



INTERIOR BOARD OF INDIAN APPEALS

Leota Hardy v. Midwest Regional Director, Bureau of Indian Affairs

46 IBIA 47 (10/17/2007)

Related Court Case:

Hardy v. United States Department of the Interior,
slip. op. 2007 WL 33755774 (D. Minn. 2007)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

LEOTA HARDY,)	Order Affirming in Part and
Appellant,)	Dismissing in Part
)	
v.)	
)	Docket No. IBIA 07-44-A
MIDWEST REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	October 17, 2007

Leota Hardy (Appellant) seeks review of an October 18, 2006, decision of the Midwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA), which affirmed a February 14, 2006, decision of the Minnesota Agency Superintendent, BIA (Superintendent), to approve a mortgage obtained in August 2000 by Appellant and LeRoy J. Whitebird, Jr., from the Minnesota Chippewa Tribal Housing Corporation (MCTHC). We affirm the Regional Director’s decision. To the extent that Appellant also seeks review of actions by MCTHC and/or the Tribe, we dismiss these claims on the grounds that we lack jurisdiction to review their actions.

Background

I. Introduction

Appellant is one of the owners of Leech Lake Allotment No. 267 (Allotment No. 267), which is located on the Leech Lake Reservation. On June 14, 2000, BIA approved a residential lease, No. 42008262025, for Appellant on 2.06 acres of Allotment No. 267 for 25 years with an automatic renewal for another 25 years. The lease expressly authorized Appellant “to construct, improve and/or maintain a dwelling and related structures on the premises.” Lease ¶ 1. In addition, the lease specifically authorized Appellant to assign her leasehold interest as security for a mortgage to finance the construction of a home on the leased land. *Id.* ¶ 17. The lease also provided that any improvements constructed on the 2.06 acres would become the leasehold property of the lessee. *Id.* ¶ 7.

2. Appellant's Interactions with MCTHC

On August 31, 2000, Appellant and LeRoy Whitebird, Jr., obtained a mortgage, Loan No. 901411-9, from MCTHC for \$83,000 to finance the construction of a home on Allotment No. 267. According to the Federal Truth-in-Lending Disclosure Statement that was prepared in connection with Appellant's mortgage, the mortgage was secured by "the goods or property being purchased;" according to the mortgage deed itself, the mortgage was secured by the 2.06-acre parcel that was leased to Appellant.¹ The mortgage deed signed by Appellant makes it subject to Federal law and "the law of the jurisdiction in which the Property is located." Mortgage Deed ¶ 15. As part of her loan documents, Appellant also signed a document acknowledging that any disputes relating to the mortgage would be subject to the jurisdiction of the Leech Lake Tribal Court.

Appellant and Whitebird apparently retained the services of a contractor to build a home that, by all accounts, was improperly constructed. According to documents filed in tribal court, Appellant and Whitebird stopped making their mortgage payments to MCTHC in September 2001. On August 6, 2002, MCTHC filed the first of two foreclosure actions in tribal court against Appellant and Whitebird. *MCTHC I*. On November 26, 2002, the tribal court dismissed *MCTHC I* without prejudice.² On or about October 2, 2003, MCTHC refiled its foreclosure action against Appellant and Whitebird. *Minnesota Chippewa Tribal Housing Corporation v. Whitebird and Hardy*, No. CV 02-57 (Leech Lake Tribal Court) (*MCTHC II*). On February 1, 2005, the tribal court awarded MCTHC possession of Appellant's house and "a two-acre square of land surrounding said premises" along with a right of access to said property. Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree, *MCTHC II*, Feb. 1, 2005, at 10.

¹ In the first foreclosure action filed against Appellant and Whitebird, MCTHC represented to the tribal court that the mortgage was secured by "the residence" on Allotment No. 267 and that the mortgage entitled MCTHC "to repossess the residence" in the event of a default on the mortgage. Complaint, *Minnesota Chippewa Tribal Housing Corporation v. Whitebird and Hardy* (Leech Lake Tribal Court) (*MCTHC I*), at ¶ V. (No case number or other identifier appears on the pleadings in the file from *MCTHC I*.)

