

LAND AND RESOURCES TRIBUNAL QUEENSLAND

CITATION: *Re Ellis & Anor v Struber & Anor* [2007] QLRT 119

PARTIES: **In the matter of Mining Lease No 20238 – Determination of compensation payable by Raymond K Ellis and Paul D Ellis to Stephen R Struber and Diane R Wilson-Struber**

FILE NO/S: MLC78/07

PROCEEDING: Application for determination of compensation

DELIVERED ON: 22 August 2007

DELIVERED AT: Brisbane

HEARING DATE: Heard on the Papers

MEMBER/S: Smith DP

ORDER/S: **1. Compensation determined at \$198.00 per annum (at [6])**
2. The miners to pay the compensation of \$198.00 to the landholders yearly in advance, with the first payment due within two months from notification of the renewal of the mining lease by the Mining Registrar. (at [7])

CATCHWORDS: MINING LEASE – DETERMINATION OF COMPENSATION

Mineral Resources Act 1989, s. 281

Re Wallace & Ors & Evans [2006] QLRT 93, applied
McFarlane v Wilson Mining Warden 26.06.96 referred to

COUNSEL: N/A

SOLICITOR/S: N/A

Background

- [1] Raymond K Ellis and Paul D Ellis (the miners) currently hold ML20238. The mining lease was originally granted on 1 November 1996 for a period of 10 years. On 17 July 2006 the miners lodged an application for renewal of the mining lease for a term of 10 years with the Mining Registrar, Mareeba District.

- [2] The lease is located on a property owned by Stephen R Struber and Diane R Wilson-Struber (the landholders). The lease is for the purpose of mining for andalusite/sillimanite, gold, ilmenite/leucosene, monazite, rutile, tin ore, and zircon. The lease area is 34.4ha.

Tribunal Practice Direction

- [3] On 4 April 2007 the Tribunal sent letters to the miners and the landholders bringing the referral of this matter to the Tribunal by the Mining Registrar to their attention, and advising them of their obligations under Practice Direction 1 of 2003. Timeframes for the submission of relevant material were provided to each party. The miners have submitted that compensation should remain as originally determined by the Mining Warden on 26 June 1996, that being the sum of \$170 per year¹. Although the landholders made submissions to the tribunal and submitted photographic evidence, the thrust of their evidence and submissions related to issues of mining lease obligations and rehabilitation, and not the principles and evidence required for determining compensation. Accordingly, neither party has complied in any way helpful way with the Tribunal Practice Direction as far as providing evidence and submissions to assist the Tribunal in quantifying a compensation determination.
- [4] It is not an uncommon occurrence for either or both parties in a compensation matter before the Tribunal to fail to comply, in a meaningful way, with Practice Direction 1 of 2003. Mining Referee Windridge has determined a matter in circumstances which mirror those before me, and I adopt the analysis of the legislative provisions, compensation principles and methodology applied by Mining Referee Windridge in that case, *Re Wallace & Ors & Evans* [2006] QLRT 93. I also acknowledge his 1996 determination of compensation (as Mining Warden) for this lease.

Determination

- [5] The Mining Registrar has provided a copy of the Department of Natural Resources and Water QVAS Property Details Report for the landholders' property which shows the unimproved valuation, valuation date 1 October 2004, in the sum of \$650,000.00 for the 125,640 hectare property. Using the unimproved valuation, and assuming the land subject to the mining lease is of an average standard for the property, the unimproved value of the mining lease land equates to \$5.17 per hectare. Although the purpose of the unimproved valuation is not for determining compensation under the *Mineral Resources Act* 1989 (the Act), given the absence of any other evidence, I am prepared to accept the value of the land as at 1 October 2004 to be, rounded up, \$5.20 per hectare. Further, absent any evidence that I can rely on as to any change in value subsequent to that date, I adopt \$5.20 per hectare for the purposes of this determination. I note that this sum closely equates to the value applied by the Mining Warden, and I am

¹ See the Mining Warden's decision on the LRT website, reported as *McFarlane v Wilson* Mining Warden 26.06.96. In assessing compensation, no submissions were made by either party to the Mining Warden. Doing the best he could with the lack of evidence, he assessed compensation in the sum of \$5.00 per ha per year for 34 ha

prepared to follow his previous determination in determining compensation on a per hectare per year basis.

- [6] Taking into account all heads of compensation in subsection 3 of s 281 of the Act, I assess compensation in the sum of \$5.20 per hectare per year, which for 34.4 hectares equates to \$178.88, which I round up to \$180.00. Pursuant to s 281(4)(e) of the Act, I award the additional sum of \$18.00, making a total of \$198.00 per annum.
- [7] Taking all relevant factors into account, I order that the miners pay to the landholders compensation in the sum of \$198.00 yearly in advance, with the first payment due within two months from notification of the renewal of the mining lease by the Mining Registrar.