

LANDMARK EXPLORATION CO.

IBLA 85-791

Decided April 29, 1987

Appeal from a decision of the New Mexico State Office, Bureau of Land Management holding oil and gas leases to have expired by operation of law. NM 3814 (OK), NM 0560010 (OK).

Affirmed.

1. Board of Land Appeals -- Estoppel

A party asserting a claim of estoppel based on a misrepresentation must be ignorant of the true facts and his reliance on the misrepresentation must be reasonable under the circumstances. Where appellant knew certain oil and gas leases were allegedly expired for lack of production from a communitized well, BLM will not be estopped to hold the leases expired based on a representation of a BLM employee without knowledge of the production status that, based on the records, the leases were in effect.

2. Oil and Gas Leases: Bona Fide Purchaser -- Oil and Gas Leases: Termination

The provision of 30 U.S.C. § 184(h)(2) (1982) protecting the interests of bona fide purchasers from certain action by the Department to cancel an oil and gas lease is not applicable to expiration of a lease by operation of law under 30 U.S.C. § 226 (1982).

APPEARANCES: David W. Wulfers, Esq., Tulsa, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Landmark Exploration Company has appealed a decision dated June 28, 1985, by the New Mexico State Office, Bureau of Land Management (BLM), holding oil and gas leases NM 3814(OK) and NM 0560010(OK) to have expired by operation of law as of January 31, 1984.

Lease NM 0560010(OK) was issued with an effective date of June 1, 1966, and lease NM 3814(OK) was issued with an effective date of December 1, 1967. The lessee of record is L. R. French, Jr., who obtained the leases by

assignments approved in November and December 1975. The leases were committed to communitization agreement MC-570, approved May 28, 1976, with L. R. French, Jr., designated as operator. The agreement provided it was to remain in effect for a period of 2 years from December 1, 1975, and for so long thereafter as communitized substances were produced in paying quantities. The lease terms were subsequently extended by reason of production from the No. 1 Bouma well completed on private lands committed to the unit.

By letter dated April 10, 1984, the Associate District Manager of BLM's Tulsa District office advised French that the last reported production from the unit well (L. R. French No. 1 Bouma) had occurred in January 1982 and that for this reason communitization agreement MC-570 had expired on January 31, 1982. ^{1/} The Associate District Manager requested French to "notify all interested parties of this expiration."

Subsequently the BLM State Office issued the decision under appeal holding the leases expired January 31, 1984, two years after expiration of the communitization agreement, citing the regulation at 43 CFR 3107.4.

Appellant asserts in the statement of reasons for appeal that it obtained an interest in the leases from French by a farm-out agreement ^{2/} dated March 14, 1984, entitling appellant to an assignment of French's interest in the leases on completion of a producing well. Thereafter, appellant commenced drilling the Calvery No. 1-14 well on private lands formerly committed to the communitization agreement (MC-570) on July 2, 1984, and subsequently completed the well as a gas producer on August 20, 1984. The well is apparently shut-in awaiting pipeline connection. Appellant asserts it was subsequently assigned an undivided 15/16 interest in the French leases by agreement dated August 30, 1984. However, we note there is no indication in the record that BLM ever received a request for approval of assignment of an interest in the Federal leases to appellant.

Appellant further recites that on September 25, 1984, the Tulsa District Office wrote L. R. French, Jr., advising that appellant had completed the Calvery No. 1-14 as a gas well. BLM cautioned that as lessee of record French was required to protect leases NM 3014(OK) and NM 0560010(OK) from possible drainage and that in order to do so, he should submit a communitization

^{1/} The letter noted BLM had been advised in a Mar. 26, 1984, conversation with a named person in French's office that the well "would probably be plugged and abandoned."

^{2/} "A very common form of agreement between operators, whereby a lease owner not desirous of drilling at the time agrees to assign the lease, or some portion of it (in common or in severalty) to another operator who is desirous of drilling the tract. The assignor in such an agreement may or may not retain an overriding royalty or production payment. The primary characteristic of the farm-out is the obligation of the assignee to drill one or more wells on the assigned acreage as a prerequisite to completion of the transfer to him." H. Williams and C. Meyers, Oil and Gas Terms (6th ed. 1984) at 307-308.

agreement in which these leases could participate. In November 1984, appellant filed a new communitization agreement with the Tulsa District Office.

