

LAND COURT OF QUEENSLAND

CITATION: *Slater & Anor v Appleton & Anor (No. 2)* [2013] QLC 13

PARTIES: Christopher Ian Slater and Sharyn Patricia Slater
(applicants)

v.

Victor John Edward Appleton and Janet Anne Appleton
(respondents)

FILE NOS: MRA161-12, MRA172-12 and MRA173-12

DIVISION: Land Court of Queensland

PROCEEDING: Applications to amend compensation

DELIVERED ON: 22 March 2013

DELIVERED AT: Brisbane

HEARD AT: On the Papers

MEMBER: Mr PA Smith

ORDERS: **The original compensation in each mining lease is confirmed.**

CATCHWORDS: MINING - COMPENSATION - right to have compensation reviewed if change of circumstances of lease - what can permit review - *Mineral Resources Act 1989*, s.283B

Mineral Resources Act 1989, s.283B
Environmental Protection Act 1994, s.149

Slater & Anor v Appleton & Anor [2012] QLC 7

APPEARANCES: Sharyn and Christopher Slater, self-represented
No submissions by the respondents

Background

[1] I have before me three applications to amend compensation with respect to three granted Mining Leases being ML70346, ML70406 and ML70407.

[2] Each mining lease is held under the same ownership, being Christopher Ian Slater and Sharyn Patricia Slater (“the miners”). Each mining lease is on land owned by Victor John Edward Appleton and Janet Anne Appleton (“the landholders”).

[3] The applications have been brought pursuant to s.283B of the *Mineral Resources Act 1989* (“the MRA”) which provides as follows:

“283B Review of compensation by Land Court

(1) This section applies if—

- (a) compensation has been agreed under section 279 or 280 or determined under section 281 or 282 for a mining lease (the *original compensation*); and
- (b) there has, since the agreement or determination, been a material change in circumstances for the mining lease.

Example of a material change in circumstances—

a different mining method that changes the impact of mining operations under the lease

- (2) The mining lease holder or any owner in relation to the mining lease mentioned in section 279(1)(a) or 280(1) may apply to the Land Court for it to review the original compensation.
- (3) Sections 281(3) to (7), 282 and 282A apply, with necessary changes, to the review as if it were an application under section 281(1).
- (4) The Land Court may, after conducting the review, decide to confirm the original compensation or amend it in a way the Land Court considers appropriate.
- (5) However, before making the decision, the Land Court must have regard to—
 - (a) the original compensation, other than any part of it that consists of an additional amount under section 281(4)(e); and
 - (b) whether the applicant has attempted to mediate or negotiate an amendment agreement for the original compensation; and
 - (c) any change in the matters mentioned in section 281(3) and (4) since the original compensation was agreed or determined.
- (6) If the decision is to amend the original compensation, the original compensation, as amended under the decision, is for this Act, other than this section, taken to be the original compensation.”

[4] It should be noted that compensation with respect to ML70406 and ML70407 was determined by this Court on 24 February 2012.¹

[5] The hearing of these applications was undertaken on the papers. The miners provided submissions to the Court in accordance with a Court ordered timetable. It is unfortunate that the landholders chose not to provide the Court with any submissions and to withdraw from the proceedings.² As the determinations of compensation proceed as if they were applications under s.281(1) of the MRA,³ the landholders remain as named respondents in each matter despite their withdrawal.

[6] There are a number of preconditions which must be met before any application under s.283B can proceed. I am satisfied that I am sufficiently apprised of the details of compensation for the mining leases in accordance with s.283B(5)(a). I am also satisfied that, given the stance of the landholders, there was nothing further that the applicants could do pursuant to s.283B(5)(b).

¹ See *Slater & Anor v Appleton & Anor* [2012] QLC 7.

² See email from Mr Houen to Land Court dated 28 June 2012.

³ See MRA s.283B(3).

- [7] I now turn to consider the provisions of s.283B(5)(c). This requires me to determine if there has been a material change in circumstances for each mining lease since the original compensation.
- [8] At the time of the original compensation for each mining lease, each mining lease had a separate Environmental Authority. The change that has occurred is that there is now one Environmental Authority⁴ covering all three mining leases. This means that, for *Environmental Protection Act 1994* (“the EP Act”) purposes, the mining leases are viewed as a single integrated operation.⁵
- [9] The consequence of this change is that, instead of being able to substantially disturb up to 10 ha at any one time on each mining lease, the miners may only disturb 10 ha at any one time on the mining project, which is the three mining leases combined.
- [10] I have no doubt that this represents a material change in circumstances for each mining lease pursuant to s.283B(1)(b) of the MRA, and that accordingly the requirements of s.283B(5)(c) are met. What I must now determine is what change in compensation, if any, should be made with respect to each mining lease.
- [11] Having given this matter careful consideration as I am required to do, even in the absence of submissions by the landholders, I have reached the conclusion that I am unable to reduce the compensation with respect to any of the mining leases. This means that the only order which it is appropriate for me to make⁶ is that the original compensation for each mining lease is confirmed.
- [12] I expect that the miners, and indeed the landholders, will be surprised by this result. The reason for this outcome flows from my strict interpretation of the intent of the MRA as currently drafted.
- [13] Pursuant to s.283B of the MRA, compensation is determined in accordance with s.283(3)-(7) of the MRA. There are three crucial words which appear in s.281(3)(a) and (b): “the mining lease”. There is no doubt that the only meaning which is possible under s.281 is a determination for EACH mining lease. It follows that I must separately consider the rights of the miner under each mining lease.
- [14] As matters currently stand, on any one of the mining leases, the miners may choose to conduct their full mining operations on just one lease, and accordingly significantly disturb up to 10 ha on that lease. This situation applies for each of the mining leases.
- [15] I am aware, of course, that pursuant to their Environmental Authority under the EP Act, the miners may only significantly disturb a total area of 10 ha for the three mining leases

⁴ MIC 200362705.

⁵ See s.149 EP Act.

⁶ In accordance with s.283B(4).

combined. However, there is nothing in the Environmental Authority preventing the miners from undertaking all mining on just one mining lease.

- [16] Clearly, there is a significant disconnect between the provisions of the MRA and the EP Act. This is because the MRA does not contemplate a mining project, being a combination of several mining leases, in the way the EP Act does. In fact, the concept of a mining project does not appear in the MRA.
- [17] Applying the relevant provisions of the MRA, I must assess the compensation for each mining lease as if up to 10 ha may be significantly disturbed on each, despite the legal fiction that this is when one considers the provisions of the EP Act.

Order

1. The original compensation in each matter is confirmed.

**P A SMITH
MEMBER OF THE LAND COURT**