

CHESTER F. DAWSON

IBLA 83-267

Decided May 9, 1983

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting small tract application Nev-024165.

Reversed and remanded.

1. Conveyances: Generally -- Small Tract Act: Generally

Where BLM makes an unequivocal offer to sell a small tract and invites acceptance by submitting a prescribed amount as full payment, and where an individual submits the payment, a binding contract passing equitable title to the buyer is created. Thereafter, BLM holds legal title in trust for the purchaser and, as soon as any impediments to conveyance of full legal title are removed, it is obliged to convey title to him, without additional charge.

2. Conveyances: Generally -- Equitable Adjudication: Generally -- Federal Land Policy and Management Act of 1976: Repealers -- Small Tract Act: Generally

Although the Small Tract Act of June 1, 1938, was repealed by the Federal Land Policy and Management Act of 1976, this repeal was made expressly subject to any existing "land use right or authorization," including a vested contractual equitable property right. Thus, the repeal of the former by the latter did not remove the Department's authority to meet its ministerial duty to pass legal title where a binding contract to do so had been created prior to the enactment of FLPMA.

APPEARANCES: Chester F. Dawson, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Chester F. Dawson appeals from the November 23, 1982, decision of the Nevada State Office, Bureau of Land Management (BLM), rejecting his application to purchase 2-1/2 acres in Clark County, Nevada, under the Small Tract Act of June 1, 1938, as amended, 43 U.S.C. § 682a through 682e (repealed 1976). We reverse.

Dawson first filed an offer to lease this tract under the Small Tract Act, supra, on May 3, 1954. At this time, small tracts could not be purchased outright. 43 CFR 257.3(b) (1954). The procedure for purchasing small tracts was that the parcel would first be leased to the applicant for a 3-year term. The lease contained a clause granting the lessee the option to purchase the tract after the expiration of 1 year from the date of the lease, provided that he had used the tract and made improvements on it. 43 CFR 257.13 (1954). The purchase price was specified in the lease itself and was based on an appraisal of the tract made at the time of the issuance of the lease. Thus, in 1954, applying for a lease was the first step in purchasing a tract under the Small Tract Act, supra.

On January 15, 1955, the small tract regulations were revised, and the 1-year minimum occupancy requirement was removed. Thus, a lessee could purchase the tract at any time within the term of the lease, again provided that he had made the required improvements. 43 CFR 257.13(a) (1955).

On November 9, 1955, while Dawson's application was pending, the Secretary of the Interior approved a memorandum further relaxing the requirements for purchasing a small tract in Clark County, Nevada. The memorandum authorized the sale of small tracts held by existing lessees even though no rental had been paid and no improvements had been made on the tract. Abraham Epstein, 24 IBLA 195 (1976).

On January 13, 1956, BLM advised Dawson that the tract that he had applied for had been made available for lease, with option to purchase, by "Classification Order Nevada # 49." Even though Dawson did not then hold a lease, BLM advised him that he was entitled to purchase the tract. 1/ Moreover, BLM invited Dawson to purchase the tract and specified the procedure he should follow to do so. The nature of BLM's communication is critical to the resolution of this matter, so we set it out fully as follows:

1/ In view of the special provisions applied by the Secretarial memorandum, anyone desiring to purchase a small tract in Clark County could simply wait until BLM issued the small tract lease and then immediately apply for purchase. BLM evidently recognized that, if an applicant wished to purchase the tract, the issuance of the lease would be a mere time-consuming formality. Accordingly, it simply offered the tracts for sale without first issuing leases for them.

Although the classification order provides that the lands classified by that order will be subject to lease, with a right of purchase after the construction of suitable improvements on the lands, the Secretary of the Interior has authorized the sale of land in the Las Vegas area without improvements or payment of rental. You therefore have a choice of one of the following courses of action:

1. You may choose to buy the lands now. If you choose to do this, you must submit the balance due on the purchase price of the lands. This purchase price was specified in the classification order. The balance due is as follows:

Filing fee.	\$ 10.00
Purchase price of lands	\$275.00
Total amount due	\$285.00
Less: amount paid with application . .	\$ 25.00
Balance due	\$260.00

2. You may elect to lease the land for a period of three years. This lease will permit you to purchase the lands at any time prior to its expiration without any requirements as to the construction of improvements. If you elect to lease the land, the balance due on advance rental must be paid. The balance due is as follows:

Filing fee.	\$10.00
Advance rental for 3 years.	\$25.00
Total amount due	\$35.00
Less: amount paid with application . .	\$25.00
Balance due.	\$10.00

If you elect to lease the land, purchase may be made any time prior to the expiration date of your lease. However, if you purchase it now you will save (A) the additional \$10.00 filing fee required with a purchase application, (B) the \$5.00 rental for each year the lease is in effect and (C) avoid the necessity of paying the full three-year rental which must be paid in advance.

3. You may choose to withdraw your application. If you do, your advance rental will be returned to you. \$10 must be retained by the Government as a filing fee.

YOU HAVE 60 DAYS IN WHICH TO TAKE ONE OF THE FOLLOWING ACTIONS:

(1) SEND NOTICE ON THE ATTACHED FORM THAT YOU WISH TO PURCHASE THE TRACT, ENCLOSING A CHECK OR MONEY ORDER FOR \$260.00 IN PAYMENT OF THE BALANCE DUE ON THE LAND.

