

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA**

In re:

DANIEL E. ASHBROOK,

Debtor.

Case No. F95-00795-DMD

Chapter 7

MEMORANDUM REGARDING CABIN

This is a contested matter to determine the ownership of a cabin near Kantishna. This court has jurisdiction over the matter under 28 U.S.C. § 1334(b) and the district court's order of reference. It is a core proceeding in accordance with 28 U.S.C. § 157(b)(2)(E) and (O). I find in favor of the trustee.

Background

The lure of gold provided a powerful incentive for the exploration of Territorial Alaska.

Alaska was purchased by the United States from Russia in 1869, and there were many who saw the new territory not only as a virgin land to conquer but also as a wilderness to which a man could flee. The newly acquired frontier was shaped like a kitchen pot: a long strip of coastal land, aptly named "The Panhandle," attached to the main body of the peninsula, bordered the Pacific territories of British Columbia. In 1880, at a point midway down this Panhandle, hardrock gold was discovered and the mining town of Juneau sprang up. And to Juneau came the wanderers and the adventurers, the Indian-fighters and the frontiersmen, men from all over the American west who could not sit still. Juneau, in its turn, served as a springboard to Alaska and the Canadian Yukon. Thus was

completed a northward osmosis that had been going on since the rush to California,¹

Thousands of miners poured into the Yukon by a number of different routes in 1897 and 1898.² Ships left West coast ports in San Francisco and Seattle crammed with men headed for the Klondike. Some prospectors stopped in Skagway and, if they made it past Soapy Smith and his notorious gang, tested the rigors of Chilkoot Pass. After the pass prospectors built rafts to navigate a series of lakes. A float down the treacherous rapids of the Thirtymile and Leures rivers ensued before reaching Dawson. Others headed for St. Michael's on Alaska's west coast. After a prolonged 1,700 mile passage via sternwheeler eastward through Alaska on the Yukon River, they too arrived in Dawson and the Klondike. Some attempted other routes: over the giant Malaspina Glacier, northward through Valdez, even inland on foot through Canada.

The Klondike Gold Rush spurred exploration throughout Alaska. Gold was discovered on the Seward Peninsula near Nome. By 1899 thousands of miners staked claims there.³ Gold was also discovered in the interior of Alaska and a rush was on in Fairbanks in 1903.⁴ The Kantishna Gold Rush soon followed.⁵

¹PIERRE BERTON, *THE KLONDIKE FEVER* 5-6 (Carroll & Graf 3d printing 1993) (1958).

²*Id.* at 417. Berton estimates 100,000 people actually set out on the trail for Dawson; 30,000 to 40,000 actually made it.

³CLAUS-M. NASKE AND LUDWIG J. ROWINSKI, *FAIRBANKS: A PICTORAL HISTORY* 18, (The Donning Co. 1981).

⁴*Id.* at 19.

⁵National Park Service, U.S. Dept. of the Interior, *The History of Kantishna – Kantishna Gold!* at http://www.nps.gov/dena/home/historyandculture/kanhx/kantishna_gold.htm.

Kantishna is located about 185 miles south of Fairbanks in Denali National Park and Preserve. It lies thirty miles north of Mt. McKinley on the eastern side of Moose Creek. Kantishna was called “Eureka” during the gold rush. It was inaccessible by road until 1938. The road is closed during the winter and public access to it through Denali National Park is restricted.

Kantishna, like many other boom towns, experienced a meteoric boom and bust. The first record of gold strikes appeared in the Nome Nugget, September 9, 1903.⁶ One J. T. Minuse found “a good poke of Tanana gold” panned from streams just north of Mt. McKinley.⁷ Two weeks later, Minuse told the Nugget that he had traveled up the Tanana and Kantishna Rivers to the Mt. McKinley region where he and his partner Burns had prospected for a year. Minuse claimed they found gold in every stream they prospected.⁸

Joseph Dalton, Joseph Quigley and others explored the Kantishna area in 1904 and 1905. They staked claims and traveled to Fairbanks to record those claims in the summer of 1905. They boasted of their finds and sparked a stampede later that summer.⁹ Two thousand miners headed for the Kantishna hills and filed over a thousand mining claims. Most took a river route and, when the rivers became too shallow, proceeded forty miles on foot. Four boom towns and hundreds of cabins sprang up overnight.

⁶*Id.*

⁷*Id.*

⁸*Id.*

⁹National Park Service, U.S. Dept. of the Interior, *The History of Kantishna – Kantishna Gold!* at http://www.nps.gov/dena/home/historyandculture/kanhx/kantishna_gold.htm.

