

**IN THE WARDENS COURT OF QUEENSLAND
HELD AT BRISBANE**

BEFORE: F W WINDRIDGE
MINING WARDEN

IN THE MATTER OF: APPLICATION TO EXTEND CAVEAT LODGED
UNDER SECTION 301 OF THE *MINERAL
RESOURCES ACT 1989* IN RESPECT OF MINING
LEASE 90081

APPLICANT: MS Z FARMER, Lawyer, for UAL PTY LTD

RESPONDENT: MR P AMBROSE, instructed by Blake, Dawson &
Waldron, Lawyers, for MAJESTIC RESOURCES NL

CATCHWORDS: MINING – MINING LEASE – CAVEAT – EXTENSION
– NON-CONSENT CAVEAT – PROPRIETARY
INTEREST – CONTRACTUAL INTEREST

Mineral Resources Act 1989 s. 301

RULING:

This matter was dealt with by way of oral submissions, a sworn affidavit, and tendered documents on Friday 28 April 2000. I ruled at the close of submissions that the application be refused, with reasons to be given at a later date. I now set out those reasons.

Initially, the applicant sought orders as hereunder:

1. That the caveat lodged by the Applicant pursuant to s.301 of the *Mineral Resources Act 1989* in respect of ML90081 remain in place until such time as either;
 - The applicant is paid the amount due to it on settlement under the Deed of Variation to the Hampden Kilometre Agreement made between the Applicant and Respondent on September 20, 1996, or
 - The Applicant and Respondent reach a compromise under the said Deed of Variation and all obligations under that agreement are at an end; or
 - September 20, 2001.

whichever is the sooner.

2. That the Respondent pays the Applicants costs in respect of this Application.

At the outset, the applicant amended the claim by deleting the application for costs (item 2 of the claim).

During the submissions, a number of documents were tendered and admitted as exhibits. They are:

Exhibit 1 - Mining Lease – Public Search Report – Caveat

Exhibit 2 - Mining Lease – Public Search Report – Mortgage

Exhibit 3 - Copy of Caveat

Exhibit 4 - Hampden Agreement

The applicant supported the application with an affidavit from James ASKEW to which a number of documents were exhibited. For assistance, the applicant also provided a computer printout of a map from the Department of Mines and Energy which showed the location of ML 90081 and the surface area that is held within ML 90081, referred to in submissions as the 'keyhole'. It is the balance of the surface area, i e the surface outside the "keyhole" that is the subject of the agreement between the parties UAL Pty Ltd (UAL) and MAJESTIC RESOURCES N L (MAJESTIC).

By a caveat dated 2 February 2000, UAL Pty Ltd sought to protect certain interests in relation to the Hampden Kilometre Agreement and a Variation thereof. As I understand the background, Majestic purchased ML90081 from UAL. This purchase included that part of the surface area known as the "keyhole". The agreement stipulated that UAL would make application for the balance of the surface area and assign that application to the purchaser (Majestic) who would then pay the balance of the purchase price namely \$500,000.

The caveat document itself is in the prescribed form. It states that UAL claims a right or interest in respect of Mining Lease 90081 in the Mount Isa District.

The particulars of that "right" or "interest" are stated at item 5 of the caveat document as "the caveator has an agreement with the holder under which the caveator is entitled to be paid a sum of money upon the grant of the application for additional surface area for ML 90081. This agreement is recorded in the Deed of Variation between UAL Pty Ltd and Majestic Resources NL of 20 September 1996 (copy attached)".

The caveat forbids the approval of any assignment, mortgage or sub-lease absolutely for the period 02/02/2000 to 01/05/2000.

The caveat was a non-consent caveat and expired on 1 May 2000 automatically under the provisions of section 303(2)(d). Hence the application by UAL for an order of this Court under section 303(2)(c) that the caveat remain in place until certain things happened.

The applicant advanced a number of reasons for the "extension" of the caveat, the principal of these being a fear that Majestic may somehow deal with the tenement contrary to the interests of UAL, and possibly put at risk its entitlement to payment of \$500,000 on grant of the additional surface area. The applicant asserts that its rights under the agreement can be protected by the simple and cost effective action of extending the caveat.

The respondent opposes the application and disputes that the applicant has or had a right or interest that could be protected by a caveat. The respondent relies (in part) on the ruling in *Rural & Industries Bank of W A v Hamilton & Ors* (Wardens Court of WA 19 December 1989) which held that royalty payments (being the interest that the defendants held in the subject Mining Lease) was not a proprietary interest but was a contractual interest.

The issue to be determined is "Does UAL have a right or interest in the tenement that can be protected by a caveat?"

We have some guidance from "Halsbury's Laws of Australia" at (170-3290) page 350 at note 1, "A caveat can be lodged only to protect an interest in the tenement, not a personal right to receive money from a tenement holder. Royalty payments are not proprietary rights such as confer an interest in the tenement. They are mere contractual rights."

The effect of a caveat is severe in that it forbids any dealings with the tenement and in fact over-rides Ministerial power in relation to assignment of a lease or application for a lease. Section 301(1) of the *MRA* refers to "a person who claims a right or interest in or in respect of a mining lease or an application for the grant of a mining lease". The operative words are "a right or interest in a mining lease or application for a mining lease". I do not consider the words "or in respect of" puts any different connotation on the intent of the section, or widens the "net of influence" of the section. The claim must be of a legal or equitable nature and the claim must be for "a right or interest" in the tenement.

In this instance UAL have contracted to dispose of their interest and on the occurrence of certain other things or times, UAL will receive a further financial benefit. Their rights to receive this benefit is executed in the form of a document known as the Deed of Variation and dated 20th September 1996. I am of the opinion that UAL have a contract with Majestic in relation to the balance of the surface area, and their rights should be protected by the terms of the contract and enforced by the terms of the contract. The applicants (UAL) seek to enforce their contractual rights by the caveat, but on my reading of the agreements, they have contracted out of any legal or equitable interest in the tenement. There is no proprietary interest in the lease.

For these reasons the application was refused.

Dated at Brisbane this 5th day of May 2000.

(F W WINDRIDGE SM)
MINING WARDEN