(2) SEND NOTICE ON THE ATTACHED FORM THAT YOU WISH A LEASE FOR THE TRACT, ENCLOSING A CHECK OR MONEY ORDER FOR \$10.00 TO COVER THE BALANCE DUE ON THE ADVANCE RENTAL.

(3) SEND NOTICE ON THE ATTACHED FORM THAT YOU WISH TO WITHDRAW YOUR APPLICATION.

Dawson responded on March 14, 1956, by taking option (1), i.e., he advised BLM that he wished to purchase the tract and submitted \$260 in cash.

However, on March 27, 1956, BLM advised Dawson that, subsequent to the date on which it had mailed him the "offer to purchase," it had discovered that the tract he had applied for was subject to prior existing mining claims. Although the claims had been declared invalid, the claimant had appealed the matter, and therefore, BLM indicated, it could not issue a patent to Dawson until the question of the validity of the claims was resolved.

The question of the validity of these conflicting claims was not finally resolved until March 1981, when the U.S. Supreme Court let stand a circuit court opinion affirming our decision invalidating the claims. ^{2/} On August 7, 1981, BLM advised Dawson that it could process his claim, but that, since the Small Tract Act of June 1, 1938, *supra*, had been repealed in 1976, its provisions no longer applied, and that he could therefore only purchase the parcel at current market value, which would be determined by a new appraisal.

On November 23, 1982, BLM, formally rejected Dawson's Small Tract Act application, and, by letter of the same date, advised him that he could purchase the 2.5 acre-parcel for \$32,750, its asserted fair market value, along with a \$50 filing fee, pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1713 (1976). BLM indicated that, if he did not respond within 30 days, the offer of sale would be rescinded. BLM did not offer to return the \$260 paid by Dawson with his application in 1956. Dawson appealed.

^{2/} While the question of the validity of the conflicting mining claims was in litigation, on May 10, 1962, BLM issued a decision rejecting Dawson's application because, it held, "[t]o continue the suspense of [small tract application] cases pending the ultimate conclusion of contests, and court action is untenable." BLM offered Dawson an alternative small tract, but he appealed the rejection of his application, asserting that he had already bought and paid for the parcel in 1956. On June 8, 1962, BLM advised Dawson that, if he withdrew his appeal, his application would be regarded as remaining in effect on the tract for which he had originally filed. On July 2, 1962, he withdrew his appeal. In 1964, Dawson elected not to participate in a drawing held by BLM to award alternate tracts to persons who had applied for lands that conflicted with existing mining claims.

[1] BLM's communication to Dawson (appellant) of January 13, 1956, was an unequivocal offer to sell him this tract and invited acceptance merely by submitting payment in this amount. At the time, BLM recognized this offer as such, as shown in its letter of March 27, 1956, in which it referred to the January 13, 1956, communication as an "offer to purchase." Appellant did accept the offer by making payment of the demanded amount on March 14, 1956, at which point a binding contract to convey the property to appellant was created, subject only to any superior rights in the tract held by others. Abraham Epstein, supra; cf. Henry Offe, A-29060 (December 10, 1962) (holding that applicant could be charged current fair market value for a tract because he had refused to accept BLM's offer). Since there was a binding contract to sell the tract to appellant for \$275, BLM may not now increase the price of the tract.

When a party does all that he is required to do to entitle him to receive title, he acquires a vested interest therein, and equitable title to the land. Upon the passage of equitable title, the Department holds legal title in trust for him. See Kern Oil v. Clarke, 30 L.D. 550 (1901), cited with approval in Wyoming v. United States, 255 U.S. 489, 501 (1921); Solicitor's Opinion, M-36910, 88 I.D. 909, 912 n.4 (1982). Upon BLM's acceptance of his offer appellant gained a vested interest in the tract subject only to whatever rights, if any, the holders of the senior mining claims might have in it. When these impediments are removed, BLM must convey the legal title.

[2] The Small Tract Act of June 1, 1938, as amended, supra, was repealed by the FLPMA, supra. However, section 701(a) of FLPMA, supra, expressly provides that "[n]othing in this Act * * * shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act [October 21, 1976]." Appellant's contractual right to this property is a "land use right or authorization" that existed on October 21, 1976. Thus, BLM is not barred by FLPMA from patenting the tract to him, since the repeal of the Small Tract Act did not reach so far as to remove the Department's authority to meet its ministerial duty to recognize appellant's vested contractual equitable property right. See Leona K. Strang, 43 IBLA 156 (1979).

Since, we have held, the Department retains authority to dispose of this parcel under the Small Tract Act, supra, it is unnecessary to consider the applicability of the sales provisions of section 203 of FLPMA, supra. The pre-FLPMA Departmental policy, announced in Autrice C. Copeland, 69 I.D. 1 (1962), requiring that the Government receive full value in the sale of its property, was applied only in the absence of a binding contract and, therefore, would not affect this transaction.

The only contingency blocking appellant's right to receive title, the possible superior rights of the holders of mining claims on the tract that predated his small tract acquisition, has now been removed. In the absence of any other impediment not presently disclosed in the record, BLM should issue patent to appellant for this tract.

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 the matter is remanded for further action as described above.

Douglas E. Henriques
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Franklin D. Arness
Administrative Judge
Alternate Member

