

ROBERT M. TAYLOR  
TRANSAMERICA TITLE INSURANCE COMPANY

IBLA 70-24

Decided December 9, 1970

Grazing Lease: Applications

An application for a grazing lease for land already under lease is properly rejected where no grounds are established for cancellation of the outstanding lease.

Grazing Leases: Generally

A grazing lease creates a property right which may be used to secure a debt of the lessee.

ROBERT M. TAYLOR : Grazing lease  
TRANSAMERICA TITLE INSURANCE COMPANY : application rejected  
  
: Affirmed

### DECISION

Robert M. Taylor has appealed to the Secretary of the Interior from a decision dated November 25, 1968, whereby the Office of Appeals and Hearings, Bureau of Land Management, modified and affirmed a decision of the Phoenix, Arizona, district office. <sup>1/</sup> The district office rejected his application, filed pursuant to section 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1964), to lease 6,060.76 acres of public land in Ts. 18 and 19 N., Rs. 22 and 23 E., G.&S.R.M., Navajo County, Arizona, for grazing purposes and awarded the lands described in the application to Transamerica Title Insurance Company.

The record shows that the lands in question were included in grazing lease Arizona 056471, issued to the Arizona Land Corporation, with Phoenix Title & Trust Company (now Transamerica Title Insurance Company) as trustee under Trust No. 4757, for a period of 10 years from June 15, 1962. On June 17, 1968, appellant filed his lease application, stating therein that he had winter grazing in Yuma County, Arizona, and that he would like to use the lands applied for as summer grazing lands.

In a decision dated July 29, 1968, the district office found that the Arizona Land Corporation was in a state of bankruptcy and, for all business and legal purposes, no longer existed. It further found that Transamerica had provided documented evidence to show that it holds in fee title the patented lands which qualify as preference right land for the lease of contiguous public domain

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<sup>1/</sup> The Office of Appeals and Hearings also rejected a grazing lease application for the same lands filed by Lyle E. Robinson on October 3, 1968. Robinson did not appeal and the decision has become final as to his application.

and, in addition, had been awarded the lease of State land cornering on several tracts of the Federal land in the unit. The district office found that appellant had no preference qualifications, as then set forth in regulation 43 CFR 4122.1-2(a) and (b) (1968), now 43 CFR 4121.2-1(c), 35 F.R. 9772, and although the application stated appellant had petitioned the Arizona Land Department for a grazing lease of certain State lands, the petition was nullified by the award of the lease to Transamerica. The district office concluded that the existing lease to the Arizona Land Corporation should be canceled and a lease should be awarded to Transamerica. Accordingly, it rejected appellant's application.

The Office of Appeals and Hearings affirmed the decision of the district office insofar as it rejected appellant's application. It held, however, the district manager erred in stating that the outstanding lease to the Arizona Land Corporation would be canceled and the lease need only be reformed to reflect the proper name and status of the lessee.

In his appeal to the Secretary, Taylor challenges several of the Bureau's factual findings relating to the present and prospective status of the State lands which were leased by the Arizona Land Corporation. The essence of his allegations is that, contrary to the Bureau's findings, the ultimate disposition of the State lands has not yet been determined, and he has been prematurely eliminated from consideration as a preference-right applicant for the Federal lands in question. Appellant also questions the propriety of reforming the existing Federal lease as proposed by the Office of Appeals and Hearings. Pointing out that the Federal lease was assigned by Arizona Land Corporation to Lagamco, Inc., appellant asserts that there:

" . . . is no doubt that a controversy exists between the Trustee of the bankrupt estate and the principals of Lagamco and Arizona Land Corporation as to the status of the purported transfer of the beneficial interest of Trust No. 4757. A more concentrated inquiry would certainly reveal that the Trustee is not giving up any interest which Arizona Land Corporation may have under the lease A-056471 and fully intends to keep these leases in the bankruptcy until he can liquidate them in some fashion if possible."

He further contends the decision of the Office of Appeals and Hearings did not in any way meet his earlier argument that Transamerica Title Insurance Company has no effective powers to operate and conduct business with respect to the grazing leases and will simply carry out the orders of the first beneficiary.

It is not necessary to determine whether Transamerica is a qualified applicant for a Federal grazing lease or whether appellant is entitled to any consideration as a preference-right lease applicant unless it is first established that the lands in question are available for leasing. If those lands were included in a valid, subsisting lease when appellant's application was filed, of course his application could not be entertained. See 43 CFR 4125.1-1(a)(3) and (c)(2)(iv); Robert E. Rowe, A-27063 (April 11, 1955).

The record clearly shows that the lands in question were included in an outstanding grazing lease on June 17, 1968, when appellant filed his application. We agree with the Office of Appeals and Hearings that the bankruptcy of the Arizona Land Corporation does not necessarily require the cancellation of that lease. The Department's regulations (43 CFR 4125.1-5(a)) expressly authorize the pledging of a grazing lease as security for a loan, thereby recognizing a property right which is included in the assets of the lessee. No requirement is imposed that the lending agency be qualified to apply for a Federal grazing lease. Thus, it is implied that, in some circumstances, the rights of a lessee may be transferred to a party not otherwise qualified to hold a Federal grazing lease.

Appellant, however, has found another basis for urging cancellation of the lease. The seventh-year lease rental, he alleges, was paid by Lagamco, Inc. The payment, it is argued, was conditioned upon approval of an assignment of the lease to Lagamco. Since the assignment has not been approved, appellant reasons, the seventh year's rental has not been paid, and the lease terminated at the end of the sixth rental year in June 1968.

The record indicates that the seventh-year rental of \$ 363.65 was paid on June 14, 1968. It does not disclose who made the rental payment, although there is evidence that Lagamco, Inc. did submit a payment in that amount with an application, dated June 14, 1968, for approval of an assignment to it of lease Arizona 056471. We do not find any evidence in the record that the rental payment was conditional, as appellant alleges. Had it been

so intended, we know of no grounds upon which Lagamco could have recovered the rental payment money from the United States. In short, we find no basis for concluding that the lease was subject to cancellation on June 17, 1968, for failure to make timely payment of rental.

We do not find it necessary to attempt an adjudication of the relative rights and obligations of Transamerica and Lagamco. Assuming that there is, as appellant alleges, a conflict between those parties, the conflict goes only to the question of who is entitled to beneficial ownership of the existing lease. Such conflict does not, of itself, afford grounds for canceling that lease.

Upon the record as a whole, we find no reason for canceling lease Arizona 056471 and, hence, no basis for entertaining new lease offers. Accordingly, appellant's application was properly rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

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Francis E. Mayhue, Member

I concur:

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Anne Poindexter Lewis, Member

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Martin Ritvo, Member

