

GOLD ROAD RED TOP MINING CO.

IBLA 95-177

Decided September 22, 1998

Appeal from decision of the Arizona State Office, Bureau of Land Management, rejecting application for mineral patent. AZA 28780.

Set aside and remanded.

1. Applications and Entries: Generally--Mining Claims: Patent--Patents of Public Lands: Generally

A party filing notice of alleged adverse mining claims with BLM is properly advised that he is required within 30 days of such filing to commence proceedings in a state court of competent jurisdiction to determine the question of right of possession to the claims as between him and his rival claimant. During the pendency of this action, patent proceedings will be stayed.

APPEARANCES: Mark T. Nesbitt, Esq. Denver, Colorado, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Gold Road Red Top Mining Company (Red Top Mining or Appellant) has appealed the November 30, 1994, Decision of the Arizona State Office, Bureau of Land Management (BLM), rejecting its mineral patent application. BLM rejected the application because "on September 29, 1994, the date the mineral application was filed, [Red Top Mining] did not hold possessory title to the Red Top Lode mining claim." (Nov. 30, 1994, Decision (Decision) at 2.)

The Decision appealed from made the following determination, in pertinent part:

The Applicant must hold full possessory title at the time of application. Lackawana Placer Claim, 36 LD 36 (1907). In Kerr-McGee Nuclear Corp. (On Reconsideration), 43 IBLA 348, 350-352 (1979) the Interior Board of Land Appeals discussed the type of evidence necessary to establish full possessory title. In John R. Meadows, 43 IBLA 35 (1979) the Board held that the patent applicant must show he has full legal possessory title of record to the claims which he seeks to patent.

* * * * *

*** If the missing Supplemental Certificate of Title were submitted today, the record would show the mining claim in the ownership of Adwest Minerals, Inc. and not Gold Road Red Top Mining Company. The official county records in Book 2486, Page 308, would further show that title had transferred on May 5, 1992.

* * * * *

It is hereby concluded that on September 29, 1994, the date the mineral patent application was filed, Gold Road Red Top Mining Company did not hold possessory title to the Red Top Lode mining claim. Therefore, mineral patent application AZA 28780, filed by Gold Road Red Top Mining Company, is hereby rejected.

(Decision at 1-2.)

In a Petition for Stay which includes Appellant's Statement of Reasons (SOR), Red Top Mining states, in pertinent part:

The decision is in error because Red Top Mining had not conveyed its interest in, and, therefore, held full possessory title to, the Red Top claim on September 30, 1994, the filing date for Mineral Patent application AZA 28780. The conclusion is erroneous due to the fact the purchase of the Red Top claim was subject to the terms and conditions of an Option to Purchase ("Option"). * * * The decision was made without knowledge of the terms and conditions of the Option. One condition of the Option was the payment of the entire purchase price of One Hundred Sixty Thousand Dollars (\$160,000), payable in two installments. The first payment of Eighty Thousand Dollars (\$80,000) was paid on October 29, 1993. * * * The second payment of Eighty Thousand Dollars (\$80,000), due on or before November 1, 1994, was paid on October 27, 1994. * * *

Title was conveyed from Red Top Mining to Adwest Minerals, Inc. ("Adwest") effective November 1, 1994 by the quitclaim deed recorded in Mohave County at Book 486, Page 308. * * * This was over a month after Red Top Mining filed its Mineral Patent Application. A Notice of Transfer of Interest and the Quitclaim Deed were promptly filed in the Arizona State Office on November 17, 1994. * * * This is clear evidence of good faith on the part of Red Top Mining regarding the subject Mineral Patent Application.

A deed was executed at the same time as the contract to purchase, May 5, 1992. However, the seller and purchaser agreed the deed would be held in escrow and not released to the purchaser unless the option to purchase was exercised and

the balance of the purchase was paid. To clarify the record, a Corrected Quitclaim Deed dated December 22, 1994 was executed by the grantor, Red Top Mining, and recorded in the official records of Mohave County at Book 2505, Page 838. * * * The purpose of the corrected deed is to expressly establish the effective date of the transfer of title to the Red Top claim pursuant to the intent of the parties as described in the Option.

The Option to Purchase and Quitclaim Deed were place [sic] of record in Mohave County on November 3, 1994. Full possessory title of record was vested in Gold Road Red Top Mining Company on September 30, 1994, the date the Mineral Patent Application was filed.

The transaction to purchase the Red Top claim was a common one for the purchase of real property by contract, that is, the contract and a deed were executed at the time of closing, with the deed to be placed in escrow. The parties intended the purchaser to obtain legal title to the claim only after it paid the entire purchase price of One Hundred Sixty Thousand Dollars (\$160,000.00). Red Top Mining never intended to convey title until it received the total purchase price. Addwest, therefore, had only an equitable interest in the claim until it paid the full purchase price and legal title transferred by delivery of the deed.

(SOR at 1-2; references to attachments omitted.)