² The court held that MCTHC failed to establish that it was entitled to an order of foreclosure against Appellant and Whitebird or an order authorizing their eviction. The court's judgment apparently was based on the absence of evidence of a mortgage signed by Appellants and the absence of any tribal law governing foreclosure actions. On June 17, 2003, after *MCTHC I*, the Tribe adopted a foreclosure ordinance.

The tribal court also provided Appellant and Whitebird one year to redeem the property for the amount of the judgment. *Id.* During the course of the tribal court proceedings, Appellant and Whitebird admitted that the mortgage they obtained from MCTHC was a valid mortgage.

After one year, when Appellant and Whitebird did not redeem the property, MCTHC returned to tribal court and obtained a writ authorizing MCTHC to remove Appellant and Whitebird from their home and granting MCTHC “restitution of the premises” consisting of the two acres of Appellant’s leasehold.³ Writ of Restitution, *MCTHC II*, Jan. 31, 2006. Thereafter, MCTHC had the electricity service to Appellant’s house reduced or shut off. On or about February 16, 2006, Appellant and her family were removed from Allotment No. 267. They took few or none of their personal belongings and maintain that they have not been able to recover their belongings. At some point, the house itself was removed from Allotment No. 267. According to Appellant, the house was resettled on another parcel and was sold on May 15, 2006. Prior to April 26, 2006, MCTHC apparently gave BIA a quitclaim deed relating to Allotment No. 267.⁴

BIA was not a party to the mortgage obtained by Appellant and Whitebird from MCTHC. There are no allegations that BIA played a role in the disbursement of mortgage funds for the construction of Appellant’s house, the selection of the contractor, or the construction itself. BIA was not a party to *MCTHC I* or *MCTHC II*.

3. Appellant’s Interactions with BIA

It appears from the record that Appellant first contacted BIA on or about March 11, 2005, for assistance with her problems with MCTHC, including the foreclosure action in tribal court. Appellant informed BIA that she had a mortgage on her allotment and, through the pending foreclosure action (*MCTHC II*), she was concerned that she would lose her land. At that time, BIA undertook an investigation to determine what actions were affecting Allotment No. 267.

³ Under tribal law, MCTHC was limited to foreclosing on no more than two acres of a mortgagor’s interest. *See* Leech Lake Band of Ojibwe Ordinance No. 03-02 at § I(A)(ii).

⁴ While it is not relevant to our disposition of this appeal, we note that a copy of the quitclaim deed does not appear in the record provided to the Board of Indian Appeals (Board) by BIA.

As a result of its investigation, BIA determined that on December 31, 2003, it received a copy of Appellant's mortgage from MCTHC with a request that the mortgage be recorded with the Land Titles and Records Office (LTRO). It is not clear whether any action was taken either to approve the mortgage or to record it prior to February 2006.

On February 14, 2006, the Superintendent approved the mortgage as follows:

Pursuant to 25 CFR [§] 162.12⁵ and authority delegated to the Assistant Secretary, Indian Affairs, by the Secretary of the Interior in 209 DM 8, 230 DM 1, 3 IAM 4, and Release F00-03-01 dated May 2, 2003, the foregoing Mortgage of leasehold interest is hereby approved on behalf of the Secretary of the Interior upon the condition that the Mortgage is subject to the terms and provisions of the lease described therein and the regulations of the Secretary of the Interior relating to the leasing of tribal and individually owned trust or restricted lands, and upon the condition that the Mortgage relates only to the leasehold estate and is not to be construed as an encumbrance or lien against the title to the land involved.

On February 17, 2006, the mortgage and BIA's approval was filed with the LTRO.⁶

4. Appellant's First Appeal to the Board

On March 2, 2006, Appellant wrote to the Board about her dispute involving Allotment No. 267, her mortgage, and the MCTHC. The Board inquired of BIA whether it had issued a decision with respect to the dispute. The Board was advised that although no decision had issued concerning the dispute itself, the Superintendent recently had approved Appellant's mortgage.

