

LAND COURT OF QUEENSLAND

CITATION: *Hancock Coal Pty Ltd v Kelly & Ors* [2013] QLC 9

PARTIES: Hancock Coal Pty Ltd
(applicant)

v.

Kathryn Kelly, Paul and Janeice Anderson, Coast and Country Association of QLD Inc, Patricia Julien of Mackay Conservation Group, Fiorella Paola Cassoni, Bruce and Annette Currie, Allan and Rhonda Coyne, Maurice and Judith O'Dell
(respondents)

Chief Executive, Department of Environment and Heritage Protection
(Statutory Party)

FILE NOS: MRA082-13 and EPA083-13

DIVISION: General Division

PROCEEDING: Application to read and file affidavit material

DELIVERED ON: 13 March 2013 [Ex tempore]

DELIVERED AT: Brisbane

HEARD ON: 13 March 2013

HEARD AT: Brisbane

MEMBER: PA Smith

ORDERS: **1. Leave to file and read the two affidavits of Mr Zillman is not granted.**
2. Leave to file and read the affidavit of Mr Taylor is granted.

CATCHWORDS: Practice and Procedure – Conduct of parties – premature complaint as to ulterior motives – objectors right to their day in Court

Environmental Protection Act 1994
Land Court Act 2000, s.7
Mineral Resources Act 1989

APPEARANCES: Mr Clothier of Counsel, for the applicant

Ms Kathryn Kelly, self-represented respondent
Mrs Janeice Anderson, self-represented respondent

Mr Finanzio of Counsel, for the respondent Coast and Country Association of QLD Inc
Ms Fiorella Paola Cassoni, self-represented respondent
Mr George Houen, agent for the respondents:
Mr and Mrs Currie, Mr and Mrs Coyne and Mr and Mrs O'Dell

Ms Lynda Body, Principal Lawyer, for the Statutory Party

SOLICITORS: Allens for the applicant

Environmental Defenders Office (QLD) Inc for the respondent Coast and Country Association QLD Inc

Legal Services, Department of Environment and Heritage Protection for the Statutory Party

[During the course of the review and directions hearing in this matter, (which is the referral of a mining lease application for ML70426 pursuant to the Mineral Resources Act 1989 and Environmental objections to ML70426 and draft EA MIN101017310 pursuant to Environmental Protection Act 1994), the applicant made an oral request to seek the Court's leave to file and read two affidavits of Mr Ben John Zillmann sworn on 11 and 12 March 2013 along with the affidavit of Mr Paul William Mason Taylor sworn on 11 March 2013. The request for leave with regards to the affidavits of Mr Zillmann was strongly opposed by objector Coast and Country Association QLD Inc. The affidavit of Mr Paul William Mason Taylor was granted leave to read and file.

The applicant, all level 3 objectors and Department of Environment and Heritage Protection (as the Statutory Party) were represented. All Level 3 objectors bar Mr and Mrs Anderson joined in the objection brought by Coast and Country Association of QLD Inc against Mr Zillman's two affidavits being filed and read.

Mr Finanzio for Coast and Country Association of QLD Inc submitted that there was no evidence before the Court of any misconduct or delay on the part of Coast and Country Association of QLD Inc, and as such the affidavits of Mr Zillman, being based on that premise, were not relevant at this point in the proceedings and should not be accepted.

Ex tempore reasons were then delivered.]

- [1] The Court has a number of factors it must take into account. Perhaps the most important of those is s.7 of the *Land Court Act 2000*, which in shorthand form, says that this Court must operate with as little formality as possible, but in order to ensure that justice is done between the parties. So in other words, cut through what otherwise would be referred to as an Australian euphemism and get to the heart of the matter in a way that everybody gets to have their say and understands what is going on.
- [2] Now that itself can be a difficult provision to apply because it also contains provision that the Court is not to be bound by the rules of evidence, and is to follow principles of equity and good conscience. It is of course, the very rules of evidence that have to be considered in applying what relevance and weight is provided to any material, and so it simply comes to a

strange situation where you receive material which may not have otherwise been received under the rules of evidence, and use those same rules of evidence to deal with that material. So even on its face, a legislative provision which appears to make the Land Court, as it has been referred to, as the “People’s Court”, is not as straightforward as it would otherwise seem.

- [3] I believe that all parties, when they come before the Court at first instance, unless they already have a finding against them in another place (such as: that they are a vexatious litigant) should be seen as coming before the Court with clean hands. That is the presumption until proven otherwise, or until conduct suggests otherwise. I am concerned that this is obviously a very large project, involving a huge sum of money, and it has been viewed by both the State and Federal Government as a project of national significance. I must take that into account. I must also take into account the rights of the objectors that they too have the right to have their day in Court and be properly heard, and to have the Court properly consider all elements of the case in a fair, open and unbiased way.
- [4] When I balance those two considerations with s. 7 of the *Land Court Act*, I come to the conclusion that in this particular instance I consider it appropriate to receive into evidence the affidavit of Mr Taylor, sworn on 11 March 2013. The affidavit may be filed and relied upon, despite the unfortunate wording in that affidavit in paragraph 14, which on its face, does give the impression that Mr Taylor views the Court as a rubber stamp. I state formally on the record that I note Counsel’s advice that that is not the intent of Mr Taylor in swearing the affidavit, and so I take that into account in the decision to receive that affidavit.
- [5] As regards the two affidavits of Mr Zillmann, I find nothing in the attitude undertaken to date by either Mr Finanzio nor Dr McGrath, nor any of the other objectors, save perhaps Ms Cossoni, in requesting a longer adjournment of the case, to be anything but seeking a quick, efficient and proper disposition of the matter before me. In that sense, I consider the affidavits, having read both of them, and all of their annexures, to be premature at this stage, and not relevant to the matters currently before the Court.
- [6] Leave to file and read the two affidavits of Mr Zillmann is not granted.

Orders

1. Leave to file and read the two affidavits of Mr Zillman is not granted.
2. Leave to file and read the affidavit of Mr Taylor is granted.

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