[1] The law is clear that BLM lacks authority to rule on the validity of the title asserted by the applicant for patent in the face of the assertion of title by Addwest Minerals, Inc. (Addwest). Instead, BLM should have notified Addwest that it had 30 days from receipt of the Decision to commence judicial proceedings in a State court to decide its competing claim. In John R. Meadows, 43 IBLA 35, 37 (1979), we held:

We consider first the appeal from BLM's decision of January 31, 1979, requiring Meadows (appellant) to commence proceedings in court concerning his alleged adverse claims to the lands patent to which Mobil applied for in November 1978. Revised Statute 2326, as amended, 30 U.S.C. § 30 (1976), and the implementing Departmental regulation, 43 CFR 3871.3, expressly require that BLM notify a party who files an adverse claim that he is required within 30 days of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession to the claims as between rival claimants. A suit filed pursuant to this section is the proper means for determining possessory rights between the conflicting claimants. See John W. Pope, 17 IBLA 73, 76 (1974); Essex International, Inc., 15 IBLA 232, 241-3, 81 I.D. 187, 191-2

(1974); Chemi-cote Perlite Corp. v. Bowen, 72 I.D. 403, 407 (1965); Gray v. Milner Corp., 64 I.D. 337, 340 (1957); Powell v. Ferguson, 23 L.D. 173, 174 (1896). During the pendency of the court action, all proceedings on any application for patent will be stayed, except for completion of procedural details, until the controversy is finally adjudicated in court or the adverse claim is either waived or withdrawn. 30 U.S.C. § 30 (1976); 43 CFR 3871.4; Brown Land Co., 17 IBLA 368, 378 (1974); Thomas v. Elling, 25 L.D. 495, 498 (1897).

Thus, by statute, the Department is without authority to decide appellant's adverse claim, and BLM properly advised him in its decision of January 31 that he was required to commence court proceedings to resolve the question of the right of possession of these claims. BLM's decision not to consider his adverse claim will not prejudice appellant, as he suggests in his statement of reasons, as it will take no action to dispose of the land until after the final adjudication of the ownership dispute in court.

(Emphasis supplied; footnotes omitted.) We held as follows in Scott Burnham, 100 IBLA 94, 111-14 (1987):

[W]hen an adverse claim has been filed with the Department during the period of publication, all proceedings by the Department on the patent application "shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived." 30 U.S.C. § 30 (1982). The adverse claimant is required to commence judicial proceedings "to determine the question of the right of possession" within 30 days after filing his adverse claim with the Department, and he must prosecute his suit with reasonable diligence or be deemed to have waived his suit. Id.

The statute also provides that:

After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment roll with the register of the land office, * * * and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess.

On their face, the statutes seem to provide a simple and efficient procedure for resolving conflicts between mineral locators so that patent may be issued. If no adverse claim is filed during the period of publication of notice of

a patent application, it is assumed "that the applicant is entitled to a patent * * * and that no adverse claim exists." If an adverse claim is filed, patent proceedings within the Department are stayed. If the adverse claim is not pursued in court and diligently prosecuted, it is deemed waived. If prosecuted to completion, the successful party may go to the Department with the judgment "and a patent shall issue."

(Emphasis supplied). Similarly, we held as in Melvin Helit v. Gold Fields Mining Corp., 113 IBLA 299, 316 (1990):

Although the statutes providing for adverse claims do not authorize the Department to rule on their merits, John R. Meadows, 43 IBLA 35, 37 (1979), it is within the Department's authority to determine whether a document presents an adverse claim within the meaning of the statutes. Thomas v. Elling, 25 L.D. 495, 497 (1897). If the document does not present an adverse claim such as is contemplated by the statutes, BLM may take other appropriate action or, if a judicial suit has been filed, the Department may choose to await the result. Brown Land Co. v. The Cleveland-Cliffs Iron Co., 17 IBLA 368, 378, 81 I.D. 619, 623 (1974).

(Emphasis supplied.)

Although we have addressed the question presented here (when the quitclaim deed from Gold Road to Adwest took effect) in Richard W. Cahoon Family Limited Partnership, 139 IBLA 323, 324-25 (1997), we made it clear that it was governed by State law:

The filing also included two quitclaim deeds executed on August 22, 1996, by which Pedersen and Southam conveyed their claims to Appellant. The BLM determined that the transfer to Appellant was effective on August 22, 1996, and that as the owner of 16 claims, Appellant did not qualify for the small miner exemption. Because no maintenance fees for the 16 claims were received, BLM deemed the claims forfeited.

Appellant first contends that the quitclaim deeds had not been recorded and were not "intended to be recorded until after the small miners exemption certificates were filed in the BLM office." Appellant states that the reason why the fee was not paid was that the deeds were not recorded.

Nevertheless, a delay in recording the deeds would not have postponed the effective date of the transfer. Although Departmental regulation 43 C.F.R. § 3833.3(c) provides that the filing of a transfer of interest, when properly executed and recorded under State law, will be placed on the BLM records when filed with the proper BLM office, the transfer itself "will be deemed to have taken place on its effective date under State law."