Because Appellant's appeal had not first been decided by the Regional Director, her appeal to the Board was premature. Thus, the Board lacked jurisdiction and, on March 22, 2006, dismissed the appeal. *Hardy v. Acting Midwest Regional Director*, 42 IBIA 255, 256

⁵ In 2001, BIA amended the regulations that appear at 25 C.F.R. Part 162. 66 Fed. Reg. 7109 (Jan. 22, 2001). Section 162.12 was renumbered as section 162.610.

⁶ Appellant argues that she is "appealing a mortgage from [BIA]." Opening Brief at 1. There is no record of any mortgage between Appellant and BIA, only a one-page document from BIA that *approved* the mortgage entered into by Appellant, Whitebird, and MCTHC.

(2006) (*Hardy I*). As we explained, “appeals from a Superintendent’s decision must be taken first to the appropriate Regional Director,” and we referred the matter to the Regional Director for his consideration. *Id.* The Board also informed Appellant that it has no authority to review the actions of MCTHC or tribal officials. *Id.* at 256, n.2.⁷

5. Appellant’s Appeal to the Regional Director

As we understand Appellant’s appeal to the Regional Director, she made the following arguments: (1) BIA should not have approved a mortgage for a property for which the electrical service had been shut off; (2) approval of the mortgage violated Appellant’s lease on Allotment No. 267 because it interfered with her quiet enjoyment of the premises; and (3) Appellant’s eviction and loss of her house and property in tribal court were illegal because BIA had not approved the mortgage until after the conclusion of the tribal court proceedings.

The Regional Director reviewed the Superintendent’s decision and, on October 18, 2006, affirmed the Superintendent’s approval of Appellant’s mortgage. The Regional Director determined that the approval of the mortgage was “in accordance with regulations found at 25 CFR § 152.34”⁸ and, moreover, determined that the approval was retroactive to the date of Appellant’s mortgage. Regional Director’s Decision at 3. In addition, the Regional Director determined that he had no jurisdiction to review the actions of MCTHC or the tribal court inasmuch as Appellant expressly had agreed to resolve any disputes concerning the mortgage in tribal court.

⁷ In her current appeal, Appellant raises a concern regarding “overlapping docket numbers.” *See* Opening Brief at 3. There is no overlap. When Appellant’s first appeal was dismissed, that appeal (Docket No. IBIA 06-51-A) was concluded, the Board’s file was closed, and the file was returned to the Regional Director. The current appeal is a new appeal and thus was assigned a new docket number, IBIA 07-44-A. This decision concludes her appeal in Docket No. IBIA 07-44-A.

⁸ We note that 25 C.F.R. § 152.34 applies to mortgages of a beneficial interest in trust or restricted lands. While Appellant does own a 1/12 interest in Allotment No. 267, the Superintendent’s approval did not extend to Appellant’s trust ownership interest but was specifically limited to Appellant’s *leasehold* interest. Therefore, the appropriate regulatory authority was 25 C.F.R. § 162.610, which addresses encumbrances of leasehold interests.

6. Appellant's Current Appeal to the Board

Appellant filed a timely appeal from the Regional Director's October 18 Decision. Appellant and the Regional Director submitted briefs. In addressing the merits, the Regional Director argued in his brief that Appellant's appeal is moot and suggested that BIA's approval of the mortgage was not required and was "of no effect." Regional Director's Answer Brief at 6. Because the Regional Director's position appeared to imply that the Regional Director might be willing either to withdraw his decision or have it vacated, either of which course would resolve this appeal, the Board issued an Order for Clarification on July 18, 2007. Appellant and the Regional Director both submitted briefs in response to the Board's Order.

