

FRANK M. YOUNGBLOOD

IBLA 83-512

Decided December 30, 1983

Appeal from decision of Eastern States Office, Bureau of Land Management, canceling oil and gas lease ES 15071.

Reversed and remanded with instructions.

1. Oil and Gas Leases: Bona Fide Purchaser

Where a noncompetitive oil and gas lease was issued to a junior offeror who assigned his entire interest in the lease to others prior to issuance of a lease to the senior offeror for the same lands, the record is found not to be sufficient to sustain the lease issuance to the junior offeror and his assignees, whose statements appearing of record fail to establish them to be bonafide purchasers within the meaning of 43 CFR 3108.3(c). A hearing is ordered to permit the making of an adequate record upon which a determination of priority of interest may be made.

2. Oil and Gas Leases: Bona Fide Purchaser

While the interests of a bona fide purchaser may be protected from cancellation by 30 U.S.C. § 184, the interest of an assignor who knows his title was defective is not protected. Overriding royalty interest reserved by assignor of lease acquired with knowledge of senior lease offer ordered canceled.

APPEARANCES: Frank M. Youngblood, pro se. 1/

1/ Appellant personally filed his notice of appeal together with a statement concerning the basis for his appeal on Mar. 22, 1983. In his statement accompanying the notice, among other matters, he designated "The Chitwood Company" to represent him in future proceedings before the Board. Subsequently, several documents signed by John R. Chitwood III "as agent for Frank M. Youngblood" were filed in this appeal. There is no indication that Chitwood is qualified to practice before the Department in conformity to Departmental regulation 43 CFR 1.3. He has failed to qualify himself under the regulation. Were it not for the fact that appellant initially appeared on his own behalf, this appeal would have been subject to dismissal.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On February 22, 1983, the Eastern States Office, Bureau of Land Management (Eastern States, BLM), canceled noncompetitive oil and gas lease ES 15071 earlier issued to appellant Frank M. Youngblood. Included with his notice of appeal in this matter, Youngblood files a statement challenging the factual determination of BLM that resulted in the cancellation of his lease. The BLM decision appealed from summarizes the underlying facts and the agency action taken:

Oil and gas lease ES 15071 was issued effective September 1, 1982 for 180 acres in Harrison County, Mississippi. While posting this issuance in our status records it was discovered that the lands included in this lease are also contained within these two existing oil and gas leases: Lease ES 17116 issued effective December 1, 1978 to Wilfred Plomis contains the N 1/2 SW 1/4, SE 1/4 SW 1/4, and the N 1/2 SW 1/4 SW 1/4 of Sec. 31, T. 5 S., R. 11 W., St. Stephens Meridian; Lease ES 17623 issued effective October 1, 1978 to the same applicant, contains the NE 1/4 NE 1/4 of Sec. 23 of the same Township, Range and Meridian.

Lease offers ES 17116 and ES 17623 were filed after lease offer ES 15071 giving them a lower priority for these lands but section 23 and 31 were erroneously issued ahead of the senior offer because our status reports in the junior offer case files were not complete.

Regulation 43 CFR 3110.1-6(a) states that [n]o lease shall be issued before final action has been taken on any prior offer to lease the land. If a lease is issued before final action has been taken on such an offer, it shall be cancelled, after due notice to the lessee, if the offeror is found to be qualified and entitled to receive a lease on the land.

According to this regulation, lease ES 17116 and ES 17623 should be cancelled in part as to the conflicting lands contained in ES 15071. However, an assignment of 100 percent record title in ES 17116 to Apache Corporation was approved effective December 1, 1981; and on April 10, 1981, an assignment to Getty Oil Company for 100 percent record title in ES 17623 was filed. In view of this the interest in the subject lands in these leases are protected by the bona fide purchaser provision of the regulations (43 CFR 3108.3(c)). A lease or interest therein shall not be cancelled to the extent that such action adversely affects the title or interest of a bona fide purchaser, even though such lease

Thomas L. Tuttle, 71 IBLA 265 (1983). Significantly, it is noted that this "agent" failed to notice any defect in the transactions between the assignees and their assignor which might have affected Youngblood's appeal. This appearance illustrates the danger in using unauthorized counsel for representation.

or interest, when held by a predecessor in title, may have been subject to cancellation). (47 IBLA 39 Geosearch, Inc.)

