

Editor's note: Reconsideration denied by Order dated April 7, 1987

MASCOT MINING, INC.

IBLA 85-724

Decided January 30, 1987

Appeal from a decision of the Anchorage District Office, Alaska, Bureau of Land Management, declaring placer mining claims null and void and rejecting recordation filings. F-63931, F-63932, and F-63934.

Affirmed.

1. Mining Claims: Generally -- Mining Claims: Location -- Mining Claims: Withdrawn Land

If lands have been withdrawn from mineral entry the owner of a mining claim must demonstrate that the claims he owns were located prior to withdrawal. In doing so he must also demonstrate a chain of title running from the locator to him.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

An unpatented mining claim must be deemed abandoned and void pursuant to sec. 314(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(c) (1982), where there is no evidence that an instrument of recordation and an initial affidavit of assessment work or notice of intention to hold the claim was filed within the 3-year period following Oct. 21, 1976, by the purported owner of the claim, a predecessor in interest, or an agent.

APPEARANCES: Robert G. Pruitt III, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Mascot Mining, Inc. (Mascot), has appealed from a decision of the Anchorage District Office, Alaska, Bureau of Land Management (BLM), dated May 24, 1985, declaring the Number Six Below Discovery, Number Seven Below Discovery, and Number Eight Below Discovery placer mining claims, F-63931, F-63932, and F-63934, null and void and rejecting recordation filings. The mining claims are situated along Mascot Creek in protracted sec. 31, T. 31 N., R. 13 W., and protracted sec. 36, T. 31 N., R. 14 W., Fairbanks Meridian, Alaska.

On October 19, 1979, BLM received a proof of labor for various mining claims, including the three claims involved herein, signed by William J. Nelson, "agent for Maple Leaf Gold, Inc." (Maple Leaf). A statement signed by Michael J. Crabb, also representing Maple Leaf, which, in part refers to the three claims involved herein, stated: "Location notices * * * are not available on Mascot Creek," 1/ and a map showing the location of the claims were included with the proof of labor documents.

By notice dated December 13, 1983, BLM directed Maple Leaf to submit "additional information" relating to lost or destroyed records, in accordance with 43 CFR 3862.1-4, within 30 days of receipt of the notice. BLM stated that it would "suspend further action on [Maple Leaf] filings" pending submission of the information. In an April 6, 1984, decision, BLM declared the three mining claims null and void pursuant to 43 CFR 3833.4(b), and rejected the recordation filings because Maple Leaf had failed to provide "location dates or evidence relating to destroyed or lost records of the mining claims," as required by BLM's December 1983 notice.

Copies of the certificates of location recorded with the local recording district for the three mining claims were submitted to BLM on April 30, 1984. These certificates state the claims were located on September 3, 1958, by Andy Schwaesdall (Number Six Below Discovery (F-63934)), Frank James (Number Seven Below Discovery (F-63931)), and James R. Johnson (Number Eight Below Discovery (F-63932)). By decision dated May 4, 1984, BLM vacated its April 1984 decision as to the three claims because of the subsequent submission of the location notices, "thereby complying with the filing requirements for those * * * claims." 2/

By notice dated May 4, 1984, BLM again gave Maple Leaf 30 days to file "additional information" relating to the existence of an unbroken chain of title to Maple Leaf, originating "at a time when the lands were open to location and entry under the Federal mining laws." BLM stated that it would

1/ BLM also received a statement signed by Connie Van Horn, which stated: "The seven claims listed on Mr. Crabb's statement, and in the affidavit of annual labor, are in addition to the 15 Mascot Creek claims included in mineral survey [application] F-23155 (M.S. 2367). The claims in the survey application already qualify for recordation under FLPMA."

2/ In its May 1985 decision, BLM stated that "location notices" for the three claims were filed with BLM on Oct. 19, 1979. The record indicates that location notices were not filed until Apr. 30, 1984. However, BLM apparently regarded the documents filed on that date as "other evidence, acceptable to the proper BLM office, of [the] instrument of recordation." 43 CFR 3833.0-5(i) (1979). This rule, which no longer appears in the regulations, was intended to apply in the case of claims held and worked pursuant to 30 U.S.C. § 38 (1982). See United States v. Haskins, 59 IBLA 1, 105, 88 I.D. 925, 978 (1981), aff'd, Haskins v. U.S. Department of the Interior, No. CV-82-2112-CBM (C.D. Cal. Oct. 30, 1984). There is some question whether the regulation was applicable in the case of a notice of location temporarily unavailable. Cf. Philip Sayer, 42 IBLA 296 (1979).