Discussion

1. Summary

With respect to her mortgage, Appellant argues that BIA was prohibited by law, specifically 25 U.S.C. § 483a, from approving the mortgage, thus rendering the approval "illegal." Opening Brief at 2. Even assuming that BIA approval was permissible, Appellant also argues that BIA erred in approving the mortgage given that electrical service to the premises had been shut off and because the mortgage funds were expended on substandard construction. Appellant also claims that the "Quiet Enjoyment" clause in her lease obligated BIA to intervene on her behalf or otherwise prevent the actions of MCTHC and tribal court that led to Appellant's eviction and the loss of her home and personal belongings. We disagree with each of these arguments and conclude that the Regional Director's decision is entitled to affirmance.

Finally, it appears that Appellant may also be seeking review of (1) the foreclosure action brought against her in tribal court, (2) the actions of MCTHC to remove her from her home and to retain her personal possessions, and (3) other matters in which BIA did not play a role. Because we lack jurisdiction to review decisions of tribal courts, tribal officials, and tribal agencies, we dismiss these claims.

2. Standard of Review

Questions of law are reviewed *de novo*. See *LeCompte v. Acting Great Plains Regional Director*, 45 IBIA 135, 142 (2007). Whether to approve a mortgage by a lessee of her leasehold interest on Indian trust land is a decision committed to BIA's discretion. See *Tyler*

v. Acting Billings Area Director, 19 IBIA 144, 146 (1991) (decision whether to approve mortgage of trust land is committed to BIA’s discretion). The Board reviews BIA discretionary decisions to determine whether BIA acted in accordance with the law, *id.*, whether its decision is supported by substantial evidence, and whether its decision is arbitrary or capricious, *see Stockbridge-Munsee Community v. Acting Minneapolis Area Director*, 30 IBIA 285, 289-90 (1997). However, the burden remains at all times on appellants to identify any errors in BIA’s decision. *LeCompte*, 45 IBIA at 142.

3. Was the Mortgage Subject to BIA’s Approval?

In response to the Board’s Order for Clarification, the Regional Director equivocated. First, the Regional Director stated that at the time the mortgage was approved by BIA, approval was required and therefore should be affirmed. Then, the Regional Director appears to argue that notwithstanding the necessity of approval, the decision is moot because only personalty (i.e., the house) was taken to satisfy the judgment. Appellant did not respond directly to the Regional Director’s argument but, in her opening brief, she cited 25 U.S.C. § 483a and argued that BIA approval was not required and was therefore illegal. We conclude that section 483a does not apply to this case, and that the mortgage was indeed subject to BIA’s review and approval pursuant to 25 C.F.R. § 162.610(c).

We first address Appellant’s erroneous contention that, pursuant to 25 U.S.C. § 483a, BIA should not have been a “party” to the mortgage and therefore its approval of her mortgage was illegal. In pertinent part, section 483a provides,

The individual Indian owners of any land which either is held by the United States in trust for them or is subject to a restriction against alienation imposed by the United States are authorized, *subject to approval by the Secretary of the Interior*, to execute a mortgage or deed of trust *to such land*. . . . For the purpose of any foreclosure or sale proceeding the Indian owners shall be regarded as vested with an unrestricted fee simple title to the land, the United States shall not be a necessary party to the [foreclosure or sale] proceeding, and any conveyance of the land pursuant to the proceeding shall divest the United States of title to the land.

25 U.S.C. § 483a(a) (emphasis added). Section 483a governs mortgages that are secured by the mortgagor’s own beneficial interest in trust lands. Appellant’s mortgage is secured by her *leasehold* on, and not by her beneficial trust interest in, Allotment No. 267.

Consequently, section 483a has no applicability to Appellant's mortgage. Of course, even if section 483a did apply to Appellant's mortgage, the mortgage would still be subject to the approval of the Secretary of the Interior. The language in section 483a that states that the United States "shall not be a necessary party" refers not to the Secretary's approval of a mortgage but to foreclosure or other proceedings brought to enforce the provisions of a Secretarial-approved mortgage. Therefore, we reject Appellant's argument that section 483a made BIA's approval of her mortgage illegal. We turn now to a discussion of the source of BIA's authority to approve mortgages of leasehold interests.