The record on appeal establishes documentary proof of the transactions leading to the assignment to Getty Oil Company (Getty) in April 1981. Thus, Wilfred Plomis filed lease offer ES 17623 on June 13, 1977, for lands which included the NE 1/4 NE 1/4 Sec. 23, T. 5 S., R. 11 W., St Stephans meridian. On September 19, 1978, a lease to Plomis was issued, effective October 1, 1978. Reserving a 6-1/4 percent overriding interest in the lease, Plomis then assigned the lease on January 13, 1979, to Paul H. Sanderford. On May 4, 1979, Getty filed an assignment of 100 percent record title interest, executed January 26, 1979, from Sanderford to Getty. Eastern States Office, however, apparently failed to take action to approve either of the assignments.

By letter dated March 27, 1981, received by Eastern States on May 4, 1981, Plomis and Sanderford withdrew the January 13, 1979, assignment from Plomis to Sanderford, and also purported to withdraw the lease assignment of January 26, 1979, from Sanderford to Getty. (Eastern States noted on this document that withdrawal of the Getty Assignment requires the consent of Getty, and also noted that the Getty assignment was not in the office records.) On April 10, 1981, Getty filed an assignment of 100 percent record title from Plomis to Getty dated April 4, 1981, reserving 6-1/4 percent overriding royalty. On August 23, 1982, Eastern States issued the lease to Youngblood, whose prior offer had been pending since March 14, 1975. On December 20, 1982, a decision issued holding leases ES 17623 and ES 17116 for cancellation in part and requiring Plomis, Getty, and Apache Corporation (Apache) to "submit statements to this office establishing that Apache Corporation and Getty Oil Company are bona fide purchasers of the respective leases."

The two separate lease assignments involved in the transaction described by BLM are separately considered. The first assignment, of ES 17623, made by Wilfred Plomis to Getty, is explained by a letter from Getty to BLM dated January 10, 1983, which appears in the record, stating in part:

Please be advised that on January 19, 1979 Getty Oil Company issued to Mr. Wilfred Plomis, Draft No. 77037 to purchase 100% interest of oil, gas and mineral lease ES 17623 located in Harrison County, Mississippi. This draft was submitted for collection by Mr. Plomis and paid by Getty Oil Company on February 7, 1979. All past delay rentals for ES 17623 have been timely paid.

Getty Oil Company hereby declares that it is a bona fide purchaser of the oil, gas and mineral rights relative to those lands covered under ES 17623 and is therefore protected from cancellation of its interest in the subject lands.

This explanation that assignment occurred in 1979 is not corroborated by the statement dated January 20, 1983, submitted by Plomis to BLM, however, which states:

In accordance with Decision dated 12/20/82, this is to verify that both of these leases, shown above, were assigned.

Payment was made for both at the time they were executed and deposited forthwith in the Southeastern National Bank in Chester, Pennsylvania. [Emphasis supplied.]

Since the assignment by Plomis to Getty which appears in the file is dated April 4, 1981, it is apparent that Plomis' statement means that he assigned his lease and received payment from Getty in 1981, not in 1979 as stated by Getty. This apparent inconsistency between the two statements is made significant by the recorded fact that Plomis examined the BLM case file on several occasions, and that, not later than January 14, 1980, had reviewed the portion of the file containing the prior offer made by Youngblood. 2/ It therefore appears Plomis knew of the existence of the prior offer for the lease by Youngblood at the time of the assignment to Getty.

The other land involved in Youngblood's offer was the N 1/2 SW 1/4 SE 1/4 SW 1/4 and (1/2 SW 1/4 of sec. 31, in the same township as the tract involved in the Getty transaction. On March 22, 1977, Plomis filed lease offer ES 17116, which partially included this land. A lease to Plomis issued effective December 1, 1978, which was assigned by Plomis to Apache on October 13, 1981, and approved by BLM effective December 1, 1981. Plomis retained a 6-1/4 percent overriding royalty interest in this lease also. In response to the December 20, 1982, decision by BLM requiring a statement concerning the assignment to Apache, the corporation replied:

Please be advised that Apache Corporation took assignment of the referenced lease and forwarded as its annual rental payment Check No. 007539, dated 11-16-82, in the amount of \$227.00, drawn on The First National Bank, Minneapolis, Mn. This check has been received and cashed. Therefore, Apache Corporation should be considered a bonafide and innocent party to this lease.

