

LAND COURT OF QUEENSLAND

CITATION: *Re Markert v Struber & Anor* [2008] QLC 0103

PARTIES: **Frank Joseph Markert (applicant miner) and Stephen Roy Struber and Dianne Rose Wilson-Struber (respondent landowners)**

FILE NO/S: MLC005/2008

PROCEEDING: Application to determine compensation

DELIVERED ON: 23 May 2008

DELIVERED AT: Brisbane

PRESIDING MEMBER: Mr FW Windridge, Judicial Registrar

ORDER/S: **1. Compensation determined at \$1.
2. Such compensation to be paid by the miner to the landowner within 30 days of notification of the grant of the mining lease.
3. The property known as Palmerville Holding be acquired by the State of Queensland and placed under the control of the current Trustees of the Resources Reserve.
4. A copy of this determination be provided to the Hon. The Minister for Mines and Energy by the Registrar of the Land Court of Queensland.
5. The applicant miner is granted liberty to apply for injunctions, restraining orders, damages and costs on the giving of 21 days notice.**

CATCHWORDS: COMPENSATION —RENEWAL OF LEASE
GRAZING PROPERTY —PRACTICE DIRECTIONS

Mineral Resources Act 1989, s. 281
Mining Right of Way Act (RSBC 1996) Chapter 294

Smith v Cameron [1986-1987] 11 QLCR 64
Shaw v Heritage Holdings Pty Ltd (1992-93) 14 QLCR 139
Mitchell v Oakhill and Mitchell (10 March 1998) unreported

APPEARANCES: Not applicable – Heard on the papers

Background

- [1] This is an application under s. 281 of the *Mineral Resources Act 1989* (MRA) for the determination of compensation for the effect upon the respondent landowners of the renewal of the applicant's mining lease number 20553 in the Mareeba District.
- [2] The lease is located on Palmerville Holding, being part of Lot 2 on CP910619, Parish Groganville, County Chelmsford. Access to the lease is partly through Palmerville Holding. The matter for consideration here is compensation for the lease area of 25.2 ha with about 11 ha of that area being creek alluvium. This land is held by the respondent landowners Struber and Wilson-Struber.
- [3] The parties have been unable to resolve the issue of compensation, and the matter has been referred to the Court for determination. Whilst it is within the power of the parties to come to agreement on any issues, the power of the Court is limited to s. 281. It appears there is no response from the landowner on file or any response to Practice directions by the landowners.
- [4] The Court has given directions in relation to time frames for submissions, and this matter has been dealt with on the papers. The applicant miner has lodged a very detailed submission in relation to compensation for the lease and access. No site visit has been conducted. The Court has attempted to carry out various site inspections in late 2007 and early 2008. However, adverse weather conditions have thwarted all attempts to visit the area. It is hoped some inspections will be carried out in late 2008 or early 2009.

Compensation

- [5] Relevantly, s. 281(3)(a) requires the Court to settle the amount of compensation an owner of land is entitled to as compensation for:
 - “(i) deprivation of possession of the surface of land of the owner;
 - (ii) diminution of the value of the land of the owner or any improvements thereon;
 - (iii) diminution of the use made or which may be made of the land of the owner or any improvements thereon;
 - (iv) severance of any part of the land from other parts thereof or from other land of the owner;
 - (v) any surface rights of access;
 - (vi) all loss or expense that arises;as a consequence of the grant or renewal of the mining lease”.

[6] Section 281(4) enables various additional factors to be included in the compensation determination. In the present case, only paragraph (e) is relevant. It provides as follows:

“(4) In assessing the amount of compensation payable under subsection (3)—

...

(e) an additional amount shall be determined to reflect the compulsory nature of action taken under this part which amount ... shall be not less than 10% of the aggregate amount determined under subsection (3).”

[7] 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. Whilst the Court is only bound by its own legislation, the following past appeal cases offer some guidance to methodology that could be used in arriving at a determination. In *Smith v Cameron* [1986-1987] 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.”