Nevada's recording statute requires recordation of conveyances in the appropriate county recorder's office "to operate as notice to third persons," but states that a conveyance "shall be valid and binding between the parties thereto without such record." Nev. Rev. Stat. § 111.315 (1995). The Supreme Court of Nevada has stated that statutory provisions relating to the recordation of deeds are for the protection and security of creditors and that such provisions do not prevent the passage of title by the grantor to the grantee. Allen v. Hemon, 74 Nev. 238, 328 P.2d 301, 304 (1958). Thus, Appellant's failure to record the deed prior to August 31 did not prevent title from passing to Appellant before that date, and because Appellant failed to pay the claim maintenance fee or qualify for a waiver, BLM properly declared the claims abandoned and void.

(Emphasis supplied.) The above-quoted precedent leaves little doubt that the only proper way to resolve this State-law question in connection with its mineral patent application is for Addwest to bring an action in State court. This is made very clear in LaRue Burch, 134 IBLA 329, 332-33 (1996), where we held:

Burch's protest and subsequent appeal collaterally attack the Idaho State court decision quieting title to the Rock Garden Quarry Nos. 1 through 5 placer mining claims in Rodriguez, by requesting that BLM rule on issues it has no authority to decide. Under 30 U.S.C. § 30 (1988), BLM has no statutory authority to determine validity of title or right of possession. American Colloid Co. v. Hodel, 701 F. Supp. 1537, 1542 (D. Wyo. 1988); see also John R. Meadows, 43 IBLA 35, 37 (1979). Such questions must be decided by a court of competent jurisdiction. 30 U.S.C. § 30 (1988); see, e.g., W. W. Allstead, 58 IBLA 46, 48 (1981). Under the doctrines of res judicata and collateral estoppel, repeated litigation of an issue is barred when that issue has already been litigated by the same parties and settled by a final judgment on the merits. State of Alaska, 113 IBLA 86, 90 (1990), and cases cited. The findings of a state court on the right of possession are binding on parties to the lawsuit. See Estate of Arthur C. W. Bowen, 14 IBLA 201, 210, 81 I.D. 30, 33 (1974). In this case, Burch is bound by the final Idaho court decision validating Rodriguez' chain of title and possessory right to the Rock Garden Quarry claims as against Burch and the Whittles. See Harvey A. Clifton, 80 IBLA 96, 98 (1984). The State court determination in favor of Rodriguez prohibits Burch from asserting her (or the Whittle's) adverse claims as objections to the issuance of Rodriguez' mineral patent. W. W. Allstead, *supra*.

(Emphasis supplied.)

It is important to note that Gold Road was not required to show in its patent application more than that it was the successor in interest

to the mining claims as of the date of the application. As we stated in Geoffrey J. Garcia, 111 IBLA 148, 150-51 (1989):

Particularly instructive in this regard is the case of John R. Meadows, 43 IBLA 35 (1979), which involved an appeal by an adverse mining claimant from a rejection of his protest to a mineral patent application filed by Mobil Oil Corporation. With respect to appellant's challenge to the abstract of title on the ground that it did not address all instruments of record affecting title to the claims, the Board held that:

By suggesting that Mobil has failed to meet the requirements of 43 CFR 3862.1-3 by not addressing the existence of his conflicting claims in the abstract of title filed with its application, appellant misperceives what is required by this section. It does not require that an applicant demonstrate that his title is legally superior to all other existing claims, but merely that he is the successor to possessory title dating back to the original location of the claim which he seeks to patent, and that he presently has full legal possessory title of record.

John R. Meadows, *supra* at 38.

Applying these standards to the present case, we find that appellants have filed with BLM in support of their patent application a copy of the notice of location of the Last Chance Association Placer reflecting a date of location of March 26, 1985, bearing the names of appellants as locators of the claims. The copy, certified by the Josephine County Recorder, reflects that the original was filed for record with the County Recorder on April 2, 1985, and recorded at Vol. 60, page 150 of the records. The application is also supported by a certificate of title executed by the Josephine County Title Company indicating the appellants are the holders of title to the Last Chance Association Placer mining claim comprising lot 3 in sec. 26, T. 34 S., R. 8. W, Willamette Meridian, Josephine County, Oregon. This is the same claim which has been recorded with BLM as ORMC 81850. This evidence appears to establish possessory title to the claim as of the date of the certificate as required by the regulation.

See also Kerr-McGee Nuclear Corp. (On Reconsideration), 43 IBLA 348, 350-52.

Gold Road asserts that it had title to the claims as of the date of its application, arguing that the effective date of the quitclaim to Addwest was not until after final payment was received for the claims.

Despite this assertion, the Department is not authorized to rule on the validity of Gold Road's title, but must instead await a ruling by the State court.

Accordingly, the BLM Decision appealed from is set aside and the case remanded to BLM in order to advise Addwest to commence proceedings in a state court of competent jurisdiction, within 30 days of such filing, to determine the question of right of possession to the claims as between rival claimants. During the pendency of this action, patent proceedings will be stayed.

Therefore, pursuant to the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the BLM Decision appealed from is set aside and the case remanded to BLM for actions consistent with this decision.

James P. Terry
Administrative Judge

I concur:

David L. Hughes
Administrative Judge

