

ESTATE OF JOHN C. BRINTON

IBLA 83-22

Decided March 10, 1983

Appeal from decision of the California State Office, Bureau of Land Management, rejecting color-of-title applications. CA 3420, CA 3422 through CA 3424.

Affirmed in part, vacated in part and remanded for adjudication on the merits.

1. Color of Claim or Title: Generally -- Color of Claim or Title: Privity

Acquiring title to Federal lands by tax deed from a local state authority that mistakenly believes it has title to the lands initiates a new title for the purposes of determining when possession under color of title commenced. There is no privity between the person acquiring the tax deed and any previous owner.

2. Color or Claim of Title: Generally -- Color or Claim of Title: Adverse Possession

No valid class 2 color-of-title claim is presented where the earliest possible date of commencement of adverse possession was long after Jan. 1, 1901.

3. Administrative Procedure: Decisions -- Color or Claim of Title: Generally -- Color or Claim of Title: Adverse Possession -- Color or Claim of Title: Applications -- Mistakes: Generally

Where the Board of Land Appeals has previously held that the record did not show that lands were ever open to the operation of the public land laws and concluded accordingly that they were not

subject to color-of-title applications, and where the record is subsequently amended to show that the lands were, in fact, reopened to entry, the Board's previous decision will be vacated as will BLM's decision applying it as a basis for rejecting a color-of-title application.

4. Color of Claim or Title: Generally -- Color of Claim or Title: Applications

Where color-of-title applications allege facts sufficient to establish entitlement to class 1 claims, and where the claimed lands were apparently open to the operation of the public land laws at all times during the alleged occupancy of the lands, BLM's decision rejecting the applications will be vacated and the matters remanded for adjudication of their merits.

Estate of John C. Brinton, 25 IBLA 283 (1976), vacated in part.

APPEARANCES: M. William Tilden, Esq., San Bernardino, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The Estate of John C. Brinton has appealed the August 3, 1982, decision of the California State Office, Bureau of Land Management (BLM), rejecting four applications to purchase lands under the provisions of the Act of December 22, 1928, as amended, 43 U.S.C. § 1068, 1068a (1976) (the Color-of-Title Act). Two related appeals have been previously decided by the Board. A full statement of the history of the matter is in order.

On July 18, 1972, John C. Brinton, now deceased, filed an application to purchase the NE 1/4 sec. 31, T. 2 S., R. 1 E., San Bernardino meridian, Riverside County, California. BLM rejected the application, which was assigned serial number R-4871, because it was not on an approved form and was not accompanied by a \$10 filing fee, as required by the regulations. Subsequently, Brinton filed what BLM regarded as a request for a quitclaim deed to this land, and BLM also rejected this request. Brinton filed a timely appeal to this Board of BLM's rejection of the color-of-title application and the rejection of its request for a quitclaim deed.

On September 18, 1973, we affirmed BLM's decisions, holding that there was no authority by which BLM could grant a quitclaim deed, and that Brinton's color-of-title application was properly rejected for failure to comply with the regulations. John C. Brinton, 13 IBLA 69 (1973). The latter holding was without prejudice to his filing a new color-of-title application.

Sometime subsequently, Brinton died, but his estate filed a second color-of-title application seeking patent both to NE 1/4 of sec. 31, and to

lot 1 of the same section, totaling 201.17 acres. This application was assigned serial number CA 2395.

On September 22, 1975, BLM rejected this application, again because it had not been filed on the correct form. BLM also held that Brinton had not shown acceptable qualifications and evidence to be granted a class 2 claim. <sup>1/</sup> Brinton appealed this decision to this Board, but, on December 8, 1975, while the appeal was pending, he filed four separate applications (on proper forms) for the same lands: CA 3420, a class 2 application for NE 1/4 sec. 31; CA 3422, a class 1 application for lot 1, sec. 31; CA 3423, a class 1 application for NE 1/4; and CA 3424, a class 2 application for lot 1.

