

PAULINE V. TRIGG  
JOHN H. TRIGG

IBLA 77-81

Decided July 22, 1977

Appeals from two decisions of the New Mexico State Office, Bureau of Land Management, denying appellants' petitions for reinstatement of their respective oil and gas leases, NM 25817 and NM-A 25889 (Okla.).

Reversed and remanded.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases:  
Rentals--Oil and Gas Leases: Termination

Where it is alleged that a bank erroneously dishonored a check drawn thereon, and an official of the bank admits that the payment was refused by mistake, the error of the bank will not vitiate the otherwise proper payment of rent.

APPEARANCES: Paul M. Bohannon, Esq., of Hinkle, Cox, Eaton, Coffield & Hensley, Roswell, New Mexico, for appellants.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Appellants Pauline V. Trigg and John H. Trigg appeal from separate decisions of the New Mexico State Office, Bureau of Land Management (BLM), denying their petitions for reinstatement of their respective oil and gas leases, NM 25817 and NM-A 25889 (Okla.), considered to have terminated by operation of law on September 1, 1976, for failure to pay the annual lease rental on or before the anniversary date of the leases. 30 U.S.C. § 188(b) (1970).

Appellants' checks for the rent were received by the New Mexico State Office on August 25, 1976, but were returned unpaid by the First National Bank of Artesia, New Mexico, with the reason stated as "insufficient funds." Thereafter, by letter dated September 21, 1976,

and received by BLM on September 22, 1976, the First National Bank, by its assistant cashier, advised as follows:

This letter is to confirm a telephone conversation with your office of recent date concerning some returned checks.

We returned two checks to you, one drawn by John M. Trigg in the amount of \$21.00 and the other drawn by Pauline Trigg in the amount of \$160.00.

Would you please return these two checks to us and we will guarantee payment of same. These checks were returned to you in error by us.

Your immediate attention to this matter will be greatly appreciated.

Apparently BLM did not accede to the bank's request that the original checks of the Triggs be resubmitted for payment, as the BLM records reflect the receipt, on September 27, of two cashier's checks from the First National Bank of Artesia for the amounts of rental required for the two leases at issue.

On September 28, 1976, BLM issued a decision jointly to Pauline and John H. Trigg, styled "Notice of Termination." Inter alia, the decision overlooked the payments received September 27, and failed to include any information relative to appeal rights. The decision stated:

Notice is hereby given that oil and gas leases NM 25817 and NM-A 25889 Okla. terminated on September 1, 1976, under the provisions of Public Law 555--83rd Congress (30 U.S.C. 188) because the checks covering the annual rental for both leases were returned by The First National Bank of Artesia marked "Insufficient Funds". As of this date, we have not received the required rental for either of these leases.

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As provided by the Act of May 12, 1970 (84 Stat. 206) and the regulations to implement it contained under Title 43 CFR 3108.2-1(c), copy enclosed, the lessee(s) are allowed 15 days from receipt hereof within which to file a petition for reinstatement of the lease. The lessee(s) must also submit a showing that failure to pay the rental on or before the anniversary date was justifiable or not due to lack of reasonable diligence on their part.

The decision was received by the Triggs on October 14, 1976. On October 30, they filed individual petitions for reinstatement of the leases, each accompanied by an affidavit from an Assistant Cashier of the First National Bank of Artesia exculpating the Triggs from the blame for the dishonored checks. The BLM decision of November 26, 1976, denied the petitions for reinstatement, stating only that "lessees have not satisfactorily complied with the requirements for reinstatement." The subject appeals were then taken.

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities terminates by operation of law if the rental is not paid on or before the anniversary date of the lease; timely tender of rental by means of a check which, when presented, is dishonored by the bank on which it is drawn does not constitute timely payment. James S. Guleke, 9 IBLA 73 (1973). While the erroneous actions of a bank in denying payment of a check drawn thereon will suffice to make a timely payment a "tender" within the ambit of section 31 of the Mineral Leasing Act, 30 U.S.C. § 188 (1970), proof that a bank error did in fact occur is required; and where such proof is offered the payment can be considered a valid tender so as to fulfill the procedural requirements for reinstatement. Cf. James S. Guleke, supra.

As neither of the subject leases has a well capable of producing oil or gas in paying quantities, each lease terminated by operation of law when the anniversary date passed without payment of rental. Notice of termination should have been sent by BLM upon receipt of advice from its banker that the Trigg checks were uncollectible. The files indicate that this notice to BLM had been given no later than September 13, although the Notice of Termination was not dispatched until September 28, at which time the dishonored checks had been replaced by cashier's checks.

[1] It is well established that where an official of a bank admits that payment of a check was refused by mistake, the error of the bank will not vitiate the otherwise proper payment of rental to BLM. Gretchen Capital, Ltd., 29 IBLA 247 (1977); Wikoa, Inc., 22 IBLA 6 (1975); George E. Conley, 9 IBLA 302 (1973); Duncan Miller, 70 I.D. 113 (1963).

But a larger problem arises from the timing in this case. It is apparent that the bank had communicated with BLM prior to September 20, relative to the returned checks, and guaranteed to honor them if presented a second time. Such payment would have related back to the time of the original presentation of the checks to BLM on August 25, 1976. BLM, however, did not present the original checks a second time, but instead waited until receiving the

replacement cashier's checks, which were received September 27. This date is after the 20th day following the anniversary of the lease, the date beyond which no payment for reinstatement may be accepted. Vern H. Bolinder, 30 IBLA 26 (1977). If the actions of the bank can be considered to have perfected the original tender of the Trigg checks, then the peril of payment after the 20th day is not in issue. Our review of the case convinces us that the bank did make errors in refusing payment of the checks when first presented and that notice of its errors was communicated to BLM within the 20 day period, so that the ultimate payment by cashier's checks may be considered as fulfillment of the timely payment requirement of the statute. Accordingly, it was error for BLM not to grant the petition for reinstatement of the two leases in issue on the basis of the information before it when the decision of November 26, 1976, was issued.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are reversed and the cases remanded for further action consistent with this decision.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Martin Ritvo  
Administrative Judge