

INTERIOR BOARD OF LAND APPEALS

Wilfred Plomis

126 IBLA 68 (April 14, 1993)

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WILFRED PLOMIS

IBLA 90-103

Decided April 14, 1993

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting acquired lands oil and gas lease offer MIES 34998.

Reversed.

1. Conveyances: Reservations--Oil and Gas Leases: Lands Subject to--Oil and Gas Leases: Noncompetitive Leases

Michigan law determined when title to the oil and gas estate passed to the United States under a grant retaining mineral title "until May 16, 1985." The conclusion that an oil and gas lease offer for acquired lands was prematurely filed on May 16, 1985, must therefore be reversed where Michigan case law indicates that ambiguity is properly construed against a grantor if it appears as a limitation on the grant.

APPEARANCES: Jason R. Warran, Esq., Kensington, Maryland, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Wilfred Plomis has appealed from an October 17, 1989, decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting acquired lands oil and gas lease offer MIES 34998. The reason for rejection was that the United States did not own the oil and gas on the date that Plomis filed his lease offer. Pursuant to Departmental regulation in effect when oil and gas lease offer MIES 34998 was made (43 CFR 3111.3-1(c) (1984)), an offer filed before mineral title vested in the United States was to be considered a future interest lease offer. A future interest lease only could issue to an offeror who owned substantially all the present operating rights in the land. 43 CFR 3111.3-1(b) (1984). If an offeror who did not qualify for a future interest lease filed an offer before title vested in the United States, his offer was therefore required to be rejected.

Plomis filed his offer on May 16, 1985, for 400 acres of land located in the Manistee National Forest and described as the E $\frac{1}{2}$  and E $\frac{1}{2}$  NW $\frac{1}{4}$  of sec. 26, T. 17 N., R. 13 W., Michigan Meridian, Lake County, Michigan.

That land was acquired by deed dated July 30, 1937, from Frank E. Whitehall. The deed contained the following reservation: "Subject to the reservation of coal, oil, gas and salt brine until May 16, 1985." On April 24, 1989, BLM issued a decision rejecting Plomis' offer because the "[o]ffer was prematurely filed. The mineral estate did not revert to the United States until May 17, 1985." Thereafter, by petition dated May 30, 1989, Plomis requested that BLM reconsider and suspend the decision pending a ruling by this Board in another case involving similar circumstances. By decision dated June 2, 1989, BLM granted the petition.

On July 5, 1989, a decision issued in Wilfred Plomis, 110 IBLA 1 (1989), affirming a determination that the subject acquired lands oil and gas lease offer was prematurely filed. In that case, the deed passing title to the United States reserved the mineral interests in the grantor "until Fifty (50) years from date of this instrument." 110 IBLA at 12. The Board held that the vesting of rights was to be determined under the law of the jurisdiction where the land is located and, in Michigan, that such a computation of time excludes the first day and includes the last day. Id. at 13-14. Following the Board decision in Plomis and relying on that decision, BLM, on October 17, 1989, again rejected his lease offer in the instant case because it was filed before the mineral rights had vested in the United States. Plomis appealed.

The issue raised by his appeal concerns when the reservation of mineral rights to a grantor cease and title vests in the United States. Plomis suggests the question is whether the word "until" in the deed means vesting occurs "on," "before," or "after" the specified date. He contends that the Plomis decision at 110 IBLA 1 does not address the question raised in this appeal. He argues the prior Plomis decision is not now instructive because the earlier decision focused on an entirely different issue involving the vesting of a reserved mineral estate where the reservation was for a period running from a specific date. Plomis contends that the case now before us for review does not involve such a computation. He argues that the subject deed is closer in form to the deed leading to oil and gas lease offer ES 33913, that provided: "RESERVING, however, unto the said grantors [mineral and prospecting rights] until September 21, 1984, and not thereafter, and upon said September 21, 1984, [the mineral rights] shall become the property of [the grantee] (Statement of Reasons at 3, emphasis added)." Urging that the word "until" should be interpreted to mean "upon" where a date is specified in the grant, Plomis asserts that the reservation in the deed from Whitehall to the United States should be read as vesting the mineral interests on May 16, 1985.