Just as suddenly, the rush was over. After the initial frenzy subsided, many miners found nothing. They left broke and out of grub either in the fall of 1905 or, after a miserable winter, in the spring of 1906. Joseph Dalton, Joseph Quigley and their partners continued mining during 1906, however, and had a profitable season. Quigley and his legendary wife Fannie, lived in the area year round for decades after the gold rush.

Marko Busia, a Croatian immigrant, arrived in 1906 to prospect in the Kantishna region. Like the Quigleys, he also lived in Kantishna year round and continued his search for gold. He was joined by his son, “Little Johnnie,” in 1918. Johnnie arrived to assist his father with mining and trapping in the Kantishna area.

The Kantishna Hydraulic Mining Company (KHMC) introduced large-scale hydraulic placer mining to the area in 1922. It had purchased 45 mining claims encompassing 890 acres of placer ground on Moose Creek.¹⁰ None of the claims were patented.¹¹ KHMC shipped large amounts of riveted steel pipe and equipment to Kantishna in 1920 and 1921. Twelve men worked throughout the 1921 season to build KHMC’s hydraulic mining plant.¹²

Although it is unclear, the cabin which is the subject of the instant dispute (the “Busia cabin”) was probably built by KHMC as a bunkhouse using logs and lumber hauled from Fairbanks in 1921. The cabin is about 20' by 20'. It is built with hand-hewn, saddle-notched spruce logs that are 9 to 11 inches in diameter. The spaces between the logs are

¹⁰See United States’ Opp’n to Mot. to Determine Whether the Busia Cabin is Property of the Bankruptcy Estate, filed Nov. 1, 2004 [Docket No. 501], Ex. A at p. 4.

¹¹*Id.*

¹²*Id.*

chinked with moss, mud and clay. It has two milled windows with six-pane sashes, planks for a floor, 2" x 10" milled boards for a roof with corrugated steel and sod covering them. The front, or north side, of the cabin is leaning inward precariously. The Busia cabin sits on the western side of Moose Creek, about half a mile from the confluence of Moose and Eldorado Creeks. An identical cabin, built closer to Moose Creek, served as a likely mess hall.¹³

In addition to building the cabins, KHMC built a dam at Wonder Lake to feed its hydraulic mining system. KHMC placed 5,300 feet of riveted steel pipe in an elaborate system stretching from Wonder Lake to the junction of Moose Creek, Eureka Creek and beyond. The hydraulic plant was operational in the summer of 1922. Five huge nozzles, or “giants,” were used to rip massive amounts of topsoil and gravel from bedrock. The materials were then sent upstream into a long series of sluice boxes to recover gold. KHMC spared no expense, employing fifteen to twenty men to operate the system. Despite their best efforts, returns were poor. The hydraulic experiment was a failure. KHMC, like many others before it, ceased operations after the 1922 season. Attempts to profitably utilize the hydraulic plant in 1923 and 1924 by new miners also failed.

Marko Busia passed away in 1923. Little Johnnie moved into the Busia cabin soon thereafter. He lived a subsistence lifestyle, trapping, hunting, mining and raising a garden. The second cabin was placed in jeopardy when Moose Creek changed course and left it dangling over the edge of the creek. With Little Johnnie’s permission, Virginia Wood

¹³Little Johnnie called this cabin the “drunk” cabin. He sent his guests there to sleep off the effects of his potent home brew.

and her husband dismantled the cabin and made a raft with some of the logs.¹⁴ They winched the raft across the creek and made a cache for storage at their campground from the logs. Little Johnnie made the bunkhouse his home until his death in 1957. He is buried there alongside his dog, Mr. Jim, on a knoll beside the cabin.

Daniel Ashbrook, the debtor, lived in the cabin year-round from 1975 to 1989 while mining. He spent summers at the cabin from 1990 through 1996. Ashbrook purchased several patented mining claims including Moose #1, the site of the cabin. He filed for chapter 7 relief in 1995. The United States acquired the Moose #1 real property from his bankruptcy estate in 2001 and has compensated the estate for its taking. The sole remaining issue in this case is whether the Busia cabin is personal property that belongs to Ashbrook's bankruptcy estate or part of the Moose #1 real property owned by the United States.

Analysis

Alaska courts have dealt with distinctions regarding real and personal property for decades. The Ninth Circuit affirmed two early territorial district court decisions dealing with fixtures on land owned by the United States. In one instance, a sawmill constructed on piles located on tidelands was found to be personalty and not a fixture.¹⁵ In a second case, a quartz mill and mill building located on a leased mining claim were determined to be

¹⁴See United States' Opp'n to Mot. to Determine Whether the Busia Cabin is Property of the Bankruptcy Estate, filed Nov. 1, 2004 [Docket No. 501], Ex. D (Decl. of Virginia Wood). Ms. Wood said about half of the logs were rotten and not salvageable. There is a conflict between her declaration and the United States' Exhibit "E," a photograph of the second cabin that was allegedly taken in August 1964. Wood recollects that cabin was dismantled prior to Little Johnnie's death in 1957.