BIA approval of leasehold mortgages, such as Appellant's, is required by 25 C.F.R. § 162.610(c), which states,

With the consent of the Secretary, [a] lease may contain provisions authorizing the lessee to encumber his leasehold interest in the premises for the purpose of borrowing capital for the development and improvement of the leased premises. *The encumbrance instrument must be approved by the Secretary.*

(Emphasis added.) A mortgage of a leasehold interest for the purpose of constructing a residence on the leased premises, such as Appellant's mortgage, is an encumbrance within the meaning of section 162.610(c). *See* Black's Law Dictionary 568 (8th ed. 2004) (defining "encumbrance" to include mortgages).

The mortgage itself described the land as security for the loan⁹ while the truth-in-lending document stated that the goods to be purchased with the proceeds from the mortgage were the security for the loan. After receiving the tribal court writ, MCTHC first had Appellant and her family removed from the house. MCTHC then removed the house from the land rather than take possession of the leasehold itself, which the Regional Director argues indicates that only the house was pledged as collateral for the mortgage. Appellant's lease, however, specifies that any improvements "constructed on the premises *shall be the leasehold property* of the lessee during the term of [the] Lease." Lease ¶ 7 (emphasis added). Therefore, since the house was constructed on the leasehold, it then

⁹ The mortgage provides a legal description of the 2.06 acres as the security, but is silent as to the nature of the interest being pledged, i.e., leasehold interest or beneficial trust title. However, BIA only approved the mortgage to the extent it encumbered the leasehold interest, and neither BIA nor MCTHC apparently have ever suggested that the mortgage was intended to encumber the underlying trust title.

became the property of the leasehold and of the lessee, rather than separate personalty. Given these facts, we conclude that even assuming that MCTHC and Appellants intended only the house to be pledged as collateral, the mortgage was still subject to BIA's approval under 25 C.F.R. § 162.610(c) because the house was part of the leasehold property.

4. Has Appellant Met Her Burden of Showing Error in the Regional Director's Decision to Approve the Mortgage?

Appellant argues that BIA erred in approving the mortgage because, at the time of the approval decision, there was little or no electricity service to the property and because the house that was constructed from the mortgage funds was substandard. We do not agree that these arguments satisfy Appellant's burden.

We begin our analysis by examining the bases for BIA's review and approval of leasehold mortgages, of which there are at least two: (1) to determine whether there is any adverse effect on the interest of the beneficial owners as a result of the mortgage, and (2) to facilitate the recording with the LTRO of all approved instruments affecting or directly relating to trust real property.¹⁰ Although the encumbrance of a leasehold interest does not encumber the underlying trust title to the property, BIA's regulations nevertheless provide for BIA review and approval of the encumbrance apparently to ensure that the interests of the Indian landowners — to whom BIA owes a trust duty — are not placed at risk or adversely affected by the mortgage. Importantly, in reviewing a mortgage of a leasehold interest, BIA owes no trust duty to the lessee, whether Indian or non-Indian. *See Burrell v. Acting Albuquerque Area Director*, 35 IBIA 56, 58 (2000), and cases cited therein.

In the present case, Appellant only mortgaged her *leasehold* interest and not her underlying 1/12 interest in Allotment No. 267. The thrust of Appellant's appeal — and the source of injury to her — is the loss of her home and her lease. Thus, Appellant pursues this appeal in her capacity as the mortgagor and tenant, but not as one of the owners of Allotment No. 267. Appellant does not provide us with any legal basis for her belief that BIA's approval of her mortgage should be contingent on whether approval or disapproval would adversely affect Appellant as a lessee or mortgagor. To the contrary, it is well settled that BIA does *not* owe a trust responsibility to lessees of Indian trust land, including those

¹⁰ BIA is charged with the responsibility of recording and maintaining title records for real property that the United States holds in trust for Indian tribes and individual Indians. *See* 25 C.F.R. Part 150.

tenants who are Indian. *See Burrell*, 35 IBIA at 58.¹¹ We now address whether Appellant has demonstrated that the Regional Director's decision was arbitrary, capricious, or unsupported by substantial evidence. We conclude that she has not.

