

LESTER AND BETTY STEPHENS

IBLA 80-788

Decided September 16, 1981

Appeal from decision of the Eastern States Office, Bureau of Land Management, rejecting color-of-title application ES 20385.

Affirmed.

1. Color or Claim of Title: Generally--Color or Claim of Title: Cultivation--Color or Claim of Title: Improvements

To satisfy the requirements of a class 1 claim under the Color of Title Act, "valuable improvements" must exist on the land at the time the application is filed, or it must be shown that the land has been reduced to cultivation. If land was once cultivated, but is not cultivated at the time the application was filed and has not been cultivated for 10 years previously, the cultivation requirement of the Act has not been satisfied.

2. Color or Claim of Title: Generally--Color or Claim of Title: Applications--Color or Claim of Title: Good Faith

Good faith under the Color of Title Act, 43 U.S.C. § 1068 (1976), requires that a claimant and his predecessors in interest honestly believe there was no defect in the title and the Department may consider whether such a belief was unreasonable in light of the facts actually known or available to the claimant or a predecessor.

APPEARANCES: John G. Sahn, Esq., Peoria, Illinois, for appellants.

OPINIONBY: LEWIS

## OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is taken from a decision dated June 15, 1980, by the Eastern States Office, Bureau of Land Management (BLM), rejecting appellants' color-of-title application ES 20385.

The application was filed on December 26, 1978, pursuant to the Color of Title Act, 43 U.S.C. § 1068 (1976) for 11.84 acres of land described as lot 3 of sec. 1, T. 13 S., R. 5 E., third principal meridian, Pope County, Illinois. The subject land was withdrawn, subject to valid existing rights, by Proclamation No. 2357 dated September 6, 1939, for Shawnee National Forest.

The decision appealed from rejected the application as a class 1 claim because appellants failed to allege any present improvement or any cultivation of any part of the land. the decision further rejected the application as a class 2 claim, holding essentially that the good faith requirement of the Act had not been met. 1/

Class 1 and class 2 color-of-title claims are described in 43 CFR 2540.0-5(b) as:

(b) The claims recognized by the act will be referred to in this part as claims of class 1, and claim of class 2. A claim of class 1 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 more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. A claim of class 2 is one which has been held in good faith and in peaceful, adverse possession by

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1/ The text of this portion of the decision is as follows:

"The application also fails to meet the good faith requirements of the Color of Title Act, since the applicants were aware of the title defect at the time they purchased the land. This is shown by Lester Stephens' letter of August 1, 1977, to the Vienna Ranger District, Shawnee National Forest. Their grantor, Wilburn E. Dixon, was advised on October 8, 1976, that title remained vested in the United States. The good faith of the person applying for a patent under the Color of Title Act must be established. The fact that the land applied for may have been held by other persons in good faith for more than 20 years under color of title does not justify the issuance of a patent to one who thereafter purchased the land with knowledge that title was in the United States. Anthony S. Enos, A-25364, 60 I.D. 322, June 3, 1949.

"This deficiency would also bar any Class 2 claim under the Color of Title Act, for which the application otherwise appears qualified.

"The application is therefore rejected."

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. A claim is not held in good faith where held with knowledge that the land is owned by the United States. A claim is not held in peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes.

The application was filed as a class 1 claim, appellants alleging thereon that they and their predecessors in interest had held the land in good faith for more than 20 years, paid property taxes, cultivated the land, and knew of no claim adverse to their claim. However, in answering item 6(a) of the application, appellants stated they "first learned that title to the land was not clear when [their] predecessor in title, Wilburn E. Dixon, was so notified on 9 January 1976, by Malcolm H. Morris, Pope County Supervisor of Assessments." Appellants bought the land from Dixon by warranty conveyance on May 25, 1977.

In his January 9, 1976, letter the Pope County, Illinois, Supervisor of Assessments advised Dixon:

In the conduct of our survey of all Pope County lands we have come across an apparent discrepancy in the ownership of subject tax parcel.