Subsequently, by memorandum of November 28, 1984, the Tulsa District Office requested the New Mexico State Director to advise it "of the correct status" of the instant leases. The State Office responded on June 28, 1985, stating in pertinent part as follows:

Status of the subject leases has been reviewed and the findings are that due to the termination of Communitization Agreement MC-570 on January 31, 1982, both leases were entitled to a two-year extension ending January 31, 1984, pursuant to 43 CFR Subpart 3107.4. However, no action was taken to extend them because the period had passed when the extension recommendation [report of termination of communitization agreement] was made to us on April 10, 1984.

Also on June 28, 1985, the State Office issued the decision here appealed. That decision, addressed to the lessee of record, L. R. French, Jr., declares:

The records of this office show that oil and gas leases NM 3814 (Okla.) and NM 0560010 (Okla.) were held by Production from No. 1 Bouma within Communitization Agreement MC-570.

Last Production within this Communitization Agreement was in January 1982. Therefore, the Communitization Agreement expired on January 31, 1982. The leases were entitled to a 2-year extension under 43 CFR 3107.4 ending January 31, 1984. There is no evidence in this office of any further activity that would serve to extend the leases beyond January 31, 1984. Accordingly, we consider the leases to have expired by operation of law as of January 31, 1984.

In the statement of reasons for appeal, appellant does not deny that application of the regulation at 43 CFR 3107.4 to the facts as now known supports a finding that the leases expired. Rather, appellant contends BLM, should be estopped to find the leases expired in light of the representations made to appellant, appellant's ignorance of the true facts, and appellant's detrimental reliance on the representations in drilling the gas well. Appellant has submitted a copy of a document dated June 7, 1984, signed by the Chief of the Public Assistance Unit, New Mexico State Office, BLM, reciting that records relating to oil and gas leases are maintained by the office and purporting to certify that the oil and gas leases at issue "are considered to be in full force and effect as of this date." Further, appellant contends it was advised orally by the BLM Tulsa District Office to wait until the new well was completed before filing a new communitization agreement.

In the alternative, appellant argues that it qualifies as a bona fide purchaser of the leases, having made reasonable inquiry resulting in no notice of any defect in the leases. Appellant asserts this status entitles the leases to statutory protection under the terms of 30 U.S.C. § 184(h)(2) (1982).

It is provided by section 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226(j) (1982), that "[A]ny lease which shall be in effect at the termination of any such * * * communitization * * * agreement, unless relinquished, shall continue in effect for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities." See 43 CFR 3107.4. There has been no assertion in this appeal that communitization agreement MC-570 did not terminate as a result of the failure of the earlier well committed thereto to produce in paying quantities after January 1982. Accordingly, since the Federal leases committed to the unit were already in their extended term by reason of production from the communitized well, they were subject to extension through January 31, 1984. Hence, as the BLM decision held, the leases expired on that date.

[1] As we noted in Ptarmigan Co., 91 IBLA 113 (1986), the Board has recognized that estoppel may lie against the Government in appropriate circumstances. The Board has frequently recited the elements of estoppel identified by the Ninth Circuit Court of Appeals in United States v. Georgia Pacific Co., 421 F.2d 92 (9th Cir. 1970):

Four elements must be presented to establish the defense of estoppel: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the facts; and (4) he must rely on the former's conduct to his injury.

Id. at 96 (quoting Hampton v. Paramount Pictures Corp., 279 F.2d 100, 104 (9th Cir. 1960)). Further, it is well established that estoppel against the Government in matters concerning the public lands must be based upon affirmative misconduct, such as misrepresentation or concealment of material facts. United States v. Ruby Co., 588 F.2d 697, 703 (9th Cir. 1978); D. F. Colson, 63 IBLA 221 (1982); Arpee Jones, 61 IBLA 149 (1982). Finally, we have noted that while estoppel may lie where reliance on Governmental statements deprived an individual of a right which he could have acquired, estoppel does not lie where the effect of such action would be to grant an individual a right not authorized by law. See Raymond T. Duncan, 96 IBLA 352 (1987); Edward L. Ellis, 42 IBLA 66 (1979).

In reviewing the application of the doctrine of estoppel to the facts of this case, we must start with the premise that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1982); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Coronado Oil Co., 52 IBLA 308, 312 (1981). Thus, where the material facts embrace the provisions of statute and regulations duly promulgated thereunder, actual ignorance of these facts is not a sufficient basis on which to predicate an estoppel. See Tom Hurd, 80 IBLA 107 (1984). Accordingly, appellant is properly charged with the knowledge that upon termination of the communitization agreement (MC-570), the leases would be subject to an extension for two years and so long thereafter as oil or gas is produced in paying quantities.