"suspend further action on [Maple Leaf's] filings" pending submission of the requested information. At the request of appellant, on June 5, 1984, BLM extended the time for submission of the information to August 7, 1984. In an August 21, 1984, notice, BLM again extended the time for submission of the information to February 7, 1985. In a January 29, 1985, notice, BLM granted a final extension to March 31, 1985.

Various documents have been submitted in response to BLM's second request. From these documents the following facts emerge. In a July 26, 1984, letter to BLM, Mascot's attorney stated that the three mining claims were "first located by Vincent Knorr, et al." on September 3, 1958. The claims had been located at a time when adjoining claims were leased "to AS&B Mining Company, operated by Andy Schwaesdall" pursuant to a December 23, 1950, lease. A copy of the 1950 lease was submitted (Exh. E attached to July 1984 letter). Knorr leased "15 claims on Mascot Creek" to "Andy Schwaesdall and E. J. Akeson and Erick Brunholm, known as A.S. and B. Mining Co. of Fairbanks, Alaska." However, the lease does not set forth the claim names. ^{3/}

The record contains proofs of labor filed by Knorr with the local recording district from 1959 to 1964, naming 16 mining claims. However, the proofs of labor do not name the three claims at issue and the record does not contain any notice or certificate of location filed by Knorr with respect to the three mining claims.

By quitclaim deed dated May 9, 1969, Knorr conveyed the 16 mining claims to William H. Nordeen (Exh. D attached to July 1984 letter). Again, the three claims at issue are not named in the deed. The record also contains affidavits of annual labor filed by Nordeen with the local recording district from 1968 to 1975 for the 16 mining claims conveyed in 1969. By quitclaim deed dated October 16, 1980, Nordeen conveyed 19 mining claims (again not including the three claims) to Maple Leaf, pursuant to a February 26, 1976, "Mining Lease and Purchase Agreement" (Exhs. B and C attached to July 1984 letter). The record contains proofs of labor filed between 1976 and 1978 on behalf of Maple Leaf or Maple Leaf and Nordeen with respect to certain of these 19 claims. The proofs of labor filed by Nelson on behalf of Maple Leaf between 1979 and 1982 include the three mining claims involved herein.

In his July 1984 letter, Mascot's attorney asserted that the three claims were actually located by "Schwaesdall and his employees" during the term of the December 1950 lease from Knorr:

There is language in the lease to AS&B Mining Company to the effect that the lessee covenants not to locate and record claims on the property. This covenant was evidently breached by the location of Nos. 6, 7, and 8 Below Discovery during the term of

^{3/} It is quite possible that the 15 mining claims subject to the December 1950 lease were the same claims included in the mineral survey application. See note 1.

the lease, and by this breach those claims could be considered to be held in a constructive trust in favor of Knorr pursuant to the covenant not to locate other claims in the property area of interest.

The actual language of the December 1950 lease required the lessees "to not locate or record said mining property." (Emphasis added.) Aside from whether there could arise a constructive trust in favor of Knorr, there is some question whether the "property" included the three mining claims in question, where there is no evidence Knorr ever located or asserted an interest in the claims located by Schwaesdall, et al. Moreover, there is no evidence that Knorr ever conveyed any interest in these mining claims to Nordeen or Maple Leaf. Rather, the record indicates that "Schwaesdall and his employees" independently located these claims. The record contains an affidavit of annual labor for the three claims which Schwaesdall filed with the local recording district in 1960. That affidavit lists the owners of the claims as Schwaesdall, James, Johnson, and Eugene Earnest. There is no evidence that a proof of labor was filed for the claims at issue between 1961 and 1978.

We turn next to Mascot's claim of an interest in the three mining claims. By lease dated September 3, 1982, Maple Leaf leased the three claims at issue and the other 19 claims to Mascot for a term of 10 years "and so long thereafter as gold and other valuable minerals are capable of commercial production therefrom." The lease contains a warranty of title, but no option to purchase in favor of Mascot or restriction on Mascot's right to acquire additional land. By instrument dated October 7, 1982, Mascot assigned the September 1982 lease to Cinco Mining. On December 13, 1984, Cinco Mining released its interest in the September 1982 lease to Mascot.

