

# LAND COURT OF QUEENSLAND

CITATION: *McIntyre and Downing* [2009] QLC 0067

PARTIES: In the matter of mining Lease 3683 – Application by John Stewart McIntyre and Mary Josephine McIntyre for determination of compensation payable to Gordon Downing

FILE NO: MLC207/2008

PROCEEDING: Application for determination of compensation

DELIVERED ON: 19 May 2009

DELIVERED AT: Brisbane

MEMBER: Mr BR O'Connor, Judicial Registrar

ORDER: 

1. **I determine compensation under s.281 in the sum of \$220.**
2. **I award an additional amount of \$20 in accordance with s.281(4)(e).**
3. **I direct that the miners pay the total compensation in the sum of \$240 to the current landowner within three months from notification of the grant of renewal of the mining lease by the Mining Registrar.**
4. **No order for costs.**

CATCHWORDS: MINING LEASE – DETERMINATION OF COMPENSATION  
Mineral Resources Act 1989, ss.279, 281  
*S.P. White v Warner* [2003] QLRT 40  
*Smith v Cameron* [1986 -87] 11 QLCR  
*Shaw v Heritage Holdings Pty Ltd* [1992-93] 14 QLCR

APPEARANCES: Not applicable – heard on the papers

[1] The applicants John Stewart McIntyre and Mary Josephine McIntyre (the miners) seek the renewal of the grant of mining Lease 3683 in the Rockhampton District. The

applicants seek a term of 11 years. The application was lodged at the office of the Mining Registrar Rockhampton on 30 May 2008.

- [2] The lease is located on Lot 311 on CK 1014. Access is in part through the same property. A grazing operation is conducted on the property. The lease is over a surface area of 1.6 ha and is sought for the purpose of crushing and screening of rock related to mining operations. For the purpose of this application I will round to 2 ha.

### **The Act**

- [3] Section 279 of the *Mineral Resources Act 1989* ("the Act") provides that a mining lease shall not be granted or renewed unless an agreement in relation to compensation has been filed at the office of the Registrar, or in the absence of such an agreement, a determination of compensation has been made by the Court. In this instance, no agreement has been lodged with the Registrar and the matter has been referred to the Court for determination.

- [4] 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. In *Smith v Cameron* (1986) 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."

- [5] 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."

- [6] In considering *Mitchell v Oakhill and Mitchell* (10 March 1998) unreported, The President of the Land Court, referring to s.281(3) of the Mineral Resources Act, 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."

### **The evidence**

- [7] Neither party sought to appear before the Court in relation to the compensation issue and this matter has been dealt with on the papers. Both parties filed statements or other supporting material. In these reasons I refer to the salient points but not all the evidence that I relied upon in making my determination.

- [8] There was limited valuation evidence to consider. Due to the relatively small area involved, the cost of a formal valuation would outweigh any award for compensation. Due to the area involved, co-use or co-occupation would not be feasible, and the land owner has lost the use of the lease area of 2 ha for the term of the lease.

[9] Prior determinations and agreements for leases and claims in the Rockhampton area range from about \$5 per hectare per year to \$15 per hectare per year.

[10] In summary, there was limited evidence called to support any claim under any other head of compensation, nor was any matter raised which would necessitate consideration under paragraphs (a), (c), (d), or (e) of subsection 4 of section 281 of the Act.

### **Quantum**

[11] In making this determination I take into account that the only other viable use of the land is low intensity grazing. I consider mining operations on this lease of this size would have no measurable effect on the operations conducted on the property. There would be some minor effect which would include the noise of machinery and the movement of people and vehicles on or about the lease area and along the access road. There is no evidence of severance of one part of the property from any other part and I make no allowance for injurious affection of the balance of the property.

[12] It is not the usual event that the mining lease is fenced to keep stock out, and it is common practice for the balance of the lease not disturbed by mining to be left available for grazing by stock and native fauna. This determination will reflect the level of usage of the surface of the lease by the miner against the right of the landowner to receive compensation and place the landowner in as near a position that a monetary award can as if the lease did not exist.

[13] Having regard to all the circumstances, I consider that the following award will satisfy the requirements of s.281 for the term of the lease for the limited purposes authorised by the grant of the lease. Drawing then on the limited evidence that is available, I determine compensation under Part 7 of the *Mineral Resources Act 1989*, to satisfy all heads of compensation set forth in subsection 3 of section 281 of the *Mineral Resources Act 1989* shall be the sum of \$10 per annum per hectare for the term of the lease totalling \$220. I further award the sum of \$20 under s.281(4)(e) to reflect the compulsory nature of the action taken under this part.

### **Terms of payment**

[14] In relation to the terms, conditions and times when payments should be made, I take into account the quantum of the order, the size of the lease and the period of the lease. In these circumstances, I order that the miners pay the total compensation to the current landowner in the sum of \$240 within a period of three months from notification of grant of the mining lease by the Mining Registrar.

**Costs**

[15] Neither party has sought an order for costs and in this matter it is not appropriate that costs be awarded.

**BR O'CONNOR  
JUDICIAL REGISTRAR**