While BIA did not articulate specific reasons for its approval of Appellant's mortgage, it is evident that BIA reviewed the mortgage from the perspective of the owners to ensure that none of their interests in Allotment No. 267 would be adversely affected by the mortgage and the judgment of the tribal court. BIA did so by expressly tailoring its approval to permit only the leasehold as security for the mortgage and not the underlying trust realty. Thus, BIA protected the land from alienation, which was an appropriate exercise of BIA's discretion. BIA was not required to consider the shutoff of electrical service to the property or the substandard construction of the residence that was built with the mortgage funds as these issues do not affect ownership of the trust property. Therefore, BIA's decision was not arbitrary or capricious. It comports with the law and is supported by substantial evidence. Therefore, we affirm the Regional Director's decision to approve Appellant's mortgage.

5. BIA's Duty to Defend Appellant's Leasehold

Appellant also maintains that the "Quiet Enjoyment" clause of her lease, Clause 11, requires BIA to protect her right to reside on the leasehold. She claims that Clause 11 secures to her the right to reside on the leasehold and in her house and that BIA was required to intervene on her behalf with MCTHC and the tribal court. Appellant errs.

The terms of Appellant's lease must be construed as a whole, not as separate, discrete parts that may conflict with one another. *See, e.g., Tendoy v. Portland Area Director*, 33 IBIA 303, 310 (1999) (construing lease as a whole). Clause 11 states that

¹¹ To the extent Appellant may be concerned about her trust ownership interest in Allotment No. 267, we emphasize that BIA approved the mortgage only to the extent that it was secured by Appellant's leasehold and not her ownership interests. Moreover, it appears that MCTHC has quitclaimed any interest in the property. Consequently, the interests of the landowners in Allotment No. 267, including Appellant's own interest, are unaffected by BIA's approval of the mortgage.

Lessor agrees to defend the title to the premises and also agrees that Lessee . . . shall peaceably and quietly hold, enjoy and occupy the premises for the duration of this Lease without any hindrance, interruption, ejection or molestation by Lessor or by any other person or persons whomsoever.

The first difficulty with Appellant's argument is that she apparently believes that BIA, rather than the Indian landowners, is the "lessor" of the property. BIA signed the lease, but it did so on behalf of the Indian owners, who are the actual lessors. Even assuming, however, that BIA may be a lessor of the property, or that BIA assumed the obligations of the lessors, we disagree with Appellant's interpretation of Clause 11 because it is qualified by another clause in her lease. As we explained in *Tendoy*, Clause 11 cannot be construed in isolation, but must be considered with the remaining provisions of the lease.

When Appellant signed her lease, she agreed to all of the terms set forth in the lease. One of those terms, Clause 17, which is captioned "Assignment," authorized Appellant to mortgage her leasehold interest for the purpose of obtaining funds for the construction of a residence on the leasehold. Clause 17 also provides that "[n]othing in this Lease . . . shall prevent the mortgagee or other lender [f]rom foreclosing or instituting other appropriate proceedings under law in the event of default of any mortgage or other loan agreement by the lessee." (Emphasis added.) Thus, the phrase "nothing in this lease" means that the Quiet Enjoyment clause does not require the lessors to intervene in or prevent a foreclosure action against Appellant. Clause 17 controls over any contrary provisions in the lease, and expressly authorizes the lender, i.e., MCTHC, in an appropriate proceeding, to foreclose against the lessee and, if successful, to succeed to Appellant's interest in the house and the leasehold. Therefore, Clause 11 of Appellant's lease did not require BIA to intervene in Appellant's dispute with MCTHC or in the tribal court action.¹²

6. Jurisdiction to Review Actions of Non-BIA Officials

To the extent that Appellant seeks review by this Board of actions taken by MCTHC, the tribal court, or other tribal agencies or officials, we dismiss these claims for lack of jurisdiction.

