

LAND COURT OF QUEENSLAND

CITATION: *AMC De Mining Pty Ltd and J Poulsen (TTE Estate of RN Adams) and SM West* [2009] QLC 0090

PARTIES: AMC De Mining Pty Ltd
(applicant)
v.
J Poulsen (TTE Estate of RN Adams) and SM West
(respondents)

FILE NO: MRA00054/2009

DIVISION: General Division

PROCEEDING: Application for variation of an order

DELIVERED ON: 26 June 2009

DELIVERED AT: Brisbane

MEMBER: Mrs CAC MacDonald, President

ORDERS: **1. Order 1 made on 7 May 2009 is varied by removing reference to EPM 17639.**
2. Consequentially, Order 2 made on 7 May 2009 is varied by removing the implied reference to EPM 17639.

CATCHWORDS: *Land Court Rules – r.45(2)(d) – variation of an Order*

APPEARANCES: Written submissions

SOLICITORS: McGillvrays Solicitors, for the applicant
Marino Moller Lawyers, for the respondent J Poulsen
Gayler Cleland Lawyers, for the respondent SM West

[1] By an amending originating application filed in this Court on 9 April 2009, the applicant sought the following Orders -

1. That the Court declare that AMC De Mining Pty Ltd has an interest in Mining Leases 20341, 20407, 20427 and 20471 and EPM 17639.

2. That the Court order that the Mining Registrar assign forthwith, subject to the payment of appropriate fees and charges, Mining Leases 20341, 20407, 20427 and 20471 and EPM 17639 to AMC De Mining Pty Ltd
3. That pursuant to s.99 of the *Mineral Resources Act 1989* Caveat No. 1013799 in favour of the applicant be enlarged to lapse at the final determination of this matter.

[2] After reading the materials filed by the applicant in support of this application and considering submissions made by Counsel for the applicant and the solicitors representing the other parties, I made the following Orders on 7 May 2009 -

1. The Mining Registrar is authorised to dispense with the signature of Reginald Noel Adams for the applications attached hereto and marked "A", that is EPM 17639 and Mining Tenement Nos. 20341, 20407, 20427, 20471.
2. Subject to payment of any fees and any formal requirements of the Mining Registrar, the Mining Registrar process the applications attached hereto and marked "A" in accordance with s.300 of the *Mineral Resources Act 1989* but without the requirement that the Assignor, Reginald Noel Adams, execute the assignment.
3. Subject to payment of any fees and any formal requirements of the Mining Registrar, the Mining Registrar process all other applications for assignment of mining claims or mining leases in favour of AMC De Mining Pty Ltd in accordance with s.300 of the *Mineral Resources Act 1989*.
4. Caveat No 1013799 be lifted to enable registration of the applications referred to in Orders 2 and 3.
5. Following registration of the applications referred to in Orders 2 and 3, Caveat No. 1013799 be discontinued.
6. Each party have 7 days liberty to apply.

[3] It subsequently emerged that there are no provisions in the *Mineral Resources Act 1989* allowing for the assignment of an application for an exploration permit and, therefore, it was not possible for the Mining Registrar to comply with the order in respect of EPM 17639.

[4] By letter dated 10 June 2009, the solicitors for AMC De Mining Pty Ltd have advised that their client has instructed them to withdraw the component of its amended originating application that pertained to EPM 17639. Accordingly, the solicitors requested that this component "fall away" from the orders made on 7 May 2009. No submissions have been received from the other parties to this matter.

[5] Rule 45(2)(d) of the *Land Court Rules 2000* provides that a Court may set aside an order at any time if the party who has the benefit of the Order consents. AMC De Mining Pty Ltd is the party which has the benefit of the Order made in respect of EPM 17639 and

AMC De Mining Pty Ltd has requested that the part of the Order relating to EPM 17639 be set aside. Accordingly, pursuant to rule 45(2)(d) I make the following Orders:

ORDERS

1. Order 1 made on 7 May 2009 is varied by removing reference to EPM 17639.
2. Consequentially, Order 2 made on 7 May 2009 is varied by removing the implied reference to EPM 17639.

**CAC MacDONALD
PRESIDENT OF THE LAND COURT**