

BRYAN WAGNER AND SIDNEY LAZARD

IBLA 78-118

Decided June 22, 1979

Appeal from decision of the Wyoming State Office, Bureau of Land Management, dated November 16, 1977, denying reinstatement of oil and gas lease W 56354.

Affirmed.

1. Oil and Gas Leases: Reinstatement

Reinstatement of an oil and gas lease is properly denied where the lease holder of record delegated responsibility for payment to a purported assignee who failed to make timely payment of the advance rental to the proper BLM office.

APPEARANCES: Mary Jane Reynolds, Esq., and F. Shaun Burns, Esq., Vinson & Elkins, Washington, D.C., for intervenor, F.C.J. Oil and Gas, Inc.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Bryan Wagner and Sidney Lazard appeal from a decision of the Wyoming State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease W 56354 which terminated by operation of law for failure to pay advance rental on or before November 1, 1977. At all times relevant to this appeal, the lessees of record for the subject lease were the above-named appellants, Wagner and Lazard. It appears, however, that Wagner and Lazard, on or about September 26, 1977, executed an assignment of their interest in the lease, naming as their assignee F.C.J. Oil and Gas, Inc. (F.C.J.), referred to in this opinion as "intervenor." This assignment was never approved by BLM, and F.C.J. never received a copy of the courtesy notice of advance rental due which BLM had mailed to Wagner and Lazard by certified mail on August 19, 1976.

Pursuant to its assignment agreement with appellants, F.C.J., on October 21, 1977, mailed a check in the amount of the rental due

to the Washington, D.C., office of BLM, thinking that office was the proper place to make payment for Federal oil and gas lease rentals. Intervenor's employees state on appeal that they had no previous experience with Federal leases but had assumed from their experience with oil and gas leases issued by the State of Texas that the central office at the capitol would be the proper place to make such a lease payment. Thus, F.C.J. sent the lease payment by certified mail on October 21, 1977, to BLM's Washington office, from where some 3 weeks later it was forwarded to the Eastern States Office, BLM, in Silver Spring, Maryland. The Eastern States Office, in turn, forwarded the payment and the voucher which accompanied it to the Cheyenne, Wyoming Office, BLM, where it was received November 21, 1977, some 20 days after the rental deadline. Intervenor's employees in the meantime had become concerned over the failure of BLM to return a receipted copy of its lease voucher and had contacted the Wyoming State Office where BLM personnel informed them that the lease payment should have been sent to Cheyenne, Wyoming, rather than Washington, D.C. Thus, on November 11, 1977, F.C.J. mailed a second rental check which the Cheyenne Office, BLM, received on November 14, 1977. By decision dated November 16, 1977, BLM held appellants' oil and gas lease terminated for failure to make timely payment of the advance rental and denied reinstatement of the lease for the reason that "reasonable diligence had not been exercised where the payment was sent to the wrong office prior to the anniversary date of the lease." Both of intervenor's rental checks were subsequently returned by BLM.

[1] As we stated, supra, intervenor has at all relevant times been a stranger to the lease transaction here in question. No assignment of lease W 56354 has ever been approved and it was therefore incumbent upon appellants Wagner and Lazard to see to the timely payment of the advance rental. As we held in Leonard A. J. Tancredi, 32 IBLA 325 (1977), "[T]he fact that appellant attempted to assign the lease * * * does not absolve him of paying rental timely, or of complying with the reinstatement requirements, until assignment of the lease is approved by BLM." We find, therefore, that the efforts of intervenor, F.C.J., however Herculean they may have been, are merely collateral to the question of whether the failure to make timely rental payment was "either justifiable or not due to a lack of reasonable diligence on the part of the lessee." ^{1/} (Emphasis added.) This result is reinforced by the language of 30 U.S.C. § 187a (1976) relating to lease assignment which states: "Until such approval [of an assignment], however, the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed." Appellants herein took no measures whatever to effect payment of the lease rental, but rather they completely entrusted the responsibility

^{1/} Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 188(c) (1976).

for payment to a third party who had no interest of record in the lease. In doing so, they acted at their own peril. Had the third party intervenor F.C.J. made timely payment at the correct BLM office, such payment would doubtless have been accepted and the lease preserved. But the actions of a third party intervenor cannot be attributed by inference to the leaseholder of record. "Appellant, as the lessee of record at the time the rental payment was due, has the responsibility of either making timely payment or making certain that the rental was timely paid." Lynn Schusterman, 29 IBLA 182, 183 (1977), quoting Clarence and Marguerite Zuspann, 18 IBLA 1, 3-4 (1974).

Appellants herein apparently did not forward the BLM courtesy notice to intervenor or inform intervenor, the purported assignee of their interest, of the correct place to make the rental payment. This negligence precludes any claim that the failure to pay was either justifiable or not due to a lack of reasonable diligence by lessees under the Mineral Leasing Act, supra.

No assignment of the lease having been approved prior to the rental due date, we find it unnecessary to reach the question of whether F.C.J.'s action in making "timely" payment to the wrong office would support a petition for reinstatement if F.C.J. had been the true lessee.

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 affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Frederick Fishman
Administrative Judge