On February 2, 1983, Apache filed another statement of explanation as follows:

This letter is being written as a supplement to my original letter dated January 27, 1983. I am providing herewith additional information regarding the assignment made between Wilfred Plomis and Apache Corporation. Said assignment was executed on 10/13/81 and approved by the Eastern States Office on 12/1/81. A draft dated 10/6/81 was issued by Apache to Mr. Plomis and subsequently deposited and cashed. There was no knowledge that the lease was encumbered in any way. In view of these facts, it is Apache's position that it has fulfilled the terms of an innocent and bonafide purchaser to this lease.

2/ The form requesting review of the file is undated. However, the next document filed was inserted into the record on Jan. 14, 1980. The examination by Plomis took place sometime prior to that day, or on the 14th at the latest.

This explanation creates more questions than are answered by it. Since the draft was issued by Apache to Plomis on October 6, 1981, and the assignment from Plomis to Apache did not occur until October 13, 1981, the transaction appears somewhat ambiguous. The amount of the payment is not furnished by the explanation. Since the record establishes that Plomis knew, at the time he assigned his interest to Apache, that there was a prior offer by Youngblood, the amount of the payment to Plomis under such a circumstance is clearly relevant to a determination whether Apache could have been a bona fide purchaser, as it claims to be.

A somewhat similar situation was considered by this Board in George P. Wolter, Jr., 47 IBLA 396 (1980). In Wolter the junior offeror's assignees had not established that they were entitled to the benefit of the bona fide purchaser regulation. Since the record was simply silent concerning the factual background concerning the assignments, the Board remanded the appeal to enable BLM to inquire into the circumstances of the assignments by the junior offeror. ^{3/} The same result is obviously now required.

Here, BLM, upon learning of the conflict between Youngblood's lease and the leases issued to Plomis, inquired of Plomis and his assignees, and gave notice of the inquiry to appellant. The assignees and Plomis responded, describing the completed assignments, for which payment was claimed to have been made before the lease to Youngblood issued. Both assignees assert the assignments were made in the belief Plomis was the lawful lease owner. On the face of the statements, a number of contradictions and inconsistencies are apparent which indicate that neither Getty nor Apache may have been without notice of the existence of the prior interest of Youngblood. Clearly, Plomis knew, in each case, that Youngblood's interest was ahead of his. Questions naturally arise, therefore, concerning what Plomis told his assignees, what arrangements were made between them for payment, and what amount was paid for Plomis' interest in the leases assigned. These questions are not answered by the responses furnished to BLM by Getty, Apache, and Plomis.

[2] To qualify as a bona fide purchaser under the provisions of 30 U.S.C. 184(h)(2) (1976) and Departmental regulations codified at 43 CFR 3108.3(c), an assignee of a lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of law. Southwest Petroleum Corp. v. Udall, 361 F.2d 650 (10th Cir. 1966), affg Southwest Petroleum Corp., 71 I.D. 206 (1964). Not only the date of payment must be inquired into in this case upon remand, but amount of payment as well. Also, the circumstances surrounding the assignments made in each lease must be ascertained, because of the circumstances appearing of record which suggest knowledge of the prior interest of Youngblood by Plomis, at the very least. While the interests of a bona fide purchaser may be protected from cancellation by the provisions of 30 U.S.C. § 184, the interest of his assignor who knew of the defect in his title is not preserved. Bernard Kosik, 70 IBLA 373 (1983). The overriding interest reserved by Plomis in each lease must therefore be canceled.

^{3/} See also A. D. Matchett, 56 IBLA 231 (1981).

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 overriding royalty interest of Wilfred Plomis in leases ES 17116 and ES 17623 is canceled. This appeal is referred to the Hearings Division for the appointment of an Administrative Law Judge to conduct an evidentiary hearing into the circumstances of the assignments made by Plomis to Getty and Apache. The decision of the Administrative Law Judge concerning whether Getty and Apache are bona fide purchasers based upon the evidence received at the hearing shall constitute a final decision for the Department, unless appeal is taken to this Board pursuant to regulation.

Franklin D. Arness
Administrative Judge
Alternate Member

I concur:

Gail M. Frazier
Administrative Judge

ADMINISTRATIVE JUDGE BURSKI CONCURRING:

I agree that, on the basis of the analysis of the record set forth in the majority decision, this case should be referred to the Hearings Division for a fact-finding hearing to determine whether or not either Apache Corporation or Getty Oil Company truly qualifies as a bona fide purchaser for value. I similarly agree that the overriding interests which Plomis obtained should be canceled forthwith. However, I feel that some comment is clearly warranted on the multiplicity of errors perpetrated by the Eastern States Office in dealing with the instant matter.

