

HEIRS OF SKOOKUM JOHN

IBLA 88-243

Decided June 26, 1990

Appeal from a determination by the Alaska State Office, Bureau of Land Management, that a notice of location was insufficient to establish title to land described therein. AA 961.

Affirmed.

1. Alaska: Generally--Alaska: Possessory Rights

A notice of location filed in 1902 claiming occupancy of certain lands in Alaska is not a document conveying title. All possessory rights afforded by the Act of May 17, 1884, 23 Stat. 24, 26, and other similar Acts, terminate upon the cessation of actual use or occupancy.

APPEARANCES: Melba J. Wallace, Juneau, Alaska, for appellants; Dennis J. Hopewell, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Rosa Miller, Melba J. Wallace, and Ester G. Weimer, 1/ representing themselves as nieces and heirs of a deceased Alaskan Native named Skookum John, have appealed from a January 7, 1988, letter issued by the Alaska State Office, Bureau of Land Management (BLM), responding to their claim for certain lands described in a notice of location filed by Skookum John in 1902. The land claimed is presently part of the Tongass National Forest.

By letter dated November 30, 1987, appellants wrote to the Alaska State Office, BLM:

Enclosed please find a copy of a letter we wrote to Mr. Reed Gardner, Forest Service, Juneau, Alaska regarding our legal claim to Skookum Jim's valid claim to land located at Berners Bay, Alaska, which is self-explanatory.

Please take note the claim was filed July 5, 1902, Book 5, Pages 242 and 243, recorded in the First Judicial District.

1/ Initially, we would note that appellants offer no documentation to establish that they are the determined heirs of Skookum John or identify any additional heirs who may exist. Nothing in the case file shows that BLM disputed this asserted relationship.

We are also writing in regards to the Alaska National Interest Lands Conservation Act of December 2, 1980, Section 1301 and 1304(b)(2) which has just been brought to our attention, that the Forest Service in Juneau has granted several permits to Mr. Horst Schrcomm, Mr. Robert (Swede) Haffner, and Mr. Bernie Melvin, please notify them and others that we have a legal claim and for them and others to vacate the land.

In support of their claim, appellants filed with BLM a copy of Skookum John's notice of location.

It reads:

To whom it may concern: Notice is hereby given that I the undersigned Skookum John, an Alaska Indian, do hereby claim and locate the hereinafter described tract of land situated on the right hand side of the first river on the left hand side of the entrance of Berner's Bay in the District of Alaska. Said tract of land is claimed by me as a home for myself and family and as fishing station. And on said tract of land I have several houses which are used by me and been so used by me now since the year 1883. Said tract of land is more particularly described as follows:

Beginning at a post - on which this notice is posted on the right hand bank of said river at a point where said bank intersects the line of high tide of Berner's Bay; thence in a northwesterly direction along said right hand bank of said river a distance of one hundred and sixty rods to corner post No. 2 (two); thence in an easterly direction a distance of eighty (80) rods to corner post No. (3) three; thence in a southeasterly direction a distance of about one hundred and sixty (160) rods to corner post four (4) set on the line of high tide of Berner's Bay thence in a westerly direction along said line of high tide to place of beginning.

On January 7, 1988, BLM wrote to advise appellant Wallace that it had no records showing Skookum John had received title to the land. BLM pointed out that the recordation document was not a land conveyance and that in order for title to have passed there would have to be a deed or patent signed by an officer of the Department of the Interior. BLM informed Wallace that it had no records of an application filed by Skookum John under any legislation by which title could pass, and advised her to submit any information she might have on such an application to the State Office for review. In a letter dated January 21, 1988, the Realty Officer, BLM, wrote to Wallace and explained that the 1902 recording document did not convey title, and invited Wallace to file with BLM any other documentation in support of the claim.

On February 9, 1988, appellants, as heirs of Skookum John, filed a notice of appeal from the January 7, 1988, letter challenging BLM's determination "that Skookum John did not have title to the land in Berners Bay for which he applied on July 3, 1902."

The case file contains a typewritten document dated February 10, 1988, and signed by a BLM employee named Darrell whose last name of the signature is not legible. It reads in part: "After checking the Master Title Plats, Historical Indexes and automated records we can find no records of Skookum John having an application of any kind before the Department. The District sheets and Tract Books, from which current records were constructed, are no longer available." ^{2/} Appellants have submitted a copy of the recordation filing with the First Judicial District of Alaska, Book 8. The recordation does not include any reference to what legislation the claim is made under. The land is claimed "as a home for myself and family and as fishing station." The Board takes notice that patents of this period occasionally reserved salmon fishing rights in the same fashion ditches and canals, telephone and telegraph, minerals, etc., are commonly reserved. Thus, the above recordation may have been an attempt by Skookum John to locate and claim his fishing rights. BLM, noting that the location notice was filed in the "Placers" book, instead of the "Deed" book at the Recording Office, opined that the filing may have been "intended to be a mining claim" (BLM Letter to Melba Wallace, dated Jan. 21, 1988). Be that as it may, a recordation does not, in itself, pass title. For example, a mining claim recordation does not grant fee title to the land involved.

