



INTERIOR BOARD OF INDIAN APPEALS

Pinoleville Indian Community v. Acting Sacramento Area Director,  
Bureau of Indian Affairs

26 IBIA 292 (10/25/1994)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

PINOLEVILLE INDIAN COMMUNITY

v.

ACTING SACRAMENTO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 94-81-A

Decided October 25, 1994

Appeal from a decision declining to adjust the rent in a lease of tribal land.

Affirmed.

1. Indians: Leases and Permits: Rental Rates

The rental adjustment provision in 25 CFR 162.8 does not apply to those leases of Indian lands for which nominal rentals are authorized and approved under 25 CFR 162.5 (b)(1) or (2).

2. Contracts: Construction and Operation: Generally--Indians:  
Contracts: Generally--Indians: Leases and Permits: Generally

In discerning the intent of the parties to a contract, one must start with the language of the contract.

3. Contracts: Construction and Operation: Generally--Indians:  
Contracts: Generally--Indians: Leases and Permits: Generally

An ambiguity in a written contract can be overcome by the contemporaneous actions and understandings of the parties to the contract.

APPEARANCES: David L. Bergren, Esq., Fair Oaks, California, for appellant; David J. Rapport, Esq., Ukiah, California, for the Northern Circle Indian Housing Authority.

## OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Pinoleville Indian Community (Community) seeks review of a February 4, 1994, decision of the Acting Sacramento Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to adjust the rent in a lease between the Community and the Northern Circle Indian Housing Authority

(Northern Circle). 1/ For the reasons discussed below, the Board affirms the Area Director's decision.

On August 27, 1987, the Community and Northern Circle entered into an agreement in which Northern Circle agreed to purchase a tract of land within the Pinoleville Rancheria and convey it to the United States in trust for the Community; and the Community agreed to enter into a lease of the tract to Northern Circle for a period of 25 years, with a provision for renewal or extension for another 25 years. The agreement provided that Northern Circle would use the tract for administrative offices, a maintenance garage, and related facilities. It further provided, at paragraph 2.b, that "[r]ent for the full term of the lease, including the renewal or extension term shall be \$1.00 per year, payable on April 1 of each year."

The agreement was transmitted to BIA on December 8, 1987, by Northern Circle's attorney. The letter of transmittal stated in part:

Nominal rent is justified under 25 C.F.R. 162.5(b)(2), [2/] because the property will be used exclusively for "public purposes." Northern Circle operates as the Housing Authority for the Pinoleville Indian Community and as such is a branch of the tribal government. In addition, Northern Circle is purchasing the property for \$50,000 and plans to construct a \$250,000 facility on the land, which will become the property of the Tribe. At the expiration of the lease both the land and the building will be available to the Tribe to use for tribal purposes. Since Northern Circle is investing \$300,000 in the acquisition of land and improvements for the benefit of the Tribe, this initial investment should be considered adequate compensation over the term of the lease. No additional rental is justified.

(Attorney's Dec. 8, 1987, Letter at 1-2).

Using funds derived from a HUD grant, Northern Circle purchased the 2.84-acre tract from a tribal member, who owned it in fee status. On March 10, 1988, the seller executed a deed conveying the property to the United States in trust for the Community. The conveyance was accepted by the Superintendent, Central California Agency, BIA, on March 22, 1988. On August 3, 1988, the Superintendent approved the lease at issue in this appeal.

The lease is a standard BIA lease, prepared on a printed form. In the space for amount of rent, the typewritten phrase "\$1.00 for each year of the

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1/ Northern Circle is a multi-tribal Indian housing authority established by ordinance of its member tribes under regulations promulgated by the U.S. Department of Housing and Urban Development (HUD). See preamble to Aug. 27, 1987, agreement discussed infra.

2/ 25 CFR 162.5(b)(2) is quoted infra.

25 year term” appears. Another typewritten entry states, with respect to the 25 year term: “With option for 25 year renewal pursuant to [paragraph] 14.” Paragraph 14 appears to be a standard paragraph but is included on a page of supplemental provisions, not on the printed form. It provides:

This lease may be renewed at the option of the lessee for an additional term of not to exceed 25 years, commencing at the expiration of the original term of this lease, upon the same conditions and terms as are in effect at the expiration of the initial term, provided that said notice shall be provided by the lessee to the lessor and the Superintendent, in writing at least sixty (60) days prior to the expiration of this lease.

Paragraph 7 is a part of the printed BIA lease form. It provides:

RENTAL ADJUSTMENT.--The rental provisions in all leases which are granted for a term of more than five years and which are not based primarily on percentages of income produced by the land shall be subject to review and adjustment by the Secretary at not less than five-year intervals in accordance with the regulations in 25 CFR [Part] 131 [now Part 162]. Such review shall give consideration to the economic conditions at the time, exclusive of improvement and development required by this contract or the contribution value of such improvements.

In June 1993, the Community requested the Superintendent to prepare an appraisal for the purpose of adjusting the rental under paragraph 7 of the lease. Following correspondence with the Community and Northern Circle, the Superintendent informed the Community that its request for an appraisal would not be acted upon because the lease reflected the intent of the parties to enter into a lease for a nominal rental for the entire term of the lease.

The Community appealed this decision to the Area Director, who affirmed it on February 4, 1994. The Community then appealed to the Board.

This appeal was docketed on April 8, 1994. Both the Community and Northern Circle filed briefs.