The following unexplained, and in some instances inexplicable, errors were made in this case. On March 14, 1975, Youngblood files his offer which is serialized as ES 15071 Acq. On May 21, 1975, Eastern States requests a title report from the U.S. Forest Service. This request is returned to Eastern States on June 14, 1976, together with a cover letter by which Eastern States is informed that the Forest Service has no objections to leasing. Eastern States takes no further action in the matter until June 9, 1982 (almost 6 full years later), at which time it informs appellant that as of February 1, 1977, the rental for leases has been raised from \$0.50 to \$1 an acre, and requests that he submit the same. While Eastern States was correct in its conclusion that the increase rental was properly due (see, e.g., Raymond N. Joeckel, 29 IBLA 170 (1977)), what is unexplained is why it took it 6 years to request the additional advance rental. Indeed, the complete failure to act on appellant's offer during these years is, itself, totally unexplained.

During the period of time while Youngblood's offer is collecting dust someplace in the Eastern States Office, Wilfred Plomis files two offers, each partially embracing the land sought by Youngblood. The first, ES 17116 Acq., is filed on March 24, 1977, over 2 years after Youngblood's is filed. In contrast to the slow and deliberate track which Youngblood's offer follows, Plomis' offer is put on a veritable expressway, being adjudicated to lease issuance within a mere 18 months. His second lease offer, ES 17623 Acq., is filed on June 14, 1977, and a lease issues in even less time, a scant 16 months. It goes without saying that Eastern States fails to discover the conflict between the Plomis and Youngblood offers during this period when it is "rushing out" Plomis' leases.

The real fun, however, is just beginning. After issuance of ES 17623, Plomis files an assignment of 100 percent of the record title interest, to Paul H. Sanderford, reserving a 6-1/4 percent overriding interest to himself. This assignment is executed on January 13, 1979. On May 4, 1979, Getty files an assignment, executed on January 26, 1979, of 100 percent record title interest (and no override) from Sanderford to Getty. On November 21, 1979, this assignment is returned to Getty for completion of Part II, the Assignee's Request for Approval of the Assignment. By letter of December 10, 1979, Getty resubmits the corrected assignments for approval. These are received by Eastern States on December 13, 1979, and promptly lost. The fact that this latter assignment is lost explains why it is never approved, but this does not explain why the assignment from Plomis to Sanderford, which was on file, is never acted on.

On June 27, 1980, the Eastern States Offices, issues a decision canceling ES 17623, in part. This is sent to Wilfred Plomis, the lessee of record. On July 16, 1980, Getty Oil sends a letter to the Eastern States Office noting that it had been assigned the lease by Sanderford, and further noting that, according to its computations, the acreage to be excluded from the lease was 5.854 acres and not 6.428 acres as stated in the June 27, 1980, decision. This letter either never reaches Eastern States or it, too, is lost. In any event, Getty follows up this letter with another on March 11, 1981, asking whether any reply had been sent. This letter results in a decision dated September 4, 1981, correcting the June 27, 1980, decision along the lines suggested by Getty.

In the meantime, by letter dated March 27, 1981, but not received until May 4, 1981, Plomis and Sanderford, doubtless wearying of the long delays, purport to withdraw the January 13, 1979, assignment from Plomis to Sanderford and the January 26, 1979, assignment from Sanderford to Getty. Inasmuch as the records of the Eastern States Office do not show that Getty has ever returned the Sanderford to Getty assignment, the Eastern States Office is obviously somewhat perplexed as to how it should handle this. The following notation appears on the letter from Plomis and Sanderford:

5/15/81

Assignment from Plomis to Sanderford withdrawn 5-5-81. Assignment from Sanderford to Getty Oil was returned to Getty Oil for completion 11/24/79, and never re-filed in this office. Withdrawal of this assignment requires signature on behalf of Getty Oil.

This is a fascinating notation. It establishes that, as of May 15, 1981, BLM is still not aware that Getty had, in fact, refiled the corrected assignment. It correctly notes that under established rules only the assignee can properly withdraw an assignment. See Petrol Resources Corp., 65 IBLA 104 (1982). However, it then somehow concludes that only Getty can withdraw the assignment where, according to its own records, there is no assignment pending before BLM.