By quitclaim deed dated February 11, 1985, James R. Johnson conveyed "all his right, title, and interest" in the three mining claims to Mascot. In a February 11, 1985, affidavit, Johnson stated that the claims were located on September 3, 1958, by the "partnership" of Johnson, Schwaesdall, James, and Earnest. Johnson also stated that Schwaesdall had died in 1968 and he had been unable to locate James. Similarly, by quitclaim deed dated March 15, 1985, Eugene Earnest conveyed "all his right, title, and interest" in the claims to Mascot.

In its May 1985 decision, addressed to Maple Leaf, BLM stated that the claims "lie within an area encompassed by protracted T. 31 N., R. 13 W., Fairbanks Meridian, Alaska," which had originally been withdrawn from mineral entry by Public Land Order (PLO) No. 5184, 37 FR 5588 (Mar. 16, 1972), on March 15, 1972. This land, BLM stated, was then withdrawn from mineral entry by PLO 5213, 37 FR 11244 (June 6, 1972), on June 5, 1972, and selected by Doyon Limited, a Native regional corporation (F-21906-03) on December 18, 1975, which selection segregated the land from mineral entry. BLM declared the three mining claims null and void and rejected the recordation filings because the record contained an "insufficient showing * * * that [Maple Leaf] is a successor to an unbroken chain of legal title to the claims extending

back before the initial withdrawal of the land on March 15, 1972," citing Grace P. Crocker, 73 IBLA 78 (1983), and other cases. 4/

On June 20, 1985, Mascot as "owner of the claims" filed a notice of appeal from the May 1985 BLM decision. In its statement of reasons for appeal, Mascot contends that the two quitclaim deeds from Johnson and Earnest (the two surviving members of the partnership which had located the three mining claims) constitute prima facie evidence of "an unbroken chain of title from the original locators" asserting: "At a minimum, [Mascot] obtained a 50% undivided interest in the subject claims from two of the four partnership interests. [Mascot] could still obtain a patent to 100% undivided interest in the subject claims by forfeiting the interests of the remaining co-owners under the provisions of 30 U.S.C. § 28." Mascot also asserts that the claims are valid existing rights which predate the withdrawals cited by BLM, challenges the efficacy of the withdrawals to affect the claims and contends that BLM's decision is arbitrary, capricious, and a violation of appellant's due process rights.

Mascot claims an ownership interest in the three mining claims as a successor in interest to the partnership of Schwaesdall, James, Johnson, and Earnest, the original locators of the claims. 5/ We accept that the claims were located on behalf of the partnership, although locators were individually named on the location notices. Proof of the existence of a mining partnership can be inferred from the February 1985 affidavit of Johnson and the 1960 affidavit of annual labor signed by Andy Schwaesdall. However, the only documents in the record which constitute a conveyance of an interest of a member of the partnership or the partnership as a whole are the February and March 1985 quitclaim deeds from Johnson and Earnest to Mascot.

Although there is no indication that Schwaesdall and James conveyed their interest in the claims to Mascot, it is within the realm of reasonable probability that Johnson and Earnest may have a contingent right to become the sole owners of the claims by virtue of a forfeiture of the interests of James and Schwaesdall pursuant to 30 U.S.C. § 28 (1982) for failure to contribute their proportion of annual expenditures for assessment work, or by

4/ BLM also noted that there are "no affidavits of labor recorded in the Fairbanks recording office from 1960 to 1978." This statement does not appear to be the basis for the BLM decision and, indeed, prior to enactment of section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982), on Oct. 21, 1976, there was no Federal requirement to file an affidavit of assessment work with BLM and the local recording district. The initial filing of a proof of labor with respect to the three claims with BLM, as well as with the local recording district, was made in October 1979, prior to the statutory deadline. Thus, the Federal filing requirement did not accrue until that time. 5/ Appellant's attorney no longer advances the theory of a constructive trust in favor of Knorr, which gave rise to an equitable interest which then passed to Nordeen and then to Maple Leaf. Indeed, there is no evidence that Knorr or Nordeen ever asserted an interest in the three claims.

virtue of an oral or written transfer of their partnership interest.

However, these facts are not reflected in the record. ^{6/} See generally American Law of Mining, Vol. 4, § 22.36 (1982). Accordingly, the quitclaim deeds from Johnson and Earnest would convey whatever ownership interest existed at the time of conveyance.

