

**United States Court of Appeals
for the Federal Circuit**

VERNON MOODY, ANITA MOODY,
Plaintiffs-Appellants

v.

UNITED STATES,
Defendant-Appellee

2018-2227

Appeal from the United States Court of Federal Claims
in No. 1:16-cv-00107-EJD, Senior Judge Edward J.
Damich.

Decided: July 24, 2019

TERRY LEE PECHOTA, Pechota Law Office, Rapid City,
SD, argued for plaintiffs-appellants.

ANN MOTTO, Commercial Litigation Branch, Civil Divi-
sion, United States Department of Justice, Washington,
DC, argued for defendant-appellee. Also represented by
MARGARET JANTZEN, JOSEPH H. HUNT, TARA K. HOGAN,
ROBERT EDWARD KIRSCHMAN, JR.

Before DYK, CHEN, and STOLL, *Circuit Judges*.

DYK, *Circuit Judge*.

Vernon and Anita Moody sued the United States in the Court of Federal Claims (“Claims Court”) alleging that the United States was a party to contracts with the Moodys and breached these contracts.¹ The Moodys also contended that they had implied-in-fact contracts with the United States, and that the United States committed an uncompensated takings under the Fifth Amendment. The Claims Court dismissed the complaint. It concluded that the United States was not a party to the contracts. The Claims Court also concluded that the Moodys failed to state a claim upon which relief could be granted as to the alleged implied-in-fact contracts with the United States, and that there was no cognizable takings claim. We affirm.

BACKGROUND

The Moodys leased various parcels on the Pine Ridge Indian Reservation in South Dakota for agricultural use. The question is whether the United States was a party to those contracts.

“[T]he United States has a trust responsibility to protect, conserve, utilize, and manage Indian agricultural lands consistent with its fiduciary obligation and its unique relationship with Indian tribes.” 25 U.S.C. § 3701(2). To carry out this trust responsibility “the Secretary [of the Interior is authorized] to take part in the management of Indian agricultural lands, with the participation of the beneficial owners of the land, in a manner consistent with the trust responsibility of the Secretary and with the objectives of the beneficial owners.” 25 U.S.C. § 3702(2). The Secretary has delegated some of these responsibilities to

¹ For convenience, this opinion treats the leases as being entered into by both of the Moodys, though all the leases were, in fact, entered into either by Vernon Moody or Anita Moody, not both.

the Bureau of Indian Affairs (“BIA”), within the Department of the Interior, which has promulgated regulations governing agricultural leases on Indian lands. *See* 25 C.F.R. §§ 162.101–.256. These regulations generally allow Indian landowners to enter into such agricultural leases with the approval of the BIA. The BIA is also involved in the enforcement of the lease provisions. *See id.* §§ 162.247–.256.

In 2011, the Moodys entered into five-year leases with respect to the parcels of land in question. The leases contain similar, albeit not identical, language. Each lease defined “the Indian or Indians” as the “LESSOR” and the Moodys as “LESSEE.” *See* J.A. 18, 32, 35, 47, 61. Although the documentary record is not entirely clear, the Claims Court concluded that “[t]he Oglala Sioux Tribe was a signatory to all five leases.” J.A. 2. No party disputes this on appeal.² The leases stated that “the Secretary of the Interior [was] acting for and on behalf of Indians,” and that the land being leased was “lands and interest(s) held in trust or restricted status by the United States for the benefit of an Indian Tribe.” *See, e.g.*, J.A. 18. Other provisions of the leases further distinguished between the parties to the lease and the Secretary of the Interior/United States.³

² At oral argument the Moodys agreed. Oral Arg. at 2:11–36 (“Q. [I]t is quite clear that the other party is the Oglala Sioux . . . A. Okay. I agree with that . . .”).

³ *See, e.g.*, J.A. 19 (“Any [change to the lease] may be made only with the approval of the Secretary and the written consent of the parties to the lease . . .”); *id.* (“[The LESSEE] shall not destroy or permit to be destroyed any trees, except with the consent of the LESSOR and the approval of the Secretary . . .”); *id.* (“The owners of the land and the LESSEE shall be notified by the Secretary of any . . . change in the [trust] status of the land.”); J.A. 20 (“Neither the LESSOR, nor the United States . . .”).

