

GETTY OIL CO.

IBLA 82-952

Decided April 6, 1983

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, declaring oil and gas lease NM 13413 terminated by operation of law for failure to timely pay the annual rental.

Affirmed.

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

Where an oil and gas lease is extended beyond its expiration date because of diligent drilling operations, it nevertheless terminates by operation of law upon failure to pay annual rental for the 11th year on or before the anniversary date of the lease.

APPEARANCES: Paul Cooter, Esq., Roswell, New Mexico, for appellant; Gayle E. Manges, Esq., Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management. 1/

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Getty Oil Company (Getty) has appealed a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated May 12, 1982, holding that oil and gas lease NM 13413 terminated by operation of law on April 1, 1981, for nonpayment of the annual rental.

Oil and gas lease NM 13413 issued effective April 1, 1971, for a period of 10 years and so long thereafter as oil or gas was produced in paying quantities. The lease, therefore, was due to expire as of midnight, March 31, 1981. Getty acquired the lease pursuant to an assignment approved effective May 1, 1973.

1/ While a notice of appearance was filed by the Field Solicitor, no substantive brief was submitted.

In order to obtain the extension of the lease granted by 30 U.S.C. § 226(e) (1976) and 43 CFR 3107.2-3, drilling operations on the lease were commenced on March 30, 1981. The Minerals Management Service subsequently reported that these drilling operations had been conducted in a sufficiently diligent manner so as to extend the lease.

It was not until April 7, 1982, however, that BLM discovered that Getty had failed to pay or tender both the 1981 and 1982 annual rentals. Getty eventually paid the rentals for both the 11th and 12th year on April 15, 1982. By decision of May 12, 1982, the State Office held the instant lease to have terminated on April 1, 1981. On June 16, 1982, appellant filed a petition for reinstatement and a notice of appeal.

Appellant, while admitting that it did not tender the rental until April 15, 1982, contends that its lease did not terminate. It argues that there is a conflict between 30 U.S.C. § 226(e) (1976) which grants an extension for diligent drilling operations occurring over the expiration date of the lease, and 30 U.S.C. § 188(b) which provides for the automatic termination of leases for nonpayment of the annual rental. Appellant suggests that the provisions of section 188(d) should be applied. Appellant is wrong on all points.

First of all, there is no conflict between 30 U.S.C. § 226(e) (1976) and 30 U.S.C. § 188(b) (1976). The former provision reads in relevant part:

[A]ny lease issued under this section for land on which * * * actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities.

The relevant language of 30 U.S.C. § 188(b) (1976) states that:

[N]otwithstanding the provisions of this section, however, upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law.

In order to understand how these two provisions interrelate, it is necessary to keep clearly in mind the difference between "expiration" and "termination." A lease "expires" upon the running of its term, either primary or extended. This event occurs at midnight on the last day of the lease. In the instant case, assuming no extension of the lease, the lease would have "expired" at midnight on March 31, 1981.

"Termination," on the other hand, occurs upon the failure to tender annual rental on or before the anniversary date of the lease. The anniversary date of the lease is, of course, its effective date. In the instant case, this was April 1. That rental was due for the eleventh year is clear. See Texas Eastern Transmission Corp., 14 IBLA 361 (1974).

An analysis of what happened in the instant case showed that both provisions came into play. Thus, the diligent drilling operations served to extend the lease past midnight on March 31, 1981. However, upon the failure to pay the annual rental for the lease prior to close of business on April 1, 1981, the lease, then in its extended term, terminated by operation of law. There is simply no conflict between these two provisions. ^{2/} BLM properly held that lease NM 13413 terminated on April 1, 1981, in the absence of a well capable of producing oil and gas on the anniversary date.

Appellant also suggests that the provisions of 30 U.S.C. § 188(d) (1976) are applicable. They are not. Section 188(d) was added to section 31 of the Mineral Leasing Act by section 1 of the Act of October 15, 1962, 76 Stat. 943. That Act, as we noted in Louis Samuel, 8 IBLA 268 (1972), was solely retrospective in effect. See S. Rep. No. 2165, 87th Cong., 2d Sess. (1962). It therefore applied only to leases which had terminated prior to October 15, 1962. Moreover, by its terms, section 188(d) applied only to leases which would have been eligible for extension "pursuant to section 4(d) of the Act of September 2, 1960 (74 Stat. 790)." Section 4(d) of the Act of September 2, 1960, 30 U.S.C. § 226-1(d) (1976), itself applies only to "any lease issued prior to September 2, 1960." Thus, 30 U.S.C. § 188(d) (1976) was only applicable where the lease issued before September 2, 1960, and terminated prior to October 15, 1962. See generally Oil Resources, Inc., 28 IBLA 394, 84 I.D. 91 (1977), appeal dismissed, Oil Resources, Inc. v. Andrus, Civ. No. C-77-0147 (D. Utah July 6, 1979). It is not applicable herein.

The question of whether 30 U.S.C. § 188(d) (1976) applies properly goes to the larger issue of whether the lease could be reinstated. Inasmuch as appellant filed its notice of appeal with its petition for reinstatement, BLM never had an opportunity to specifically address its petition. However, it is obvious under the facts set forth that this lease is not eligible for reinstatement under 30 U.S.C. § 188(c) (1976) since the rental was not paid or tendered within 20 days of the anniversary date. Thus, no useful purpose would be served on remanding the case file to the State Office for adjudication of the petition for reinstatement. Cf. Julie Adams, 45 IBLA 252 (1980).

We do note, however, that on January 12, 1983, congress enacted the Federal Oil and Gas Royalty Management Act of 1982, 96 Stat. 2447, which amended section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976), to provide an additional opportunity for reinstatement where the provisions of section 188(c) do not permit reinstatement. While the new Act imposes various time limits, no implementing regulations have yet been promulgated. Therefore, if appellant is desirous of availing itself of the benefits of this Act, it should inquire promptly at the New Mexico State Office.

^{2/} We would note that while the BLM decision correctly held the lease "terminated," the caption of the decision read "Extension Denied; Lease Terminated." This was incorrect. Had the extension been denied (as it might be were it determined that the drilling operations were not "diligent"), the lease would have "expired." The only way that the lease could have been in existence, and thus subject to termination, was if it had been extended.

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.

James L. Burski

Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge.