[1] Assuming for the moment Maple Leaf has an ownership interest in the claims, and the required statutory filings have been made, ^{7/} the May 1985 BLM decision raises the question of whether Maple Leaf's chain of title originated prior to the various withdrawals.

BLM concluded that PLO 5184 withdrew the land in T. 31 N., R. 13 W., Fairbanks Meridian, Alaska, from mineral entry, subject to valid existing rights. However, the copy of the historical index for this township states that the withdrawal by PLO 5184 was "[n]oted in error."

PLO 5213 clearly withdrew the land from mineral entry, subject to valid existing rights. The township is described in the withdrawal order. See 37 FR 11244 (June 6, 1972). That withdrawal remains in effect. Allan Kaiser, 72 IBLA 387 (1983). Appellant argues that the withdrawal did not apply to locations for metalliferous minerals because it was issued under the authority of section 17(d)(1) of the Alaska Native Claims Settlement Act (ANCSA). However, there is no such limitation in the withdrawal order.

The master title plat confirms the land was selected by the Doyon Regional Corporation. In its May 1985 decision, BLM stated that Doyon had selected the land under the authority of section 11 of ANCSA, 43 U.S.C. § 1610 (1982). Standing alone, section 11 of ANCSA contains no authority to make a Native regional corporation selection. Basil S. Bolstridge, 90 IBLA 54 (1985). Section 11 withdrew land for selection by Native village and regional corporations. The statutory authority for regional corporation land selection is found at sections 12 and 14 of ANCSA, 43 U.S.C. §§ 1611, 1613 (1982). However, only section 14 selections by regional corporations are afforded segregative effect. Basil S. Bolstridge, supra at 56. Accordingly, we can attribute no segregative effect to the selection application filed pursuant to section 11 of ANCSA. Land will be considered segregated from mineral entry only by the filing of a regional corporation selection pursuant to section 14 of ANCSA, as amended, 43 U.S.C. § 1613 (1982). See 43 CFR 2653.2(d); Basil S. Bolstridge, supra.

^{6/} Since Jan. 20, 1977, the Department has required notice of the transfer of an interest in a mining claim. 43 CFR 3833.3 (42 FR 5302 (Jan. 27, 1977)). Thus, it is unlikely that any transfer of the remaining interests of Schwaesdall and James occurred since that time.

^{7/} In this light, the case might be viewed as an appeal by Mascot, as a lessee of the claims, on behalf of Maple Leaf. However, the notice of appeal does not purport to be an appeal on Maple Leaf's behalf. Accordingly, in the absence of an appeal by Maple Leaf, the May 1985 BLM decision is final and conclusive as to Maple Leaf's interest in the claims. 43 CFR 4.411(c); B. L. & Norma Jean Newman, 92 IBLA 314 (1986).

The master title plat further indicates that the entire township was withdrawn on December 2, 1980, subject to valid existing rights, as part of the Gates of the Arctic National Park and Preserve, pursuant to section 201 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. § 410hh (1982). Such designation withdrew the land "from all forms of appropriation or disposal under the public land laws, including location, entry, and patent under the United States mining laws." 16 U.S.C. § 410hh-5 (1982). Thus, giving Maple Leaf the benefit of the doubt, this land was withdrawn from mineral entry on December 2, 1980. See Mac A. Stevens, 83 IBLA 164 (1984).

Maple Leaf's chain of title must, therefore, at least originate prior to withdrawal of the land by ANILCA on December 2, 1980. As noted supra, the record contains no document conveying any ownership interest in the three mining claims located in 1958 to Maple Leaf. Even assuming that Knorr constructively owned the claims, there is no evidence that he then conveyed this interest to Maple Leaf or a predecessor in interest. The record can more readily be interpreted to justify a finding that, if Knorr ever held an interest in the claims, at some time prior to 1979, he abandoned his interest. Thus, we must conclude that the record does not demonstrate a chain of title from Knorr to Maple Leaf which predates the ANILCA withdrawal. Cf. Hugh B. Fate, Jr., 86 IBLA 215 (1985); R. J. Wall, 68 IBLA 122 (1982). In essence, the record does not demonstrate that Maple Leaf holds any valid existing rights which existed at the time of withdrawal. BLM properly held that the claims, to the extent they are owned by Maple Leaf, are void. 8/ Cf. R. Gail Tibbetts v. Bureau of Land Management, 62 IBLA 124 (1982).