¹² Appellant also claims that Clause 11 required BIA to intervene with the electric company when service was reduced to her house in February 2006, apparently at the request of MCTHC. We disagree. MCTHC's actions to have electrical service reduced, whether justified or not, are not distinguishable from its foreclosure dispute with Appellant.

The Board's jurisdiction is limited to the authority vested in it by regulation or otherwise delegated to it by the Secretary of the Interior. *See* 43 C.F.R. § 4.1(b)(2); *see also* 25 C.F.R. § 2.4(e); *Preckwinkle v. Pacific Regional Director*, 44 IBIA 45 (2006); *Delmar v. Acting Navajo Regional Director*, 40 IBIA 184 (2005). The Board's jurisdiction under 25 C.F.R. Part 2 is limited to reviewing specific decisions or actions taken by BIA Regional Directors or officials in the Office of the Assistant Secretary -Indian Affairs. *See* 25 C.F.R. § 2.4(e) (description of Board's jurisdiction under 25 C.F.R. Part 2). The Board does not have jurisdiction to review decisions rendered by the Leech Lake Tribal Court, *see Rousseau v. Acting Aberdeen Area Director*, 25 IBIA 137 n.1 (1994), nor does it have jurisdiction over actions of a tribal agency, such as MCTHC, *Hardy I*, 42 IBIA at 256 n.2.

Understandably, Appellant is upset over the substandard construction and subsequent loss of her home and personal belongings. Had there not been any construction defects in the house, which was constructed with the mortgage funds, it is possible that Appellant would have continued to make timely mortgage payments. There would have been no actions in tribal court, no reduction in electrical service, and Appellant and her family would still be living in the home with their belongings about them. However, Appellant obtained her mortgage from MCTHC, a tribal lending institution over which we have no jurisdiction. Appellant agreed, apparently as a condition of receiving the mortgage and a loan of \$83,000, that in the event of any disputes concerning the mortgage, the disputes would be subject to the jurisdiction of the tribal court, over which we have no jurisdiction. Thus, when Appellant stopped making her mortgage payments, MCTHC availed itself of a remedy that it believed was permissible under the terms of Appellant's lease and under the terms of the mortgage. Because we have no jurisdiction over either MCTHC or the tribal court, we are unable to effect any relief for Appellant even assuming there were grounds to do so.¹³

¹³ To the extent that Appellant looks to the Board to effect a remedy for the return of her personal belongings, again we lack jurisdiction to do so. Apart from BIA's approval of her mortgage and refusal to intervene in Appellant's dispute with MCTHC, which we have addressed above, Appellant does not claim that BIA played any role in the taking of her personal belongings. Rather, it appears from the record that MCTHC and/or the Tribe took and stored Appellant's belongings when Appellant and her family were removed from the house in February 2006. As we have explained, the Board has no jurisdiction to review the actions of a Tribe or its agencies.

Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board affirms the Regional Director's decision of October 18, 2006, and dismisses Appellant's claims relating to the actions of the tribal court, MCTHC, and tribal officials.¹⁴

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

¹⁴ Appellant's briefs in this appeal also contain additional demands that this Board lacks authority to meet. Appellant "[d]emand[s] a subpoena under . . . 5 U.S.C. [§] 555 . . . to United States District Court, District of Minnesota" as well as under 5 U.S.C. § 704 and 28 U.S.C. § 1360. Reply Brief at 1. The Board does not issue subpoenas. To the extent that Appellant is demanding that her appeal be heard in the district court, the Board also lacks any mechanism or procedure for making such a transfer to or initiating any action in that court. This request may be moot inasmuch as Appellant recently filed an action in the district court. *Hardy v. U.S. Dept. of the Interior*, Civ. No. 07-3858 (JMR/RLE) (D. Minn. filed Aug. 30, 2007).

Appellant also requested the Board to put a "hold" on an account held by Whitebird at a bank in Cass Lake, Minnesota. The Board has no authority to put a "hold" on any private bank account.