[1] Plomis is correct that the Board's decision in Plomis is not directly pertinent to the circumstances prevailing here and must be distinguished. Our focus in that earlier appeal was on the computation of time, inasmuch as the reservation of minerals was for a period of 50 years from the date of the execution of the deed. In Plomis, we took notice of Departmental decisions holding that the law of the state where the land is found is to be applied to determine when a mineral rights reservation in a deed to the United States expires, thereby vesting those rights in

the United States. 110 IBLA at 13, and cases cited. The land at issue in Plomis was found in the township adjacent to the land involved here; therefore Michigan state law governs both these cases. There, however, their similarity ends.

In Plomis we looked at the rules for construction of terms denoting time, focusing on the word "from" in the deed. See footnote 3 at 110 IBLA 13. Citing two Michigan cases, one interpreting the language of a redemption statute and one reviewing an insurance policy, we found that the Michigan Supreme Court had in both cases applied the general rule that computation of time within which an action is to take place is to exclude the first day and include the last day. 110 IBLA at 13-14. The opinion observed that the parties did not cite, nor was the Board able to find, a Michigan case "construing an instrument creating an estate or interest." Id. at 14.

The BLM decision here under review cited a Michigan insurance contract case, Hallock v. Income Guaranty Co., 9 N.W. 133 (Mich. 1935), as controlling. In that opinion, the Michigan Supreme Court repeatedly emphasized that the case involved review of a policy of insurance, wherein a principal concern was protection of the rights of the insured. Id. at 134. In reaching a conclusion that favored the insured, the court referred to cases and general rules from other jurisdictions concerning calculation of time under which a policy of insurance will remain in force without citing any other Michigan cases, indicating that no distinct pattern of rules existed in Michigan case law. No other Michigan cases applying general rules in the manner followed by Hallock have been found or cited to us.

We did, however, find the following general rules applicable to deeds of real property in other Michigan cases. In construing a deed, the language of the deed must be given its customary meaning. Ellenwood v. Woodland Beach, 115 N.W.2d 115 (Mich. 1962). The purpose of construing the language of the deed is to ascertain the intent of the parties. Restrictive covenants and ambiguous provisions in deeds are construed most strongly against the grantor and most favorably to the grantee. McHenry v. Ford Motor Co., 146 F. Supp. 896 (E.D. Mich. 1956), aff'd, 261 F.2d 833 (6th Cir. 1957). The general rule for construing ambiguities against the grantor has greater applicability when the language in question, as here, is in the nature of a limitation on the grant. Old Mission Peninsula School District v. French, 107 N.W.2d 758, 760 (Mich. 1961).

The intention of the deed to the United States at issue in the instant appeal was to vest title, unlike the situation in Hallock where the design of the insurance policy was to provide coverage. Construing the language of the grant against the grantor would mean that his interest ceased and the grantee Government's rights vested on the date specified. On the record here before us, we conclude that the language of the grant in this case should be so construed.

This conclusion is strengthened when we consider the Michigan Dormant Mineral Act, Mich. Comp. Laws § 554.291 (Mich. Stat. Ann. § 26.1163(1))

(Callaghan 1982)). The Act requires the owner of oil and gas rights severed from surface ownership to do one of certain enumerated acts in order to avoid a statutory presumption of abandonment and vesting of title in the surface owner. This immediate vesting of title in the surface owner unless actual development of the severed mineral estate is accomplished indicates a legislative preference that a severed mineral estate be reunited with the surface ownership as soon as possible in order to facilitate marketability of the minerals. See Van Slooten v. Larsen, 299 N.W.2d 704, 710-12 (Mich. 1980), appeal dismissed 455 U.S. 901 (1982) (challenge to constitutionality of the Dormant Mineral Act).

Appellant has shown that the instant case must be distinguished from the Board's earlier Plomis decision. Construing the language of the deed in question in accordance with Michigan law, title in the oil and gas was vested in the United States on May 16, 1985. Therefore, BLM erred by finding that the subject mineral rights did not vest in the United States until May 17, 1985. Consequently, the oil and gas lease offer from Plomis was improperly rejected.

Accordingly, 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 reversed.

Franklin D. Arness  
Administrative Judge

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I concur:

John H. Kelly  
Administrative Judge

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