Appellant's agent acknowledges:

That Landmark was aware of various lessor and lessee demands that the leases held by the Bouma well were allegedly invalid for lack of production in paying quantities and in consequence of such information obtained a ratification of such leases and attempted by available means to verify the validity of the federal leases in the section.

(Affidavit, Exh. F to Statement of Reasons). Further, appellant clearly knew there were two separate BLM offices with responsibility for the status of the leases as it communicated with both the State Office in Santa Fe and the District Office in Tulsa. We find nothing misleading in the asserted acknowledgement of the Tulsa District Office in June 1984 that communitization agreement MC-570 was on file. This is not the same as an assertion the agreement is still in effect. Indeed, the advice to file a new communitization agreement upon completion of a new well would indicate the contrary as there could not be two communitization agreements simultaneously effective for the same lands and formations. The misstatement on which appellant's argument hinges is the June 7, 1984, "certification" by the Chief, Public Assistance Section, New Mexico State Office, that "Federal Oil and Gas Leases NM3814 (OK) and NM0560010 (OK) are considered to be in full force and effect as of this date." ^{3/} This statement was clearly wrong. However, we cannot find appellant was justified in relying on this opinion in light of the knowledge of the alleged invalidity of the leases for lack of production in paying quantities from the Bouma well and the involvement of the Tulsa District Office in monitoring operations under the communitization agreement.

Appellant characterizes the failure of the Tulsa District Office employee who knew of the termination of communitization agreement MC-570 (apparently referring to the author of the April 10, 1984, letter) to communicate this fact to other BLM employees as "unconscientious." The record indicates the information was in fact relayed, but there was a delay in notation of the State Office records. However, it must be emphasized that the April 10, 1984, BLM letter gave express notice of this fact to French, the lessee of record with BLM. Appellant acknowledges in its brief making "inquiry of French to assure itself that the Bouma well was either producing in commercial quantities or was otherwise being held by other provisions of the Leases." (Statement of Reasons at 8). Against this background, we can neither find that appellant was ignorant of the true facts regarding lease status nor reasonably justified in relying on the statement of the Chief, Public Assistance Section. The latter official, unlike appellant, was apparently unaware of the status of the Bouma well.

This case is fundamentally distinguishable from Brandt v. Hickel, 427 F.2d 53 (9th Cir. 1970), cited by appellant in support of the claim of

^{3/} The basis for the purported certification by the Chief, Public Assistance Section, is unclear. However, a June 28, 1985, memorandum from the Chief, Mineral Leasing Unit 1, New Mexico State Office, states the April 10, 1984, notice of termination was "not noted in our files" at the time of the certification.

estoppel. In Brandt, the court applied the doctrine of estoppel to reinstate an oil and gas lease offer improperly rejected by BLM where the failure to perfect an appeal from the erroneous rejection was induced by the representation that a new corrected offer could be filed without loss of priority. In Brandt, the failure to apply the doctrine of estoppel would have resulted in forfeiture of a right which appellant possessed at the time of the misrepresentation (right to adjudication of appellant's lease offer as first qualified offer) as a direct consequence of the misrepresentation. In the present case, the oil and gas leases had already expired by operation of law pursuant to the terms of statute, 30 U.S.C. § 226(j), and appellant had no rights in the leases which were prejudiced by the misstatement. The misstatements of BLM officials cannot be used as a basis to establish rights not authorized by law. 43 CFR 1810.3(c); see Edward L. Ellis, supra at 70-71. Accordingly, we must reject appellant's argument that BLM is estopped to find the leases expired.

[2] Appellant's alternate argument, concerning bona fide purchaser status, is not applicable to the situation here. First, there is no showing that appellant was a good faith purchaser without notice of defect in the leases. More significantly, the leases herein were not canceled; they terminated by operation of law because events required by statute to keep them in effect did not occur. The leases lapsed automatically, without action on the part of the Department, and 30 U.S.C. § 184(h)(2), is not available to resuscitate leases terminated by operation of law. see Estate of Arlyne Lansdale, 83 IBLA 190, 194 (1984).

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 affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

John H. Kelly
Administrative Judge