

GREATER ALASKA DEVELOPMENT CORPORATION

IBLA 75-431

Decided January 5, 1976

Appeal from the decision of the Fairbanks District Office, Bureau of Land Management, rejecting an application to purchase trade and manufacturing site and canceling claim F-143.

Affirmed.

1. Alaska: Possessory Rights--Alaska: Trade and Manufacturing Sites--Applications and Entries: Generally

A decree of foreclosure by a United States District Court, which upholds the validity of a deed of trust executed on a trade and manufacturing site, is not subject to collateral attack in the Department of the Interior. Where the applicant to purchase the site has thus been deprived of any interest in the improvements and the site, he is no longer entitled to purchase the site.

APPEARANCES: William D. Artus, Esq., of Anchorage, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Greater Alaska Development Company appeals the decision dated March 6, 1975, in which the Fairbanks District Office, Bureau of Land Management (BLM), rejected its application to purchase a trade and manufacturing site and canceled its claim. Appellant filed purchase application F-143 for certain land in Alaska on November 18, 1966, alleging occupancy since May 1966. <sup>1/</sup> Appellant had not previously filed a notice of location. This land was also included in Native townsite petition F-035093, filed January 24, 1966, by the residents of Golovin, Alaska.

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<sup>1/</sup> The purchase application was filed by Greater Anchorage Development Corporation. On January 20, 1972, the corporation filed with the Department of Commerce, State of Alaska, an amendment to its articles of incorporation which changed its name to Greater Alaska Development Corporation.

A deed of trust on the site was executed in favor of the Small Business Administration (SBA) by appellant on July 27, 1966. On January 8, 1973, foreclosure on the deed of trust was commenced in the United States District Court for the District of Alaska (Civil No. A-13-73). Following an Interlocutory Decree of Foreclosure and Order of Sale, the SBA purchased "all rights, title and interest" of appellant in the property by a United States Marshal's Deed and Bill of Sale dated November 18, 1973. There is no indication that appellant here appealed from the order of the District Court.

The processing of appellant's application had awaited survey of the land. After the filing of the approved survey plat, BLM informed appellant by letter dated March 19, 1974, that he could either proceed with his purchase application or relinquish the trade and manufacturing site and apply for a deed from the Townsite Trustee. Appellant chose to maintain his purchase application and on June 5, 1975, submitted the purchase price, survey costs and cost of publishing legal notice. BLM issued its decision rejecting the application upon learning that appellant had been divested of its interest in the site by court order.

Appellant argues that the execution of a deed of trust on a trade and manufacturing site is prohibited by 43 U.S.C. § 175 (1970) and by 43 U.S.C. § 270 (1970). Appellant further argues that the deed of trust conveyed no interest because at the time the deed was executed, July 27, 1966, appellant had no interest in the site. For the reasons hereafter stated, we affirm the Fairbanks Office decision.

[1] The District Court did not determine the validity of the trade and manufacturing site. Rather, the District Court decided whether appellant or the SBA was entitled to possession of the site and the improvements thereon, based upon a private agreement between them. This is a proper determination for the courts to make. See Kennedy v. United States, 119 F.2d 564, 565 (9th Cir. 1941); Estate of Arthur C. W. Bowen, 14 IBLA 201, 209-11, 81 I.D. 30, 33-34 (1974); see also 43 U.S.C. § 270-4 (1970). Appellant's argument is, in effect, that the decree of the District Court is erroneous. Appellant should have made this argument in the court proceedings. The proper procedure thereafter was to appeal from the decision of the District Court, not to collaterally attack that decision in the Department of the Interior. The validity of the deed of trust has been resolved by the courts and cannot be reopened here. Lewis v. Regional Agricultural Credit Corp. (On Rehearing), 57 I.D. 339 (1941).

Since appellant no longer has an interest in the site which entitles him to pursue the patent application, no theoretical questions concerning whether others have possible interests need be resolved in this

Therefore, 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 affirmed.

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Joan B. Thompson  
Administrative Judge

We concur:

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Martin Ritvo  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