On June 28, 1976, the Board issued its decision on Brinton's appeal of the rejection of CA 2395 holding that the lands were not subject to any color-of-title claims because they were not open to the operation of the public land laws when his claim was initiated, and because the record did not show that the lands had ever been reopened. Estate of John C. Brinton, 25 IBLA 283 (1976). As an additional ground for rejection of the class 2 application, we held that Brinton's claim had not commenced until January 8, 1950, when he received color of title to the land by tax deed from the Treasurer of Riverside County, California:

Moreover, it is well settled that a tax deed wipes out the former title to land and initiates a new title. A tax title has nothing to do with the previous chain of title and does not in any way connect itself with it. It is a breaking up of all previous titles, legal or equitable. See W. D. Reams, A-30113 (September 23, 1964). Peaceful adverse possession since 1901 to satisfy a claim under Class 2 of the Act cannot include any time when the ostensible title was held by a political subdivision because of nonpayment of taxes. Id. Furthermore, the requirement of showing payment of taxes since 1901 contemplates positive evidence that taxes actually have been paid, not merely a presumption. Such requirement was imposed to demonstrate bona

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<sup>1/</sup> The regulations, 43 CFR 2540.0-5(b), describe the difference between "Class 1" and "Class 2" claims and describe the requirements for each:

"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 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."

fides from January 1, 1901, to the date of the filing of the application. The State statutory presumption is not efficacious to establish the bona fides required.

Id. at 286.

BLM did not rule on Brinton's last four applications (CA 3420, et al.) until August 3, 1982, when it rejected them, holding that the validity of Brinton's claims under both classes 1 and 2, had been finally adjudicated in Estate of John C. Brinton, supra, and that it was therefore without authority to rule on the question. However, BLM noted in its decision that our decision in Estate of John C. Brinton, supra, might "have been different as to Class 1, if [we] had been fully aware of Proclamation No. 1342, of August 23, 1916, which excluded certain lands, including sec. 31, from the forest and restored [them] to settlement." (Emphasis added.)

On appeal, Brinton's estate (appellant) emphasizes that our ruling as to the availability of these lands was incorrect, noting that Proclamation No. 1342, had restored the lands to entry. It concludes that its class 1 applications may still be valid. We agree.

[1, 2] Initially, we reaffirm that our decision in Estate of John C. Brinton, supra, correctly held that acquiring title by a tax deed initiates a new title for purposes of determining when claim or color of title commenced. In these circumstances, there is no privity with any previous owner. Brinton's applications show that he acquired color of title from the Riverside County Tax Collector on January 10, 1950, and we presume that he did so by tax deed. Therefore, he can have no valid class 2 claim based on this conveyance, since, in order to be valid a class 2 claim must have been initiated not later than January 1, 1901. 43 CFR 2540.0-5(b). Accordingly, we affirm BLM's decision insofar as it rejected appellant's two class 2 applications (CA 3420 and CA 3424).

[3] In Estate of John C. Brinton, supra, we noted that "[t]he record does not show that the lands have ever been opened to operation of public land laws [footnote omitted]," id. at 286, and concluded that the lands were therefore not open to initiation of either a class 1 or 2 color-of-title claim. BLM has now indicated that we were incorrect in this holding, since Proclamation No. 1342 did reopen these lands in August 1916. We are unable to see any indication in the present record that the lands were subsequently closed to entry. Accordingly, we now vacate our decision in Estate of John C. Brinton, supra, insofar as it concluded these lands were not open.

[4] Brinton initiated his occupancy in January 1950 and, according to his application, did not learn that he did not have clear title until May 11, 1970, more than 20 years later. Thus, if these facts were proven, appellant might be entitled to purchase these lands per a class 1 color-of-title application. Accordingly, we vacate BLM's decision insofar as it rejected appellant's two class 1 applications (CA 3422 and CA 3423) and direct BLM to consider them on their merits. On remand, BLM should carefully review whether these lands have been closed to entry subsequent to their being reopened in 1916. It should require convincing proof that the requirements of the Color-of-Title Act have been met. Appellant has the burden of

showing, inter alia, that Brinton possessed these lands in good faith, i.e., that he honestly and reasonably believed that there was no defect in his title. See, e.g., Lester Stephens, 58 IBLA 14, 19 (1981), and cases cited. Since Brinton has died, there may be evidentiary difficulties in so showing.

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 in part and vacated in part, and the matter is remanded for further consideration consistent herewith.

Douglas E. Henriques  
Administrative Judge

We concur:

Will A. Irwin  
Administrative Judge

Franklin D. Arness  
Administrative Judge  
Alternate Member

