

WALTER W. BENDER

IBLA 98-335

Decided October 22, 1998

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting Class 2 Color-of-Title application WYW 143373.

Affirmed as modified.

1. Color or Claim of Title: Generally—Color or Claim of Title: Applications

Under 43 U.S.C. § 1068(b) (1994), a class 2 color-of-title claim requires, *inter alia*, that the tract applied for has been held in peaceful, adverse possession by the claimant, his ancestors, or grantors, under claim or color of title for the period commencing not later than Jan. 1, 1901, to the date of application. No valid class 2 color-of-title claim is presented where the earliest possible date of commencement of adverse possession was long after Jan. 1, 1901.

2. Color or Claim of Title: Generally—Color or Claim of Title: Adverse Possession

A tax title has nothing to do with the previous chain of title and does not in any way connect itself with it. It is a breaking up of all previous titles, legal and equitable.

APPEARANCES: Yvonne Wade Nagel, Esq., Laramie, Wyoming, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Walter W. Bender (Bender or Appellant) has appealed an April 30, 1998, Decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his class 2 color-of-title application WYW 143373, filed under the Color of Title Act of December 22, 1928, as amended, 43 U.S.C. § 1068 (1994).

In his application, filed on October 7, 1997, Bender described 41 acres, more or less, in secs. 19 and 20, T. 14 N., R. 85 W., Sixth

Principal Meridian, in Carbon County, Wyoming. Bender asserted ownership through a deed recorded on November 17, 1962, conveying the land to his parents and a warranty deed recorded on September 12, 1973, by which the property was conveyed to him. Bender also submitted tax payment records.

Bender stated in his application that he first learned he did not have clear title to the land when he was so informed by a letter from the Wyoming State Director, BLM, of June 20, 1996. In that letter, BLM answered a request, filed by U.S. Forest Service District Ranger, Don G. Carroll, as to the status of two lode claims (the Quo Vadis and Vendetta) within mineral survey #275, secs. 19 and 20, T. 14 N., R. 85 W. In his letter, the State Director stated that Mineral Survey No. 275 was completed on November 28-29, 1903, and approved on February 11, 1904. The Chicago Venture Mining Company owned the mining claims and patent was applied for on January 27, 1909. That application was rejected on February 11, 1913. On March 11, 1913, Chicago Venture was notified of the rejection and the case was closed.

The State Director further advised Carroll that BLM records failed to show that the mining claims had been recorded with BLM as required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1994). The State Director noted that the Bender family had bought certain lands, including the 40.867 acres in Mineral Survey No. 275, in a Carbon County tax sale, and that that sale was apparently in error because those lands had never left Federal ownership.

In its Decision, BLM stated that Bender's claim was based on a chain of title originating with the location certificates for the Quo Vadis and Vendetta lode claims recorded in Carbon County on November 4, 1898, and May 16, 1899, respectively. Citing Purvis C. Vickers, 67 I.D. 110 (1960), BLM rejected Bender's claim because it found that he had not held it in good faith, since land subject to mining claims could not be held in good faith. Purvis C. Vickers held that a class 1 claimant who had filed a homestead application or located mining claims on the land could not be said to be holding the land in good faith under the Color-of-Title Act.

Bender's chain of title begins with a tax deed. That conveyance indicates that Carbon County, Wyoming, bought the lands at a tax sale on May 23, 1934, when no bids were received. Bender's parents purchased the property at a private sale from the Board of County Commissioners of Carbon County on October 7, 1937. The deed associated with that conveyance lists the mining claims and gives their legal description. It also explains that the purpose of the sale was to collect unpaid taxes due on the property. The warranty deed of November 14, 1962 (recorded Nov. 17) was a conveyance by Lucy Bender to Walter Winant Bender and Lucy Bender Alcorn. The deed named the mining claims and listed the mineral survey number. Bender acquired the property by warranty deed of August 28, 1973, from Truth B. Alcorn. That deed described the property as "Vendetta Sur. #275, Section 20; Quo Vadis Sur. #275 Sections 19 and 20 (41 A.) T 14 R. 85.)"

Citing Thomas Doyle Jones, Jr., 125 IBLA 230 (1993), Bender asserts in his statement of reasons (SOR) that it is the good faith of the color-of-title applicant and not necessarily his predecessor grantees of the land for which application is made that is relevant. Bender asserts that he does, in fact, meet the good faith requirement, in that he did not know, at the time of conveyance to him, that title was in fact in the Government. Bender suggests that the facts in this case "can only impute good faith occupancy." (SOR at 5.) Those facts, he states, are that locally assessed taxes have been paid since at least 1901 and that the majority of the taxes were paid by Bender and his parents. No reasonable person, Bender contends, "would make this type of investment with the knowledge that the United States held title to the property." (SOR at 5.)

A class 2 color-of-title claim is described in 43 C.F.R. § 2540.0-5(b) as follows:

(b) * * * A claim of class 2 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his successors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application, during which time they have paid taxes levied on the land by State and local governmental units.

An applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met. Hal M. Memmott, 77 IBLA 399, 402 (1983); Jeanne Pierresteguy, 23 IBLA 358, 83 I.D. 23 (1976); Homer W. Mannix, 63 I.D. 249 (1956). The applicant must establish that each of the requirements for a color-of-title claim have been met. A failure to carry the burden of proof with respect to one of the elements is fatal to the application. See Lester and Betty Stephens, 58 IBLA 14 (1981).

[1, 2] The BLM properly determined that Appellant had no valid class 2 claim, but based this determination on a lack of good faith resulting from the two mining claims present on the property, which BLM claims should have placed Appellant on notice of the interest of the United States in the property. In fact, BLM need not have considered the mining claims, as the Appellant's chain of title originated in a tax sale long after January 1, 1901. To prevail under a valid class 2 claim, such claim must have originated no later than January 1, 1901. 43 C.F.R. § 2540.0-5(b); Estate of John C. Brinton, 71 IBLA 160 (1983). A color-of-title claim requires peaceful adverse possession in good faith by a claimant or the claimant's predecessors in interest under claim or color of title for the prescribed period of time. The claim or color of title must be based upon a document which on its face purports to convey the claimed land to the applicant or the applicant's predecessors in interest. Camrine M. Warren, 69 IBLA 347 (1982). The first relevant document of conveyance submitted by Appellant was a conveyance to the county in 1934 which was the result of a failure to pay taxes. This conveyance cannot be used to

establish a class 2 color of title, however, as a tax deed extinguishes the former title to the land and initiates new title. Tax title has nothing to do with the previous chain of title and does not in any way connect itself with it. It is a breaking up of all previous titles, legal and equitable. See Wood v. Mayo, 121 So.2d 503 (La. 1960); Harrison v. Everett, 308 P.2d 216 (Colo. 1957); Green v. Esquibel, 272 P.2d 330 (N.M. 1954); Estate of John C. Brinton, 25 IBLA 283 (1976); Eustayce and Goldie Leonard, A-30573 (Aug. 3, 1966); Russell A. Beaver, 71 I.D. 114 (1964). We conclude that the first document which could be used by Appellant as the basis for the color-of-title claim was the deed from the county to Appellant's parents dated October 7, 1937. See Hal H. Memmott, *supra*, at 402. Appellant clearly does not have a class 2 color-of-title claim, because his chain of title does not extend back to January 1, 1901, but not because of mineral claims on the land. The BLM Decision appealed from is modified accordingly.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed as modified.

James P. Terry
Administrative Judge

I concur.

Will A. Irwin
Administrative Judge

