LAND COURT OF QUEENSLAND

CITATION:	*Peter Campbell Earthmoving Pty Ltd v Plentygold Miclere Pty Ltd* [2020] QLC 15
PARTIES:	**Peter Campbell Earthmoving Pty Ltd** (applicant) v **Plentygold Miclere Pty Ltd** (respondent)
FILE NO:	MRA690-19
DIVISION:	General Division
PROCEEDING:	Application for costs
DELIVERED ON:	24 April 2020
DELIVERED AT:	Brisbane
HEARD ON:	3 April 2020
HEARD AT:	Brisbane
PRESIDENT:	FY Kingham
ORDERS:	**1. The Respondent must pay the Applicant's costs of and incidental to Application MRA690-19 from 14 February 2020 on the standard basis on the Supreme Court scale.** **2. Such costs are to be agreed between the parties or, failing agreement within 14 days, the Court will issue directions requiring evidence and submissions from the parties, then fix the costs on the papers.**
CATCHWORDS:	PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – where the current Applicant was not the original applicant – where the Respondent objected to the original application – where the

Respondent maintained its objections despite the transfer of the lease, where most of the objections were specific to the original applicant – where the Applicant applied to strike out the objections and the Respondent withdrew its objection six days later – where the Applicant sought costs of the application on the indemnity basis on the ground that the Respondent maintained its objections vexatiously – where there was insufficient evidence before the Court to find an improper motive in maintaining the objections – where the Court awarded costs on the standard basis in favour of the Applicant from the date the transfer was registered

Mineral Resources Act 1989 s 265(10), s 268(9)
Land Court Act 2000 s 34, s 52A(d)(ii), s 52B(1)(j)

Anson Holdings Pty Ltd v Wallace & Anor (2010) 31 QLCR 74; [2010] QLAC 2 [18], applied.
BHP Biliton Mitsui Coal Pty Ltd v Isdale & Ors [2015] QSC 107, applied.
BHP Queensland Coal Investments Pty Ltd v Cherwell Creek Coal Pty Ltd (No 2) (2009) 30 QLCR 173; [2009] QLAC 8, applied.
Briginshaw v Briginshaw (1938) 60 CLR 336; [1938] HCA 34, applied.
Mentech Resources Pty Ltd v MCG Resources Pty Ltd (in liq) & Ors (No 2) (2012) 33 QLCR 43; [2012] QLAC 2, cited.
Moreton Bay Regional Council v Mekpine Pty Ltd & Anor (No 2) (2014) 35 QLCR 273; [2014] QLAC 5, cited.

APPEARANCES: G Smart (solicitor), Wallace & Wallace Lawyers, for the applicant
J Wheeler (solicitor), Legacy Legal Group, for the respondent

[1] Plentygold Miclere Pty Ltd objected to an application for ML70069. In the main, the objection raised concerns about the conduct of then applicant, Lodestar Mine Pty Ltd, in relation to other tenures. Subsequently, Lodestar went into receivership and the mining lease application was transferred to Peter Campbell Earthmoving Pty Ltd. After the transfer was registered with the Department of Natural Resources, Mines and Energy, Plentygold withdrew its objection.

[2] PC Earthmoving applied for an award of costs, assessed on an indemnity basis from 30 January 2020,[1] as by that date it argues that maintaining the objection can only have been for an improper purpose.[2]

[3] Plentygold opposed PC Earthmoving's application for costs, whether assessed on a standard or an indemnity basis.

[4] The issues are:

1. What is the Court's power to award costs in a mining objection hearing; and

2. Should the Court award costs and, if so, on what basis

What is the Court's power to award costs in a mining objection hearing?

[5] In its application, PC Earthmoving relied on s 34 of the *Land Court Act 2000*. At the hearing, it argued costs could be awarded either under that provision or under s 268(9) of the *Mineral Resources Act 1989*.

[6] Section 34 of the LCA confers a general power to award costs of a "proceeding." Although a mining objection hearing is not a "proceeding,"[3] the costs power applies pursuant to s 52B(1)(j) of the LCA.