On July 21, 1988, appellants filed their statement of reasons for appeal. Therein, appellants essentially complain that the BLM decision failed to provide evidence to support the conclusion that Skookum John's notice of location did not establish that he obtained title to the land. Appellants do not address the contents of the February 10, 1988, BLM memorandum served on them by the Board, nor do they offer any additional evidence to establish that Skookum John did obtain title to the land described in his notice of location. Indeed, nowhere in the statement of reasons do appellants explain the rationale behind their challenge to the BLM determination, nor do they explicitly state why the BLM conclusion is erroneous.

In its answer, BLM argues that the appeal should be dismissed because the BLM letter appealed from, dated January 7, 1988, is not an appealable decision. BLM characterizes it as merely a response to inquiries. Further, BLM points out that Federal records do not reveal that an application for the land described in the notice of location was ever filed, concluding that since no application was filed there is no basis for a claim to the land which BLM may adjudicate. The record shows, however, that BLM did adjudicate the claim. Appellants claimed title to the land at issue based on a notice of location. BLM considered the merits of the claim, and concluded that appellants' ancestor did not obtain title to the land based on the notice of location, and requested additional information to support

^{2/} A copy of this document, which post-dates the decision appealed from, was originally not served on appellants. By order dated Apr. 14, 1988, the Board served a copy of the document on appellants and provided time for the filing of any response thereto.

the claim. Appellants filed an appeal from that determination. In the alternative, BLM argues that the 1902 notice of location could not give rise to a legal title.

[1] The Board has previously addressed issues similar to those existing in this appeal. In United States v. Flynn, 53 IBLA 208, 88 I.D. 373 (1981), we said:

The first source of Native rights arose from section 8 of the Act of May 17, 1884, 23 Stat. 26, which provided that Alaska Natives "shall not be disturbed in the possession of any lands actually in their use and occupation or now claimed by them." This provision accorded no permanent rights in the lands to the Natives, being only designed to protect their occupancy until such time as Congress should act further on the question of title to such lands. See Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 278 (1955). Moreover, the right of occupancy was deemed to provide no rights as against the United States. See United States v. Atlantic Richfield Co., [435 F. Supp. 1009, 1029-31 (D. Alaska 1977), aff'd, 612 F.2d 1133 (9th Cir. 1980)]; Alaska Commercial Co., 39 L.D. 597 (1911). See also Edwardsen v. Morton, 369 F. Supp. 1359, 1370 (D.D.C. 1973).

In order to more fully protect the rights of Alaska Natives, Congress adopted the Act of May 17, 1906, 34 Stat. 197, originally 43 U.S.C. §§ 270-1 to 270-3 (1970), generally referred to as the Native Allotment Act. That Act provided, in essence, for the allotment of up to 160 acres of land and granted a preference right as to such lands as were actually occupied by the Native. [Footnotes omitted.]

Id. at 224, 225; 88 I.D. 382, 383.

In Johnson v. Pacific Coast S.S. Co., 2 Alaska 224, decided by the First Division of Alaska located at Juneau on July 9, 1904, the court held that as of 1904 the evident purpose of Congress in its legislation in relation to the property rights of Indians in Alaska was to protect the Natives in the possession of lands continuously claimed and occupied by them, but up to this time Congress had not fixed the terms under which they might acquire title thereto. Id. at 241.

On appeal, appellants have not established that Skookum John made any claim to the land beyond the filing of the notice of location filed on July 5, 1902. Based on the record before us, appellants have failed to demonstrate that BLM improperly concluded that Skookum John did not obtain title to the land. It is not disputed that Skookum John was at one time in possession of the land described in the notice of location; however there is no record to establish that he sought to secure title to the land. Appellants have produced no evidence to contradict the BLM conclusion that Skookum John never filed an application to obtain title to the land. An appellant who does not with some particularity show adequate reason for appeal and, as appropriate, support the allegation with arguments

or evidence showing error cannot be afforded favorable consideration. Add-Ventures, Ltd., 95 IBLA 44, 50 (1986); United States v. Connor, 72 IBLA 254 (1983); Rocky Mountain Natural Gas Co., 55 IBLA 3 (1981). Conclusory allegations of error, standing alone, do not suffice. United States v. Fletcher DeFisher, 92 IBLA 226 (1986).

Appellants mistakenly believe that the notice of location established an interest in the land which continued beyond actual possession and which at some point evolved into a title to the land. There is nothing in the record to support this position. The letters from BLM attempted to explain the nature of the interest in the land Skookum John held based on the 1902 notice of location. Appellants nevertheless are inclined to pursue their theory of entitlement even though they can point to no statutory authority by which Skookum John could conceivably have applied for or obtained title to the land based on the 1902 notice of location. The February 10, 1988, document included in the case file provides a reasonable explanation as to what the notice of location intended to accomplish. It was not an instrument which could establish title to the land; it was merely notice to the world that Skookum John was in possession of the land. Obviously, when he was no longer in possession of the land, his interest in the land derived from the 1902 notice of location would cease to exist.

In summary, there is no evidence that Skookum John ever filed a claim for the land with any Federal agency. Thus, appellants' claim, based on the 1902 notice of location, is untenable. As noted above, no provision had been mandated by Congress in 1902 or earlier under which Alaska Natives could acquire title to lands in Alaska. Johnson v. Pacific Coast S.S. Co., *supra*. Without such a provision, no inheritable interest in public lands could have been acquired by Skookum John. See United States v. City of Kodiak, 132 F. Supp. 574 (D. Alaska 1955).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed.

Gail M. Frazier
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge