

CRIPPLE CREEK GOLD PRODUCTION CORP.

IBLA 80-22

Decided March 17, 1981

Appeal from a decision of the Colorado State Office, Bureau of Land Management, rejecting color-of-title application C-26348.

Reversed and remanded.

1. Color or Claim of Title: Generally -- Color or Claim of Title:
Application -- Color or Claim of Title: Good Faith

A class 2 color-of-title application for an unpatented mining claim may not be rejected where the sole basis for the rejection is the conclusion of the Bureau of Land Management that the three words "entered for patent" contained in an August 13, 1900, deed in the applicant's chain of title constituted constructive knowledge that title was in the United States and that the grantee therefore was not holding in good faith.

APPEARANCES: Rodney B. Proffit, Esq., Cripple Creek, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Cripple Creek Gold Production Corporation filed a class 2 color-of-title application on February 6, 1978, for land situated in sec. 25, T. 15 S., R. 70 W., sixth principal meridian, Teller County, Colorado, known as the Mary Nevin lode mining claim a.k.a. Mary Navin lode mining claim, C-26348. The application was filed pursuant to the Color of

Title Act, 43 U.S.C. § 1068 (1976). 1/ By decision dated September 10, 1979, the Bureau of Land Management (BLM) rejected the application for lack of good faith and lack of peaceful, adverse possession.

BLM stated that there was a lack of good faith because a quitclaim mining deed in appellant's chain of title indicated on its face that the "Mary Nevin Lode mining claim" had been "entered for patent in the U.S. Land Office at Pueblo, Colorado," and the deed therefore gave notice that paramount legal title to the land was in the United States. 2/ BLM also stated that "the entryman holds possessory interest in the land under a claim of right from the United States," and that the possessory title could not be adverse to the paramount legal title in the United States.

In its statement of reasons for appeal, appellant contends that the land has been held in good faith and in peaceful, adverse possession for the required period. Appellant alleges that it did not have notice that the Mary Nevin claim was unpatented by the wording of the August 13, 1900, deed and that it never saw the deed until required to present it to BLM in support of its color-of-title application. Appellant states, however, that it received notice that the land was unpatented on July 27, 1977, in connection with a title commitment from the Fidelity National Title Insurance Company. With its statement of reasons appellant submitted various documents in support of its allegations that the subject land was assessed and taxes paid every year since 1898, that a State court decree quieted title in one of the prior grantors, and that a title commitment from Safeco Title Insurance Company to appellant's grantor indicated clear title.

[1] The sole basis for BLM's decision is its reasoning that the three words "entered for patent," which were included in the deed of August 13, 1900, were sufficient to put the grantee on constructive notice that title was in the United States, and to compel the conclusion that the grantee therefore was not holding in good faith. In light of the other indicia that this grantee and his successors and assignees honestly believed that title to this 3.84 acre tract was securely reposed in them, the Board cannot attach the same significance to those three words in the 1900 deed.

1/ In accordance with 43 CFR 2540.0-5 a class 2 color-of-title claim "is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors, or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application, during which time they have paid taxes levied on the land by State and local governmental units." The approval of a class 2 claim is discretionary with the Secretary. 43 U.S.C. § 1068 (1976).

2/ BLM mistakenly quotes the date of this deed as August 13, 1902. The correct date is August 13, 1900.

The statute requires that the "claimant, his ancestors or grantors [who have] held in good faith and in peaceful, adverse, possession * * * during which time they have paid taxes levied on the land by State and local governmental units" are qualified to receive a patent under its terms. 43 U.S.C. § 1068 (1976). The regulation, 43 CFR 2540.0-5, repeats the above-quoted statutory qualifications and further states, "A claim is not held in good faith where held with knowledge that the land is owned by the United States." (Emphasis added.) This is the only criterion of good faith expressed in either the statute or the regulations.

There is no question that appellant and its predecessors have held the land in peaceful, adverse possession since 1900, and there is evidence that taxes have been paid since 1898. Thus the only question at issue is whether such possession was "with knowledge that the land is owned by the United States." This regulatory definition might easily be read to require actual knowledge on the part of some holder, within the statutory time frame, that title was in the United States. Indeed, a number of Departmental decisions approach the question by examining the evidence to ascertain whether it was probable that the holder knew that title was in the United States. See, e.g., Earl Hummel, 44 IBLA 110 (1979); Mabel M. Farlow (On Reconsideration), 39 IBLA 15, 86 I.D. 22 (1979); George E. Merrick, 35 IBLA 208 (1978); Ivie G. Berry, 25 IBLA 213 (1976).

However, other decisions have tested the good faith of an applicant by considering whether he had good reason to know that he did not receive title through the conveyance on which he relies. See, e.g., Joe I. Sanchez, 42 IBLA 176 (1979), which affirmed an Administrative Law Judge's finding that "This conveyance clearly shows that Mr. Sanchez knew or certainly should have known that [the subject lands] were public lands * * *." (Emphasis added.) In Joe Stewart, 33 IBLA 225 (1977), the applicant and his two predecessors were the holders of a right-of-way granted by the United States over the land in question, and had received periodic notifications of trespass from Federal officers. We held that these circumstances were sufficient basis for a finding that they "had reason to know that title to the parcel was vested in the United States and that therefore they were not good faith possessors." Id. at 229. ^{3/}

The circumstances presented in this case do not rise to the level of constructive knowledge imputable to the appellants in the cases

^{3/} Recently the Board stated in John S. Cluett, 52 IBLA 141 (1981) at 145: "It is not unreasonable to conclude from the evidence that [applicant's predecessor in interest] had reason to know in early 1906 that the State selection for the land he was seeking had been canceled and that title to the land was in the United States."

cited above. Although the words "entered for patent in the U.S. Land Office at Pueblo, Colorado" might well be enough to alert someone with a thorough and comprehensive knowledge of public land law that further inquiry would be well advised, every citizen cannot be charged to exercise that degree of sophistication. Those words might easily be read, even by some lawyers, as an additional identification of the land, or as an historical reference.

It must be remembered that in every color-of-title case the applicant failed to get the title bargained for, and in every such case the true state of affairs could have been discovered if only the applicant or the applicant's predecessors in interest had exercised more caution, more prudence, more diligence. But the Color-of-Title Acts were enacted as relief statutes precisely for the benefit of those honest, trusting individuals who were unwary enough to buy Federal land from non-Federal grantors. "The policy that a remedial statute should be liberally construed in order to effectuate the remedial purpose is firmly established. Expressions of a rule to that effect appear over and over in judicial opinions on issues of statutory interpretation." A. Sutherland, 3 Statutes and Statutory Construction, § 60.01 (4th Ed. C. Dallas Sands).

In Lawrence E. Willsworth, 32 IBLA 378, 381 (1977), we held, "In determining whether the claimant honestly believed that there was no defect in his title, the Department may consider whether his belief was unreasonable in the light of the facts then actually known to him." Applying that test in this case, we conclude that there is no valid premise on which a finding of lack of good faith can be rested. If all else is regular, appellant's application may be approved and patent may issue.

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 reversed and remanded for action consistent with this opinion.

Bruce R. Harris
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