[7] Section 34 is "subject to the provisions of this or another Act to the contrary."

[8] Section 268(9) of the MRA confers a specific power on the Court to award costs against an objector who withdraws their objection. That is not inconsistent with the general costs power in s 34,[4] and is not a provision "to the contrary." It is, however, the more specific of the two provisions. As the limited circumstance in which s 268(9) applies has arisen, I regard it as the leading provision and the one to apply in deciding this application.

[9] Although the argument was not fully developed, or strongly pressed, Plentygold submitted that the Court could not award costs because, once the objection was withdrawn, it was *functus officio* and the Court had no power to make any order.

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1 Applicant's Submissions on Costs, filed 3 April 2020.
2 Affidavit of Gregory John Smart, filed 12 March 2020, Exhibit "GJS2".
3 *BHP Biliton Mitsui Coal Pty Ltd v Isdale & Ors* [2015] QSC 107 [44].
4 *Anson Holdings Pty Ltd v Wallace & Anor* (2010) 31 QLCR 74; [2010] QLAC 2 [18].

The company's lawyer relied on an article by Dr JR Forbes[5] for that proposition. I confess that I could not discern any basis in that article for the submission.

[10] In any case, Dr Forbes was considering an earlier iteration of the MRA. Under the MRA as it now stands, if all properly made objections are withdrawn before the Land Court forwards its recommendation on the application to the Minister, the Land Court "may remit the matter to the chief executive."[6] That suggests the withdrawal of the objection does not have the immediate consequence of depriving the Court of any further function. It is also a difficult submission to maintain in the face of s 268(9) which confers the power to award costs in the very circumstance that is relied on to deprive the Court of any further function.

[11] I am satisfied the Court has the power to award costs pursuant to s 268(9).

Should the court award costs and if so on what basis?

[12] Section 268(9) confers a discretion on the Court. If an objector withdraws their objection, the Court *may* award costs. Although the general rule that costs follow the event might inform the exercise of the discretion, courts have consistently interpreted costs provisions using similar wording as meaning the discretion is not fettered by any preconceived rules or principles, and must be exercised judicially, not arbitrarily.[7]

[13] PC Earthmoving submitted "the Court ought to exercise its discretion by first asking which party would be entitled to costs if those costs followed the event and then whether there is any good reason why costs should not be awarded in accordance with that principle."[8]

[14] In making that submission, PC Earthmoving relied on *Moreton Bay Regional Council v Mekpine Pty Ltd & Anor (No 2)*.[9] That is a decision of the Land Appeal Court that applied s 34 in an appeal of the determination of compensation for compulsory

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5 Dr J R Forbes, "Objections to Applications for Mining Leases in Queensland" (1997) 16 *Australian Mining and Petroleum Law Journal* 141.
6 MRA s 265(10).
7 *BHP Queensland Coal Investments Pty Ltd v Cherwell Creek Coal Pty Ltd (No 2)* (2009) 30 QLCR 173; [2009] QLAC 8 [6].
8 Above n 1, [9].
9 35 QLCR 273; [2014] QLAC 5.

acquisition of land.[10] In *Mekpine*, the Land Appeal Court adopted some observations made in an earlier Land Appeal Court decision about a caveat over a mining tenure.[11]

[15] Neither case involved a mining objection hearing, nor give clear guidance about the approach to adopt in relation to the costs of an administrative hearing involving recommendatory provisions.[12]

[16] Further, neither case articulates the process contended for by PC Earthmoving.

[17] If the Court is to exercise its discretion judicially, not arbitrarily or capriciously, it must consider all relevant factors, without starting from any presumption that a general approach to costs should apply.

[18] PC Earthmoving's submission that costs should follow the event because Plentygold Miclere has not demonstrated why they should not, is, therefore, misconceived.

[19] Starting from that presumption, PC Earthmoving raised a number of matters that it said favoured an award of costs on an indemnity basis. I will consider them in deciding two questions; whether to award costs and, if so, on what basis.