On April 4, 1981, Plomis executes an assignment of the lease to Getty Oil. This was filed with BLM on April 10, 1981. While this assignment is executed after the date of the letter withdrawing both the Sanderford and Getty assignments, it is actually received by Eastern States before the letter is received. This obviously contributes to the confusion in the Eastern States Office as it sends the receipt for the filing fee to Stewart Capital Corporation, a total stranger to the record. This assignment is presently pending. On December 20, 1982, both Plomis and Getty are informed of the problems relating to the Youngblood offer, and commence the filings which directly lead to this appeal.

While oil and gas lease ES 17623 is being engulfed in the chaos of the Eastern States Office, lease ES 17116 is successfully assigned to Apache Corporation, effective December 1, 1981. Indeed, the only problem associated with this remarkable lease is that it, too, embraces land within a senior offer. Thus, on December 20, 1982, Apache is also informed of the problems relating to the Youngblood offer and begins its attempts to establish bona fide purchaser protection.

However, prior to the discovery that it has already leased all of the land sought in the Youngblood offer, Eastern States apparently decides to retrieve the Youngblood offer from the back-burner (or, perhaps more aptly, the deepfreeze) where it has been languishing for 6 years. It first obtains the rental increase from Youngblood. What then happens is a matter of some dispute. I think it clear from the record that Eastern States actually issues the lease twice. The first time the lease is signed on May 18, 1982, with an effective date of June 1, 1982. These dates clearly appear on the lease, though Eastern States has attempted to "white" them out. Superimposed upon the top of these dates are other dates indicating August 23, 1982, as the date of signature with September 1, 1982, as the effective date.

It is unclear why Eastern States felt compelled to issue the lease twice, and I cannot discern from the record why it may have thought the initial lease issuance was erroneous. I mention this double issuance only to point out that in neither instance did Eastern States check the status plats before signing the lease even though by this time the offer had been pending over 7 years, since, had anyone done so, they would have discovered prior to issuance of ES 15071 that the land was already under lease. Even considering all that had already transpired in this case, I find this last dereliction the most egregious.

I will not explore the subsequent deficiencies which characterized Eastern States examination of the bona fide purchaser status of Apache and Getty as they are adequately set forth in the text of the majority. Added together, the concatenation of errors exhibited in this case is something of a shock even to those of us who have, over the course of years, become inured to all but the most exotic mistakes emanating from BLM State Offices. What is truly troubling, however, is the reality that such errors seem to be occurring with increasing frequency in the Eastern States Office.

In recent years, the Eastern States Office has issued a fractional interest lease for lands in which 100 percent of the mineral interest had already vested in the United States, despite the ultimately futile attempts of an applicant to alert them to this fact. See Wilfred Plomis, 62 IBLA 162 (1982). In Anne B. Ahrens, 70 IBLA 358 (1983), the Eastern States Office discovered that certain drawing entry cards (DEC's) had been inadvertently omitted from a simultaneous drawing for parcel ES-197. These cards were discovered after the initial drawing for that parcel. A new drawing was then held which included all DEC's, in violation of 43 CFR 3112.3-2, since only those cards which are omitted from a drawing are to be included and blanks are to be substituted for all DEC's which were in the original drawing. This error was compounded by the fact that Eastern States somehow failed to note the original winners of the first drawing. After the second drawing, Eastern States reconsidered its course of action and rejected that winner's DEC on the grounds that yet a third drawing was needed, even though by that time it was impossible to determine who had or had not been in the first drawing, much less who had won it.

I do not wish to personally denigrate any employee of the Eastern States Office. I have no doubt that the personnel of that office try their best to comport with the applicable law, regulations, and procedures. The conclusion, however, is inescapable that either the Office is insufficiently staffed or inadequately trained. Curing these problems is the responsibility of the

BLM directorate. It should not become this Board's burden to read case files as if they were Agatha Christie mystery novels, with both the crime and the culprit capable of disclosure only through a line by line reading of the plot. It is beyond the Board's authority and capacity to provide the guidance which the Eastern States Office so clearly needs. This duty resides, where it has these many years, with BLM. I would hope it is a duty which BLM would begin to discharge with greater effect.

James L. Burski
Administrative Judge