To clarify this matter we would strongly suggest that you arrange to contact Mr. Jerry Clutts, U.S.D.A., Forest Service Office, Vienna, Illinois, at your earliest convenience.

The Forest Service promised to investigate Dixon's claim and by letter of June 18, 1976, suggested he apply for patent under the Color of Title Act. On August 30, 1976, Dixon wrote BLM as follows:

At the suggestion of the office of General Counsel, I am making a formal request for patent under the "Color of Title Act of December 22, 1928.

I am enclosing a copy of Warranty Deed from Charlie Baker and Katie Baker, his wife. A copy of letter from Jerry L. Clutts, Vienna District Ranger, Vienna, Ill. 62995. Also copy of letter from Malcolm H. Morris, Supervisor of Assessments of Golcondo, Ill. 62938.

I have always understood that I had a clear title to this property and have paid taxes from 1940 to date including 1976.

Furthermore I have never had any inkling or suggestion that I was not the full owner of this property, untill [sic] I received this letter from the Supervisor of assessments of Pope County, Ill.

If this information isnt [sic] sufficient please advise me what course of action is necessary for me to take.

By letter of October 8, 1976, the Director of Eastern States Office, responded:

Dear Mr. Dixon:

This responds to your letter of August 30, 1976, requesting a patent under the Color of Title Act of December 22, 1928, for Section 1, Lot 3 (South part of the NW 1/4 NE 1/4), T. 13 S., R. 5 E., Third Principal Meridian, Illinois.

A search of our tract book records has failed to disclose any entry or patent for the above land. Legal title, therefore, still appears to be vested in the United States. If you believe that title to the land you claim has passed from the United States, proof should be submitted to this office. If available, an abstract of title should be furnished which we will return after examination. If an abstract is not available, a skeletal chain of title should be furnished which would assist us in determining title to the land in question.

If such evidence does not exist and you believe your claim is one which can be perfected under the Color of Title Act, an application should be filed with this office on the enclosed forms in accordance with the instructions on the reverse side and the enclosed circular of regulations governing procedures under the Act.

Upon receipt of the requested information we will review the case materials relating to this tract and inform you of our findings.  
The file does not indicate that Dixon ever filed a color-of-title application.

On August 1, 1977, more than 2 months after he purchased the land, appellant Lester Stephens wrote to the Vienna Ranger District, Shawnee National Forest, asserting strongly that he owned the land in question, and vigorously disputing the Forest Service claim thereto. (See Exh. G, appellants' statement of reasons.) Appellant states in

the letter that a title company guaranteed the title to be valid. An October 6, 1977, letter from the Forest Supervisor to appellants sets forth a partial history of the lands in question. 2/

On appeal to the Board, appellants concede that there is no present improvement or cultivation on the property. They contend, however, that their failure to improve or cultivate the land does not warrant rejection of their class 1 claim.

Having reference to the Forest Supervisor's October 6 letter (See n.2) appellants assert that they reasonably believed, since the United

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2/ The text of this letter is:

"Since acquisition began in the 1930's, the Forest Service has acquired approximately 255,000 acres of land in Southern Illinois. This comprises the total land presently having National Forest status within the boundaries of the Shawnee National Forest. Acquisition has included purchases, exchanges, donations, transfers from other federal agencies, and unpatented public domain lands which were given National Forest status.

"Enclosed is a plat of National Forest land in T12S, R5E, Section 36, and T13S, R5E, Section 1. The United States purchased 32 acres from Mr. Baker. This is identified on the plat as tract #1. There was a patent on the 32 acres when we purchased this property. Tract #4 is the unpatented public domain land formerly claimed by Mr. Baker, Mr. Dixon, and currently by you. This is the tract of land that we refused to purchase from Mr. Baker until he acquired a patent.