[8] 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.”

[9] In considering *Mitchell v Oakhill and Mitchell* (10 March 1998) unreported, the President of the Land Court, referring to s. 281(3) of the MRA, 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.

[10] *Deprivation of possession*: The matter under consideration compensation for loss of surface area and access that traverses Palmerville Holding. The road is available to the landowners for their purposes. There is no deprivation of possession.

[11] *Diminution of value*: There is no valuation evidence to consider. It is difficult to find any significant reduction of value for an access road or the surface area that is used by this miner.

[12] *Diminution of use*: There is no evidence of diminution of use.

- [13] *Severance*: The renewal of the lease and that part of the nominated access route that traverses Palmerville Holding will not cause severance of one part of the property from any other part of the property.
- [14] *Surface rights of access*. It is in all probability access is only a short distance and may be some 10 metres wide, and no doubt is used by a number of other persons for various reasons. I assess loss of access to be of nominal effect.
- [15] *Loss or expense*: There is no evidence of any other loss or expense that will occur because of the renewal of the lease. The landowner has not raised any issues for consideration.
- [16] *Additional 10%*: In respect of s. 238(4) (e), no submissions were made. There does not appear to be any reason or special circumstance why the premium should be increased, and therefore no more than the statutory 10% should be added to the general award. In view of the order that I propose to make, I do not intend to make any allowance under this section.

Determination

- [17] There will be a negligible effect, if any at all, on the management of the pastoral holding. I am not satisfied that any award other than a nominal award is justified. I note that under the *Mining Right of Way Act (RSBC 1996)*, no compensation for access is payable, the right to mine giving a common law right of access to the mining tenement. In my opinion, given the attitude of the land owners and their failure to respond in any meaningful way to the practice directions of the Court, a nominal order only is warranted. Having regard to the foregoing, I determine compensation for mining and access to be the sum of \$1.00 for the term of the lease.
- [18] There was no submission in relation to the times, terms and manner of payment. Due to the small quantum involved, I consider that payment of compensation should be in full and made within 30 days of notification of renewal of the lease by the Mining Registrar.

- [19] It is recommended that the Honourable the Minister for Mines and Energy give some serious consideration to the adoption of legislation similar to the *Mining Right of Way Act (RSBC 19996)* when amendments to the *Mineral Resources Act 1989* are being considered. There would be considerable savings in time, money and resources to the parties, the Department and this Court if appropriate amendments were made in relation to access provisions.
- [20] It should be noted by the landowner that he (or they) have no right of veto over access as nominated by the miner and have no right to prevent access where a miner, his agents, employees, invitees or prospector is exercising his, her or their rights under a duly issued licence or permit. The Crown reserves the rights to all minerals (except under certain circumstances of prior legislation) and petroleum (s. 8 MRA) and has all the necessary powers (s. 2 MRA) to grant rights of access, mining and removal of mineral. The landowner has no right of veto over nominated access or surface areas taken up under any application or renewal.
- [21] It is recommended that the State of Queensland acquire the property known as Palmerville Station and include such property into the Resources Reserve for mining purposes, with the current Trustees of the present Reserve extending their power accordingly.
- [22] Practice directions have been issued by the Court. The landowner ignores such directions at his own peril. The power of the Court is limited to the provisions of s. 281 of the MRA.
- [23] The Court appreciates the effort exhibited by the applicant miner in order to achieve a satisfactory outcome in this matter. The information supplied was detailed and relevant. The offer made was more than fair and reasonable. The Court can only assume that the landowner's had another agenda under consideration and are not prepared to co-operate in any way. Should access be prevented or obstructed in any way, the applicant miner is granted liberty to apply to the Land Court for the appropriate injunctions, restraining orders, damages and costs on the giving of 21 days notice.

[24] A copy of this determination be forwarded to the honourable the Minister for Mines and Energy for his consideration by the Registrar of the Land Court.

**FW WINDRIDGE
JUDICIAL REGISTRAR**