[2] Section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1982), requires the "owner of an unpatented * * * placer mining claim" located prior to October 21, 1976, to file a copy of the notice or certificate of location with BLM "within the three-year period following October 21, 1976." In addition, section 314(a) of FLPMA requires the "owner of an unpatented * * * placer mining claim" located prior to October 21, 1976, to file evidence of assessment work or a notice of intention to hold a mining claim "within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter." 43 U.S.C. § 1744(a) (1982). Failure to file the required documents is deemed "conclusively to constitute an abandonment of

8/ Mascot also contends that BLM lacks the statutory authority to inquire into a mining claimant's chain of title. We disagree. Although there is no express statutory authority to this effect, such inquiry is crucial to a determination of the validity of outstanding mining claims on public land which has been withdrawn from mineral entry. The question most often arises in the case of a purported amended location after the withdrawal, but is applicable in the case of any outstanding location. See United States v. Consolidated Mines & Smelting Co., 455 F.2d 432, 448-49 (9th Cir. 1971); Hugh B. Fate, Jr., 86 IBLA 215 (1985). As the Supreme Court stated in Cameron v. United States, 252 U.S. 450, 461 (1920): "[T]he power of the department to inquire into the extent and validity of the rights claimed against the Government does not cease until the legal title has passed."

the mining claim * * * by the owner." 43 U.S.C. § 1744(c) (1982). The claim is thereby rendered void. 43 CFR 3833.4(a).

The statute does not define the term "owner." However, the Department has long defined the term to mean the "person who is the holder of the right to sell or transfer all or any part of the unpatented mining claim." 43 CFR 3833.0-5(e) (1979). It is apparent from the record that, in 1979, when it filed the mining claim recordation documents, Maple Leaf alleged an ownership interest in the three mining claims. Again, by instrument dated September 3, 1982, Maple Leaf leased various placer mining claims "owned by Lessor" (including the three claims) to Mascot. However, there is no evidence of a chain of title in the record indicating how Maple Leaf acquired the ownership interest in the claims it alleged in 1979, when it filed the evidence in lieu of a notice of location (see note 2) and when it filed the initial proof of labor. 9/

Mascot and its predecessor in interest under the quitclaim deeds plainly did not file the required mining claim recordation documents on their own behalf. Moreover, there is no indication in the record that Maple Leaf had sufficient privity of title with respect to the three claims at the time of its 1979 filings such that Mascot can now take advantage of the 1979 filing by Maple Leaf. Cf. Red Mountain Mining Co., 85 IBLA 23, 27 (1985). Finally, there is no evidence that Maple Leaf was acting as an agent for Mascot. Filing by an agent is envisioned by section 314(c) of FLPMA which provides that there shall be no failure to file "if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim." 43 U.S.C. § 1744(c) (1982) (emphasis added). There is no showing of any contractual relationship between Mascot and Maple Leaf in 1979 which would create an agency relationship.

To the extent that Mascot is now the "owner" of the claims, we must conclude that Mascot's predecessor in interest did not comply with the statutory filing requirement, and the mining claims are deemed abandoned and void. Ralph C. Memmott, 88 IBLA 363 (1985); John W. Finn, 87 IBLA 55 (1985); George Stillman, 49 IBLA 150 (1980); Warren D. Elmore, 42 IBLA 91 (1979). As we said in Comstock Tunnel & Drainage Co., 87 IBLA 132, 134 (1985): "In section 314 of FLPMA, Congress assigned the owner of the claim the responsibility for making the required filings; the owner must bear the consequence of filings not timely made."

Appellant argues that the mining claims are property which cannot be taken from appellant without due process of law and that voiding the claims constitutes an unconstitutional taking. We disagree. In United States v. Locke, 471 U.S. 84, 108 (1985), which considered the constitutionality of section 314 of FLPMA, the Court concluded that the statute, which is self-operative, affords claimants "with all the process that is their constitutional due."

9/ To the extent that Maple Leaf and Mascot may both be asserting an ownership interest in the three claims, the Department is clearly not the appropriate forum for the resolution of these apparently rival interests. Sandra Memmott (On Reconsideration), 93 IBLA 113 (1986), and cases cited therein.

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.

R. W. Mullen
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Kathryn A. Lynn
Administrative Judge
Alternate Member

