

LAND COURT OF QUEENSLAND

CITATION: *Re Fitzgerald and Pedracini* [2009] QLC 0074

PARTIES: **In the matter of Application for Mining Lease No 3464 – Determination of compensation payable by Kay Frances Fitzgerald and Patrick Charles Fitzgerald to Reginald Joseph Pedracini.**

FILE NO: MLC00062/2009

PROCEEDING: Application for determination of compensation

DELIVERED ON: 29 May 2009

DELIVERED AT: Brisbane

HEARD DATE: Heard on the Papers

MEMBER: Mr BR O'Connor, Judicial Registrar

ORDER/S: **1. Compensation determined at \$120 ([5])**
2. The miners pay the total compensation of \$120 to the landholder within two months from notification of the renewal of the mining lease by the Mining Registrar.

CATCHWORDS: MINING- MINING LEASE – DETERMINATION OF COMPENSATION

Mineral Resources Act 1989, s.279, 281

Re Wallace & Ors & Evans [2006] QLRT 93, applied

APPEARANCES: Not applicable – Heard on the Papers

Background

- [1] Kay Frances Fitzgerald and Patrick Charles Fitzgerald (the miners) currently hold ML3464. The mining lease was originally granted on 3 September 1987 for a period of 21 years. On 8 February 2008 the miners lodged an application for a renewal of the mining lease for a term of 21 years with the Mining Registrar, George town District.
- [2] This determination of compensation relates to access to the mining lease which includes access over a property owned by Reginald Pedracini (the landowner).

Court Practice Direction

- [3] On 17 February the Court sent letters to the miners and the landholder bringing the referral of this matter to the Court by the Mining Registrar to their attention, and advising them of their obligations under Court Practice Direction. Timeframes for the submission of relevant material were provided to each party. Neither the miners nor the landholder have made submissions to the Court.
- [4] It is not an uncommon occurrence for either of both parties in a compensation matter before the Court to fail to comply with the Court Practice Direction. The absence of detailed, or any, compensation evidence clearly makes the task of the Court in determining compensation very difficult. In the circumstances, I adopt the analysis of the legislative provisions, compensation principles and methodology applied by Mining Referee Windridge in *Re Wallace & Ors & Evans* [2006] QLRT 93.

Determination

- [5] Taking into account all heads of compensation in subsection 3 of s.281 of the *Mineral Resources Act 1989* (“the Act”) and absent any details of the area of the land required for access, I assess compensation for access in the minimal sum of \$5.00 per annum for the term of the lease, which equates to \$110. Pursuant to s.281(4)(e) of the Act, I award the additional sum of \$10.00.
- [6] Taking all relevant factors into account, I order that the miners pay the total compensation of \$120.00 to the landholder within two months from notification of the renewal of the mining lease by the Mining Registrar.

BR O’CONNOR
JUDICIAL REGISTRAR