Issues with respect to lease payments arose in 2012. The Moodys' amended complaint alleged the following, which we must accept as true for purposes of this appeal. The Moodys visited the BIA Pine Ridge Agency of Interior to determine the amount they owed on the leases. They delivered a personal check for the proper amount to the BIA, J.A. 93 ¶ 16, but the BIA subsequently returned the check and demanded that the payment be made by cashier's check, J.A. 93 ¶ 18. The BIA then sent letters to the Moodys, which "serve[d] as [the Moodys'] official notification that effective April 18, 2013, [four of the leases were] hereby cancelled for non-compliance" for failure "to submit bonding, and payment" as to Lease Nos. 1-0218-11-15 and 1-T561-11-15, J.A. 76, 78, and "for failure to submit bonding, Crop Insurance for 2012," "any crop reports," and "Negotiable Warehouse Receipts" for Lease Nos. 1-Unit5-11-15 and 1-UNT19-11-15, J.A. 80–81. J.A. 3; J.A. 93 ¶ 19. The letters also noted that the Moodys could appeal the decision to the BIA's "Regional Director . . . in accordance with the regulations in 25 CFR Part 2," and that the "notice of appeal must be filed in this office within 30 days of the date [the Moodys] receive this decision." J.A. 78. The letters further specified that "[i]f no appeal is timely filed, this decision will become final for the Department of Interior at the expiration of the appeal." J.A. 79. "No extension of time may be granted for filing a notice of appeal" and "[i]f [the Moodys] should require further assistance in this matter, [they] may contact the Branch of Realty." J.A. 79.

Within the 30-day appeal period, the Moodys went back to the BIA with a cashier's check in the proper amount, which the BIA accepted. J.A. 93 ¶¶ 19–20. The BIA also informed the Moodys that they did not need to appeal, could continue farming the land according to the leases, and did not require written confirmation. J.A. 93 ¶ 20. Subsequently, on June 3, the Moodys received trespass notices, which led them to once again return to the BIA to resolve the issue. J.A. 93–94 ¶¶ 22–24. For a second

time they were instructed that they “should continue to farm.” J.A. 94 ¶¶ 23, 24. But, a short time later, they were instructed to vacate the land, which they did. J.A. 94 ¶ 25. On July 9, 2013, the Moodys received a cancellation letter “for failure to submit bonding, all crop reports and ‘negotiable Warehouse receipts’” for the fifth lease, Lease No. 1-T367B-12-16, J.A. 83. *Accord* J.A. 3; J.A. 94 ¶ 26.

Based on the allegations in the complaint, it appears that the Moodys would have had good grounds to appeal the lease terminations with the BIA. After there is a cancellation decision on an agricultural lease, the tenant has 30 days from receiving the cancellation letter to appeal the decision. 25 C.F.R. § 162.254. The cancellation will typically remain ineffective during the time that tenant’s appellate rights are being exhausted. *Id.* §§ 2.6(a), 162.254. For cancellation of agricultural leases, the appeal is first filed with the Area Director and thereafter with the Interior Board of Indian Appeals. *Id.* §§ 2.4(a), (e), 2.20.

The Board reviews questions of law and the sufficiency of the evidence de novo, *Early S. Burley v. Acting S. Plains Reg’l Dir.*, 64 IBIA 162, 167, 2017 WL 2415322, at *5 (IBIA 2017), but will not substitute its own judgment for the BIA official’s if the matter is committed to the BIA’s discretion and is otherwise consistent with law, *Barber v. W. Reg’l Dir.*, 42 IBIA 264, 266, 2006 WL 1148723, at *2 (IBIA 2006). The appellant bears the burden of showing error with the decision below. *Guerrero v. Nw. Reg’l Dir.*, 63 IBIA 346, 350, 2016 WL 5335850, at *3 (IBIA 2016) (citing 43 C.F.R. § 4.322(a)). Generally, after the exhaustion of administrative remedies, see 25 C.F.R. §§ 2.1–2.21; 43 C.F.R. § 4.331, the BIA’s final agency decision is subject to challenge in district court under the Administrative Procedure Act, 5 U.S.C. § 704.

The Moodys did not file an appeal with the BIA for the cancellation of any of the leases. Instead, in 2016, the Moodys filed a complaint against the United States in the

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