¹⁵*Cobb v. Hills-Corbet Co. (In re Craig Lumber Co.)*, 269 F. 755, 5 Alaska Fed. 4, (9th Cir. 1921).

personalty and not fixtures.¹⁶ In a third decision, *Inland Finance Co. v. Standard Salmon Packers*,¹⁷ the territorial district court found that a salmon cannery and docks located in Tenakee Inlet on land held in trust by the United States constituted personalty. *Standard Salmon* adopted the annexation, adaptation and intent tests to determine if property constitutes a fixture. The Alaska Supreme Court has continued to apply these tests after statehood. In *Hayes v. Alaska Juneau Forest Industries, Inc.*,¹⁸ these tests were used to determine that mine tailings were real property. In *K & L Distributors, Inc. v. Kelly Electric, Inc.*,¹⁹ the court found that industrial lighting and circuit breakers in a warehouse were fixtures, again applying the same tests.

Standard Salmon's tests to determine whether property on land constitutes a fixture are:

- (1) Whether there is real or constructive annexation to the realty.
- (2) The appropriation or adaption to that part of the realty to which such erection is attached.
- (3) Whether it was the intention of the party making the annexation that the structure be a permanent annexation to the freehold.

It is the modern doctrine that the intention of the parties is to be determined from these three tests, which establish whether

¹⁶*Chatham Gold Dredging Co. v. Burns*, 84 F.2d 717, 5 Alaska Fed. 838 (9th Cir. 1936).

¹⁷131 Alaska, 1924 WL 126 (D. Alaska Terr. 1924).

¹⁸748 P. 2d 332, 336 (Alaska 1988).

¹⁹908 P. 2d 429, 432 (Alaska 1995).

property attached to the soil should be considered as part of the real estate, or as personal property.²⁰

I will apply these tests to determine whether or not the cabin constitutes a fixture.

There has been no real or constructive annexation of the cabin to the land. The photographs submitted by the United States, particularly the photograph of the northeast corner of the cabin, indicate that the cabin was simply built on the ground.²¹ Also, the photograph of the second cabin as it hung over Moose Creek indicates that this identical cabin had no permanent foundation.²²

The United States and Ms. Wood maintain that it was impossible for miners in the early 1900s to bring cement into Kantishna to use for cabin foundations, because there were no roads to the area. In my view, they underestimate the ingenuity of motivated men searching for gold. KHMC shipped tons of riveted steel pipe, giants, logs, lumber, equipment and machinery to the Kantishna area in 1920 and 1921. Getting a few bags of cement or mortar mix to the west side of Moose Creek would have been easy. KHMC did not make foundations for the cabins because they did not need permanent structures; they just needed something to last long enough for them to establish a hydraulic plant, get rich and leave.

²⁰*Standard Salmon*, 7 Alaska at 144.

²¹See United States' Opp'n to Mot. to Determine Whether the Busia Cabin is Property of the Bankruptcy Estate, filed Nov. 1, 2004 [Docket No. 501]. Footnote 6 on page 9 of the opposition refers to Ex. G-3 (nine color photographs taken by P. Brease on September 7, 2004).

²²See United States' Opp'n to Mot. to Determine Whether the Busia Cabin is Property of the Bankruptcy Estate, filed Nov. 1, 2004 [Docket No. 501], Ex. E.

The second test for determining whether property on land is a fixture requires a court to examine the adaption of the realty on which the cabin was constructed. The realty around the cabin was used for mining. The cabin was conveniently located but not essential for mining development. The surrounding area had been mined extensively prior to KHMC's construction of the cabin.

The final test from *Standard Salmon* requires the court to consider whether KHMC intended to make the cabin a permanent annexation to the freehold. I conclude that it did not, for a number of reasons. First, KHMC did not own the freehold. It simply held a number of unpatented mining claims on property owned by the United States. Moreover, KHMC was a capitalistic venture. Its roots to the land depended exclusively on the profitability of its mining claims. It intended to hydraulically mine the claims, for boom or bust, and then leave the area. Unfortunately, it went broke. It left after the 1922 season never to return. It did not patent any of the claims or ever mine again. KHMC's actions reveal that it had no intent to make a permanent annexation to the freehold. The cabin simply served as a temporary shelter for its workers.

Conclusion

My review of the *Standard Salmon* factors leads me to conclude that the Busia cabin is personal property and not a fixture. The trustee is entitled to it. An order and judgment will be entered consistent with this memorandum.

DATED: March 11, 2005.

DONALD MacDONALD IV
United States Bankruptcy Judge