



Transcript of Proceedings

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Date: 8 December, 2003

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

DOUGLAS J

No 10902 of 2003

ALUMINIUM PECHINEY HOLDINGS PTY LTD
(ACN 001 274 639)

Applicant

and

MINISTER FOR TRADE FOR THE
STATE OF QUEENSLAND

First Respondent

and

MINISTER FOR NATURAL RESOURCES AND
MINES FOR THE STATE OF QUEENSLAND

Second Respondent

BRISBANE

..DATE 03/12/2003

JUDGMENT

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HIS HONOUR: This is an application for an adjournment of an application by the State of Queensland for a declaration and an injunction requiring the respondent to surrender mining lease 7032 to the applicant.

In my view, it would be inappropriate to determine the difficult and important issues of construction of the Aurukun Associated Agreement Act 1975, particularly those relating to sections 2, 3 and 4 of the Act and clause 14 of part 3 of the Agreement forming a schedule to that Act in the absence of the evidence relevant to the defences sought to be raised by the respondent. I appreciate that if the State's contentions about the proper construction of those sections are correct, there may be little scope for some of those defences to operate.

It seems to me, however, that the respondents' submissions are sufficient to raise what, in another context, would be regarded as a triable issue. The matter is also affected, to some extent, by the existence of the respondent's own application under the Judicial Review Act of 1991.

In the circumstances, I do not believe that it is appropriate that I analyse, in any further detail, the opposing contentions as to the proper construction of the Act.

Accordingly, I order in terms of paragraphs 1 and 2 of the respondent's application, filed the 20th of November 2003, and I invite the parties to prepare some directions as to the

future conduct of the matter, and in that context, can you
tell me whether there is anything - or how urgent it is - how
long you expect it may take when it goes to trial and when it
may be ready for trial. I know the affidavit material
addresses some of those questions. But probably, what I need
to know, particularly, is how long it may take, as best you
can judge that now, and it may be useful, in that context, if
you can agree on a likely length of the trial to give me some
- say up to three sets of available dates to suit the parties
next year.

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I can make enquiries as to when it might be able to be set
down, depending on the degree of urgency involved.

Do you want to talk amongst yourselves about directions and
send me an order.

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MR JACKSON: We're probably better off trying to do it, not in
the next 10 minutes, if we could come back to your Honour, if
we can come up with a reasonable set of proposals, that both
of us agree with and put it to you as simply as possible,
otherwise, I think, it might take a bit of time.

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MR KEANE: Your Honour, we certainly wouldn't be able to
respond to your Honour now about that.

HIS HONOUR: No. Costs in the cause?

MR KEANE: That would be our submission, your Honour.

HIS HONOUR: Costs in the application.

MR JACKSON: I think they make them in the proceeding, your
Honour.

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HIS HONOUR: Thank you, Mr Jackson.

MR KEANE: Your Honour, it may be that there is some
difficulty between us about the directions. We certainly will
try and agree them-----

HIS HONOUR: I'm in applications the rest of this week. I'm in crime next week or presumably I could do something before I start a criminal trial. In the morning before the trial recommences.

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MR KEANE: We could bring it back before your Honour, but it-----

HIS HONOUR: And I'm in applications the following week too, so-----

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MR KEANE: I think it's - I certainly agree with my learned friend that it's unlikely that we'd be in a position to do it in the next minutes and that probably means not today.

HIS HONOUR: Yes. I'm around in applications tomorrow and the next day too. Thank you for your assistance and for the interesting arguments.

MR KEANE: Your Honour, I don't mean to cut across my learned friend, but the judicial review matter is listed - for directions, I think, next - I think it's on the 16th. Would it be appropriate to include it in the directions that have been given-----

HIS HONOUR: Subject to what Mr Jackson says, I'd have thought so.

MR JACKSON: I think the answer to that is yes. It will be pointless to have separate determinations of factual matters which are involved in the same cases.

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HIS HONOUR: Yes. Thank you.

MR KEANE: So we'll sweep it up in the directions your Honour.

HIS HONOUR: My associate, at the moment, is acting for me in lieu of Justice Byrne, who is away, but you can contact her.

MR KEANE: Thank you, your Honour.

MR JACKSON: Thank you, your Honour.

HIS HONOUR: Thank you.

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