (including the original lessee of the United States) may have been cancelled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation.

Within the meaning of the MLA, a bona fide purchaser is one who has acquired an interest in a lease in good faith, for valuable consideration, and without notice of his predecessor's violation. Winkler v. Andrus, 614 F.2d 707, 711 (10th Cir. 1980); Southwestern Petroleum Corp. v. Udall, 361 F.2d 650, 656 (10th Cir 1966). Bona fide purchaser protection applies only when consideration has actually been paid prior to actual or constructive notice of an outstanding interest or defect in title. Robert L. True, 101 IBLA 320, 324 (1988); Bernard Kosik, 70 IBLA 373, 375 (1983); Richard W. Eckels (On Reconsideration), 65 IBLA 76, 77 (1982).

The evidence before us supports the conclusion that Luke paid consideration for the assignment specified in her purchase agreement. Luke was to receive an 82.5-percent interest in the lease of 40 acres for a consideration of \$2,500 to be paid in three installments: \$800 down, \$866 due on or before December 15, 1986, and \$834 due on or before January 15, 1987. The agreement stated that, "[i]f not paid as agreed, the lease reverts back to [PRC]." The purchase agreement was signed by Luke on November 11, 1986, and by Jack Birge for PRC on November 14, 1986. On November 30, 1986, PRC sent a statement of account to Luke showing receipt of an \$800 payment, and stating a balance due of \$1700. A second statement from PRC dated December 31, 1986, depicts the same record, although the copy of Luke's \$866 check to PRC shows that it was deposited to PRC's account on December 17, 1986. On January 15, 1987, Luke made a shipment to PRC via Federal express; Jack Birge signed for the shipment at 1900 E. Flamingo Suite 262, on January 16, 1987. PRC executed the assignment to Luke on December 26, 1987.

BLM has presented no evidence suggesting that Luke did not purchase the assignment from PRC in good faith; nor is there evidence that Luke had knowledge of an outstanding interest or defect in title. BLM in fact did not challenge the assignment from the original lessor of lease C-37344, to PRC, and has never shown an outstanding interest or defect in title. 5/

5/ It is axiomatic that a bona fide purchaser must have first acquired an interest in a lease; that is, he or she must have performed all obligations necessary for entitlement to a lease, including payment of rentals. See Lyman J. Ipsen, 96 IBLA 398 (1987); Ladd Petroleum Corp., 70 IBLA 313 (1983). Luke filed her assignment on Jan. 29, 1988; rental was due on or before Mar. 1, 1988, the anniversary date of the lease. Minerals Management Service received Luke's rental payment on Feb. 10, 1988. Rental was therefore timely paid, and Luke's assignment does not fail under the

As we stated in Geosearch Inc., 47 IBLA 39, 42 (1980), aff'd, Geosearch v. Andrus, 508 F. Supp. 839 (D. Wyo. 1981), the bona fide purchaser provisions in the MLA "prevent the Department from canceling a lease where it has been assigned to a bona fide purchaser, even though the original lease offer was clearly defective. Southwestern Petroleum Corp. v. Udall, * * * [supra at 655-6]." There is nothing in the record before us to indicate that Luke was not a bona fide purchaser. The documents submitted by Luke attest to her good faith in negotiating the purchase of the assignment. BLM has provided no evidence to the contrary. 6/

BLM's decision denying Luke's assignment was based solely on 1987 amendments to section 30(a) of the MLA, effective December 22, 1987, granting the Department expanded discretion for denying partial assignment of leases. These amendments to the MLA did not become effective, however, until over 11 months after Luke gave PRC full consideration for her assignment in accordance with her purchase agreement. According to the general rule, the date of payment of consideration is the relevant date for determination of the bona fides of the assignee. See Robert L. True, supra at 324, n.4; Winkler v. Andrus, supra at 712. We conclude that Luke's rights in the assignment as a bona fide purchaser vested on January 16, 1987, the date the record shows that her final payment for the assignment was made to PRC.

In disapproving Luke's assignment by exercising the authority granted by the 1987 amendments to section 30(a), which was not effective until almost a year after Luke had satisfied all conditions of the purchase agreement, BLM retroactively applied the FOGLRA amendments, and defeated the intent of section 27, which provides protection to bona fide purchasers. When it amended section 30(a), Congress did not authorize retroactive application of this broader discretionary authority to disapprove partial assignments. We must therefore construe its failure to do so as a statement of legislative intent that the statutory language not be applied retrospectively. See In re Surface Mining Regulation Litigation, 452 F. Supp. 327, 339 (D.D.C. 1978), aff'd in part, rev'd in part, 627 F.2d 1346 (D.C. Cir. 1980). BLM is therefore without authority to apply this delegated

fn. 5 (continued)

requirements set forth in Ladd, supra. See also Russell Sinclair Grove, 94 IBLA 254 (1986).

6/ In Geosearch, we quoted the provision of 30 U.S.C. § 184(i) (1976), which state:

"(i) Effective September 21, 1959, any person, association, or corporation who is a party to any proceeding with respect to a violation of any provision of this chapter, whether initiated prior to said date or thereafter, shall have the right to be dismissed promptly as such a party upon showing that he holds and acquired as a bona fide purchaser the interest involving him as such a party without violating any provisions of this chapter. No hearing upon any such showing shall be required unless the Secretary presents prima facie evidence indicating a possible violation of this chapter on the part of the alleged bona fide purchaser." (Emphasis supplied).

discretionary authority to adversely affect the bona fide interest in a lease pursuant to a transaction which occurred prior to December 22, 1987.

In that Luke, in good faith and for good and valuable consideration, purchased an interest in a lease prior to December 22, 1987, which interest was subsequently cancelled or forfeited by assignor PRC, we find her to be a bona fide purchaser within the meaning of section 27 of the MLA, 30 U.S.C. § 184(h)(2) (1988). Having found Luke entitled to her assignment by virtue of her status as a bona fide purchaser, and having found no provision for retroactive application of the 1987 FOGLRA amendment to section 30(a), we find it unnecessary to address appellant's other arguments.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and remanded, and the Colorado State Office is directed to approve Luke's 40-acre assignment from PRC out of oil and gas lease C-37344.

Wm. Philip Horton
Chief Administrative Judge

I concur:

R. W. Mullen
Administrative Judge