"During the time we were negotiating for the properties located in T13S, R5E, Section 1: NW 1/4 NE 1/4, it was discovered that a patent was never issued for any land within this 40-acre tract. However, 3 individuals -- Mr. Baker, Mr. Robinson, and Mr. Sistler -- had deeds to and were claiming land within this "forty." When Mr. Robinson applied for a patent covering his claim, the General Land Office surveyed the separate ownership claims. Each claim was assigned a "government lot" number -- Mr. Sistler's was lot #1, Mr. Robinson's lot #2, and Mr. Baker's lot #3.

"A government lot is nothing more or less than a legal subdivision surveyed and plotted by the federal government. Normally, they occur when irregular descriptions are involved. The survey was done to assist the claimants in applying for a patent under the Color of Title Act. The legal description of the property claimed by you is: T13S, R5E, 3rd P. M., Section 1: NW 1/4 NE 1/4 -- lot #3, totaling 11.84 acres.

"The ownership in this particular 40-acre tract has been a problem for a long time. We have been trying for nearly 40 years to assist claimants in perfecting their claims. I hope the above information will be useful and that you are successful in obtaining a patent. If there is anything more we can do to help, please let us know."

States had purchased all the land adjoining their lot, that clear title had been vested in their predecessors. They point out that the January 9, 1976, letter from the Supervisor of Assessments to Dixon does not state the "specific interest of the United States in the subject land." Appellants further point out that the decision is inaccurate in holding that they knew title of the land was in the United States, since the pertinent correspondence indicates at best that title "appears" to be in the United States. Appellants contend that they did not purchase the land with knowledge that title was in the United States.

[1] Appellants' contentions regarding a class 1 claim are incorrect. To be entitled to a patent under 43 CFR 2540.0-5(b) a claimant must establish that each of the requirements for a class 1 claim has been met. For valuable improvements to qualify, they must exist on the land at the time the application is filed. Lawrence E. Willmorth, 32 IBLA 378 (1977). Where land is not cultivated at the time the application is filed and has not been cultivated for 10 years previously, the cultivation requirement of the Color of Title Act has not been met. Mable M. Farlow (On Reconsideration), 39 IBLA 15, 86 I.D. 22 (1979). BLM properly held that the requirements of the Act were not met for a claim of class 1.

[2] The only criterion of good faith expressed in either the Act or the regulation is the statement: "A claim is not held in good faith where held with knowledge that the land is owned by the United States." 43 CFR 2540.0-5(b) (emphasis added). As the Board has held, good faith under the Act requires that a claimant and his predecessors honestly believe there was no defect in the title and the Department may consider whether such a belief was unreasonable in light of the facts actually known or available to the claimant or his predecessors. John S. Cluett, 52 IBLA 141 (1981); Mary C. Pemberton, 38 IBLA 118 (1978). In the case before us, appellants disclosed their prior knowledge of a defect in their predecessor's title in their color-of-title application in response to question 6A. Thus, inquiry into the reasonableness of their belief (that title was in other than the United States) is unnecessary. The correspondence to which we refer herein indicates clearly that appellants' predecessor, Dixon, knew that title was in the United States as of August 30, 1976, when he made "formal request for patent" from BLM. With such knowledge, however, he sold the land to appellants. While appellants draw a distinction between actual knowledge of title as opposed to appearance of title, they do not deny their awareness of the latter when they purchased from Dixon. In any event, such distinction is of no avail to them. Under the circumstances of this case, we conclude that appellants, given their knowledge of the January 9, 1976, letter, wherein the involvement of a Federal agency is mentioned, had good reason to know that their predecessor did not have such good title as they subsequently bargained for. We conclude that the application was properly rejected. See Cluett, supra; Anthony S. Enos, 60 I.D. 329 (1949).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, the decision appealed from is affirmed.

Anne Poindexter Lewis

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Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Bruce R. Harris  
Administrative Judge.