### Discussion and Conclusions

The Community contends: (1) Paragraph 7 is an integral part of the lease and therefore, BIA must implement it; (2) the Community did not intend to agree to the nominal rental for the entire term of the lease; and (3) as a matter of equity, the rental should be reviewed for reasonableness.

The lease between the Community and Northern Circle was approved under authority of 25 CFR 162.5(b)(2), which provides:

In the discretion of the Secretary, tribal land may be leased at a nominal rental for religious, educational, recreational, or other public purposes to religious organizations or to agencies

of Federal, State, or local governments; for purposes of subsidization for the benefit of the tribe; and for homesite purposes to tribal members provided the land is not commercial or industrial in character.

[1] Rental adjustments are governed by 25 CFR 162.8, which provides: “Except for those leases authorized by § 162.5(b)(1) and (2), unless the consideration for the lease is based primarily on percentages of income produced by the land, the lease shall provide for periodic review, at not less than five-year intervals, of the equities involved” (Emphasis added). As noted above, paragraph 7 of the Community’s lease is a standard paragraph in BIA leases and is included in the printed lease form. Thus, it is necessarily written in general terms appropriate for all leases. By providing that rental reviews shall be conducted in accordance with the regulations in 25 CFR Part 162, it incorporates the provisions of Part 162. Pursuant to Part 162, leases approved under section 162.5(b)(2) are specifically excepted from the rental adjustment requirements of section 162.8. Thus, paragraph 7 of the Community’s lease, when read properly, i.e., in conjunction with the regulations in Part 162, does not require that the rental in the Community’s lease be adjusted. The Board rejects the Community’s contention that BIA was required by paragraph 7 to adjust the rental in the Community’s lease. 3/

[2] The Community next contends that it did not intend to agree to the nominal rental for the entire term of the lease. As in any case in which a contract is to be construed, the language of the contract itself is the starting point for discerning the intent of the parties. See, e.g., Nevaco, Inc. v. Acting Phoenix Area Director, 24 IBIA 157 (1993); 17A Am. Jur. 2d Contracts § 352 (1991); 17A C.J.S. Contracts § 296 (1963). As noted above, the rental provision in the lease states that the rental is to be “\$1.00 for each year of the 25 year term.” Further, the lease authorizes a 25-year renewal “upon the same term and conditions as are in effect at the expiration of the initial term.” The language of the lease reflects an intent to maintain the nominal rental throughout the term of the lease.

Other documents also manifest this intent. The August 27, 1987, agreement signed by the Community’s Chairperson states that “[r]ent for the full term of the lease, including the renewal or extension term shall be \$1.00

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3/ Assuming arguendo that paragraph 7 could be read to require rental adjustments in the case of leases approved under 25 CFR 162.5(b)(2), the Community would still not prevail here. If so read, paragraph 7 would be in conflict with the typewritten rental provision in the lease. It is black letter law that, where there are inconsistencies between parts of a lease, some of which are printed and some of which are written or typed, the words in writing or typing will control. The reason for this is that the “written or typed words are the immediate language and terms selected by the parties themselves for the expression of their meaning, while the printed form is intended for general use without reference to particular objects and aims.” 17A Am. Jur. 2d Contracts § 395 (1991). See also 17A C.J.S. Contracts § 310 (1963).

per year." A resolution enacted by the Community's Governing council on March 6, 1988, states in relevant part:

WHEREAS: on August 27, 1987, the Governing Council of the Pinoleville Indians entered into an agreement with [Northern Circle] pursuant to the terms of which \* \* \* [the Community] was to lease [the acquired tract] to [Northern Circle] for a period of 25 years with an option to renew for 25 additional years at the nominal rent of \$1.00 per year;

\* \* \* \* \*

BE IT FURTHER RESOLVED: that Exhibit A [the lease] is approved for a term of 25 years with an option to renew for an additional 25 year term at a rental rate of \$1.00 per year.

(Community's Resolution No. 3-88-GC-1, Mar. 8, 1988). 4/

[3] Thus, if there were any doubt as to the meaning of the lease language, which the Board does not believe there is, the doubt would be removed by these documents. See, e.g., Plumage v. Billings Area Director, 19 IBIA 134, 140 (1991) ("An ambiguity in a written contract can be overcome by the contemporaneous actions and understandings of the parties to the contracts); 17A Am. Jur. 2d Contracts §§ 355, 356 (1991); 17A C.J.S. Contracts 321 (1963).

Appellant's present contention concerning its intent in 1988 is refuted by the documents its officials signed at that time. The Board finds that the intent of the parties in 1988 was to maintain the nominal rental for the entire term of the lease.

The Community next contends that, as a matter of equity, the rental should be reviewed for reasonableness. It contends, inter alia, that it has no money and has lost the use of the tract for the period of the lease, but that Northern Circle has substantial assets and can well afford to pay a reasonable rental. It asserts that, "[b]ased on a square footage basis, and reasonable rental in the area, the building will result in savings to Northern Circle of conservatively \$2,256,000 dollars over the term of the lease" (Community's Opening Brief at 4).

Where rental adjustments are authorized under 25 CFR 162.8, BIA is required to review "the equities involved" in a lease on a periodic basis.

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4/ The Community contends that BIA directed it to enact this resolution. It does not allege that BIA assisted in drafting the language of the resolution, but even if this were the case, it would not matter. Once enacted by the Community's General Council, the resolution became an act of the Community and therefore binding on it. Cf. Fort McDermitt Paiute Shoshone Tribe v. Acting Phoenix Area Director, 17 IBIA 144, 147 (1989) (Provisions of tribal constitutions, even if included at the instigation of BIA, are controlling as tribal law).