[20] PC Earthmoving alleges that Plentygold Miclere:

1. Continued proceedings in wilful disregard of known facts;

2. Had an ulterior motive in doing so;

3. Made groundless accusations; and

4. Made a collateral attack on proceedings.

[21] The parties filed a number of affidavits. None of the deponents was required for cross-examination. Given that, I take the deponents' evidence to be uncontested on this application.

[22] Lodestar Mine Pty Ltd was the registered owner of ML70069 from 7 March 2019. By that time, an application for additional surface area for the ML had been filed.

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10 Ibid.

11 *Mentech Resources Pty Ltd v MCG Resources Pty Ltd (in liq) & Ors (No 2)* (2012) 33 QLCR 43; [2012] QLAC 2.

12 LCA s 52A(d)(ii).

That is the application that Plentygold Miclere objected to, alleging that Lodestar Mine had undertaken illegal mining on the lease and that there were suspicious circumstances surrounding the purchase by Lodestar Mine of two mining leases, including this one, from the previous owners. Those previous owners were Pensacola Pty Ltd and Miclere Basin Gold Holdings Pty Ltd. The relationships between those companies and Plentygold Miclere is not clear on the material. The history of the lease is further confused by the fact the PC Earthmoving was, it seems, undertaking some works on the lease, on behalf of or under contract with Lodestar Mine.

[23] PC Earthmoving purchased the mining lease application from Lodestar Mine some time before 30 January 2020. On that date, a lawyer for PC Earthmoving advised Mr Oehlerich, on behalf of Plentygold Miclere, that his client had purchased the lease.[13] At least by that date, then, Plentygold Miclere was on notice that the applicant was likely to change. That occurred when the transfer was registered with the Department of Natural Resources, Mines and Energy on 14 February 2020.

[24] On 12 March 2020, PC Earthmoving filed an application to strike out the objections. Plentygold's initial response was to make allegations against PC Earthmoving. Six days later, Plentygold Miclere withdrew its objection.

[25] PC Earthmoving has a reasoned basis, then, for seeking costs since the purchase was notified (30 January 2020) or, at the latest, when the transfer of the lease was registered (14 February 2020).

[26] There is some evidence of an improper motive in maintaining the objection. In essence, two deponents, Mr Stahr and Mr Sklavos, have sworn affidavits about conversations with Mr Oehlerich that they were party to, or were told about, in which Mr Oehlerich, on behalf of Plentygold, was encouraging others to lodge a caveat in an attempt to prevent the transfer of the lease.

[27] PC Earthmoving acknowledges the evidence is hearsay, although Mr Sklavos was a party to the conversation he recounted. Further, Mr Oehlerich, who has also sworn an affidavit, has not contested the evidence given by Mr Stahr and Mr Sklavos.

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13 Above n 2, Exhibit "GJS1."

[28] Nevertheless, there is insufficient evidence in those two affidavits for me to be comfortably satisfied[14] that Plentygold Miclere abused the statutory objection rights for this Court's hearing. For one thing, Mr Oehlerich's relationship with Plentygold Miclere and his authority to speak for that company has not been established to my satisfaction.

[29] I am not prepared to find Plentygold Miclere made or maintained the objection for an improper purpose on the limited and untested evidence before the Court.

[30] I am persuaded, however, that PC Earthmoving should have its costs since 14 February 2020, the date that the transfer was registered with the department. In the absence of a finding of improper motive, costs should be assessed on the standard basis.

[31] If the parties cannot agree on what those costs are, within 14 days of this decision, I will issue directions about evidence and submissions from the parties and I will fix the costs, on the papers.

Orders:

1. **The Respondent must pay the applicant's costs of and incidental to Application MRA690-19 from 14 February 2020 on the standard basis on the Supreme Court scale.**

2. **Such costs are to be agreed between the parties or, failing agreement within 14 days, the Court will issue directions requiring evidence and submissions from the parties, then fix the costs on the papers.**

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14 *Briginshaw v Briginshaw* (1938) 60 CLR 336; [1938] HCA 34.