

LAND COURT OF QUEENSLAND

CITATION: *Donovan v Struber & Anor* [2009] QLC 0079

PARTIES: **In the matter of Mining Leases Nos 20459 and 20461 – Application by Colleen Anne Donovan for determination of compensation payable to Stephen Struber and Diane Wilson-Struber**

FILE NO: MLC00147/2008

PROCEEDING: Application for determination of compensation

DELIVERED ON: 10 June 2009

DELIVERED AT: Brisbane

MEMBER: Mr BR O'Connor, Judicial Registrar

ORDERS: **1. I determine compensation under s.281 in the sum of \$2,800.**
2. I award an additional amount of \$280 in accordance with s.281(4)(e).
3. I direct that the miner pay the total compensation in the sum of \$3,080 to the current landowner; \$680 within three months of notification of grant of the mining lease by the Mining Registrar; the balance in four instalments of \$600 on the fifth, tenth, fifteenth and twentieth anniversary date of the grant of the leases until expiry.

CATCHWORDS: MINING LEASE – DETERMINATION OF COMPENSATION

Mineral Resources Act 1989, ss 279, 281

Smith v Cameron [1986-87] 11 QLCR
Shaw v Heritage Holdings Pty Ltd [1992-93] 14 QLCR
Mithcell v Oakhill and Mitchell (10 March 1998) unreported

APPEARANCES: Not applicable – Heard on the Papers

Background

- [1] The applicant Colleen Anne Donovan (the miner) seeks the grant of Mining Leases 20459 and 20461 in the Mreeba District. The applicant seeks terms of 25 years.

The application was lodged at the office of the Mining Registrar Mareeba on 22 December 2004.

- [2] The leases are located on Palmerville Holding PH 14/5422. Access is through the same property. A grazing operation is conducted on the property. The leases on Palmerville are over an area of 16.2 ha (on ML 20459) and 5 ha (on ML 20461) – totalling 21 ha (rounded).

The Act

- [3] Section 279 of the *Mineral Resources Act 1989* (“the Act”) provides that a mining lease shall not be granted or renewed unless an agreement in relation to compensation has been filed at the office of the Registrar, or in the absence of such an agreement, a determination of compensation has been made by the Court. In this instance, no agreement has been lodged with the Registrar and the matter has been referred to the Court for determination.

- [4] The matters which must be considered by the Court are set forth in s.281(3) of the Act. Although s.281 sets out the matters to be considered, it does not define any method of assessment. In *Smith v Cameron* (1986) 11 QLCR. 64, the Land Court held at p.74...”

“The section in my opinion merely identifies matters which shall be taken into consideration in making the assessment. It does not prescribe a method of valuation. No doubt each case will depend on its own facts and circumstances but it seems to me that either method is open to the valuer.”

- [5] In *Shaw v Heritage Holdings Pty Ltd* (1992-93) 14 QLCR 139, the Court at p.146 said:

“the method of assessment remains a matter which will be governed by the facts and circumstances of each case in which event emphasis may shift from one method to another.”

- [6] In considering *Mitchell v Oakhill and Mitchell* (10 March 1998) unreported, The President of the Land Court, referring to s.281(3) of the *Mineral Resources Act*, found

“the latter section does not prescribe a method of assessment. In my view, as long as the amount of compensation finally determined sufficiently accounts for each of the matters referred to in the sub-section, it is not necessary to quantify an amount in respect of each of the matters referred to.”

The evidence

- [7] Neither party sought to appear before the Court and this matter has been dealt with on the papers. Only the miner has presented material on the compensation issue to the Court. In these reasons I refer to the salient points but not all the evidence that I relied upon in making my determination.

- [8] There was no formal valuation evidence to consider, therefore the Court does not have that assistance in arriving at a determination. Due to the small area involved, the cost of a valuation would far outweigh any award for compensation. Due to the small area involved, co-use or co-occupation would not be feasible, and the land owner has lost the use of the lease area of 21 ha for the term of the lease.
- [9] Prior determinations and agreements for leases and claims in the Mareeba area range from about \$5 per hectare per year to \$15 per hectare per year.
- [10] In summary, there was no evidence called to support any claim under any other head of compensation, nor was any matter raised which would necessitate consideration under paragraphs (a), (c), (d), or (e) of subsection 4 of section 281 of the Act.

Access

- [11] From details provided in the copy of the application for grant, it appears access is through the same property. There are no details of this access or the effect it will have on the operations of the landowners. Access is in all probability a track that is used by any number of persons who have leases, claims or prospecting tenures in the area. I award a nominal sum of \$50 in relation access to the claim, noting that the term of the lease is not of a short duration.

Quantum

- [12] In making this determination I take into account that the only other viable use of the land is low intensity grazing. I consider mining operations on this lease of this size would have no measurable effect on the operations conducted on the property for at least half of each year, probably longer. There would be some minor effect which would include the noise of machinery and the movement of people and vehicles on or about the lease area and along the access road. There is no evidence of severance of one part of the property from any other part and I make no allowance for injurious affection of the balance of the property.
- [13] It is not the usual event that the mining lease is fenced to keep stock out, and it is common practice for the balance of the lease not disturbed by mining to be left available for grazing by stock and native fauna. This determination will reflect the level of usage of the surface of the lease by the miner against the right of the landowner to receive compensation and place the landowner is as near a position that a monetary award can as if the lease did not exist.

[14] Having regard to all the circumstances, I consider that the following award will satisfy the requirements of s.281 for the term of the lease for the limited purposes authorised by the grant of the lease. Drawing then on the limited evidence that is available, I determine compensation under Part 7 of the *Mineral Resources Act 1989*, to satisfy all heads of compensation set forth in subsection 3 of section 281 of the *Mineral Resources Act 1989* shall be the sum of \$5 per annum per hectare for the term of the lease. I award the additional sum of \$50 for access. The aggregate total of these awards is \$2,800. I further award the sum of \$280 under s.281(4)(e) to reflect the compulsory nature of the action taken under this part .

Terms of payment

[15] In relation to the terms, conditions and times when payments should be made, I take into account the quantum of the order, the size of the lease and the period of the lease. In these circumstances, I order that the miner pay total compensation to the current landowners in the sum of \$680 within a period of three months from notification of grant of the mining lease by the Mining Registrar and amounts of \$600 thereafter on the fifth, tenth, fifteenth and twentieth anniversary date of the grant of the lease until expiry.

Costs

[16] Neither party has sought an order for costs and in this matter it is not appropriate that costs be awarded.

**BR O'CONNOR
JUDICIAL REGISTRAR**