

# LAND AND RESOURCES TRIBUNAL QUEENSLAND

CITATION: *Titan Sandstone Pty Ltd v ChongHerr Investments Pty Ltd* [2007] QLRT 123

PARTIES: **Titan Sandstone Pty Ltd and ChongHerr Investments Pty Ltd**

FILE NOS: MRAA118/2007

PROCEEDING: Application for removal of caveat

DELIVERED ON: 24 August 2007

DELIVERED AT: Brisbane

HEARING DATE: 9 August 2007

PRESIDING MEMBER: Smith DP

ORDER/S: **1. Order made that Titan have leave until 4pm Friday, 31 August 2007 to amend its caveat, and that in default of amendment the caveat be removed (at [11])**  
**2. Order made that costs of and incidental to this application be reserved until the final determination of the application and counter-claim (at [12])**

CATCHWORDS: MINING – MINING LEASE – APPLICATION FOR RECMOVAL OF CAVEAT

*Mineral Resources Act 1989 s 305, 310*  
*Real Property Acts 1861*

*ChongHerr Investments Pty Ltd v Titan Sandstone Pty Ltd* [2007] QCA 167, referred to  
*Queensland Estates Pty Ltd v Co-Ownership Land Development Pty Limited* 1969 QD.R 150 followed

COUNSEL: Ms S Moody for the Respondent (Applicant for removal of caveat)  
Mr S Fisher for the Applicant (Respondent to application for removal of caveat)

SOLICITORS: Hemming & Hart for the Respondent (Applicant for removal of caveat)  
Neumann & Turnour for the Applicant (Respondent to application for removal of caveat)

AGENTS: N/A

- [1] On 26 June 2007 Titan Sandstone Pty Ltd (“Titan”) commenced proceedings in the Tribunal seeking various orders including the recovery of mined sandstone and plant and equipment from ChongHerr Investments Pty Ltd (“ChongHerr”). Titan’s action is being strenuously opposed by ChongHerr. ChongHerr also has a substantial counter-claim against Titan. The claim and counter-claim have been set down for hearing together commencing on Wednesday 12 September 2007 in Brisbane.
- [2] This application is brought by ChongHerr under s 305 of the *Mineral Resources Act 1989* (“the Act”) seeking an order that Caveat Number 1009531 (“the caveat”) against Mining Lease 50013 be removed. The caveat was lodged by Titan on 26 June 2007. Titan opposes the application for removal of the caveat.
- [3] One aspect to be determined at the hearing in September concerns the ownership of mined sandstone located on the mining lease. By lodging the caveat, Titan seeks to prevent ChongHerr from dealing with the disputed sandstone.
- [4] The present application has been the subject of extensive submissions from Counsel for both parties, for which the Tribunal is grateful. However, many of the submissions, such as the interpretation of s 310 of the Act and the many issues that flow therefrom, are by their nature key aspects to be determined at the substantive hearing. At the end of the day, I have reached the conclusions that I have on this application without the necessity of determining the bulk of the questions at the heart of the dispute.
- [5] An examination of the caveat shows that the caveat applies to the whole of the 100% interest of ChongHerr in ML 50013. The caveat forbids the assignment, mortgage or sub-lease of the mining lease. The right or interest sought by the caveat particularly refers to the sandstone in situ on the mining lease mined by Titan.
- [6] The material before me, together with the details set out in the Court of Appeal decision between these parties relating to this mining lease<sup>1</sup>, shows that the area of the mining lease previously mined by Titan was limited to 10 hectares of the

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<sup>1</sup> *ChongHerr Investments Pty Ltd v Titan Sandstone Pty Ltd [2007] QCA 167*

total mining lease area of 129.3 hectares. I am in no doubt that the caveat, in seeking to apply to the whole mining lease (which I find by construction it purports to do), is too wide.

- [7] Additionally, I can find no justification for the caveat to prevent the mortgaging of the mining lease by ChongHerr.
- [8] It is appropriate that I refer to one aspect of the evidence. Despite the evidence of Mr Ng in his affidavit of 6 August 2007 setting out his reasons for delay in taking any action with respect to the caveat once its existence was brought to his attention, it remains a strange situation that Mr Ng would not have sought urgent information about the caveat, particularly given that he was not aware of who had lodged the caveat. Such lack of action by Mr Ng is also at odds with his evidence contained in his affidavit of 31 July 2007 to the effect that ChongHerr is seeking to sub-lease its interests in the mining lease. I note that Ms Moody relied on ChongHerr's intent to sub-lease the mining lease as a reason for urgency in bringing this application. Of course, if ChongHerr is actively seeking to sub-lease the mining lease, such action would lend some support to the action of Titan in lodging the caveat
- [9] A further aspect of this matter which I find rather curious is that the existence of the caveat does not of itself prevent ChongHerr from removing the disputed sandstone from the mining lease in a manner contrary to the interests claimed by Titan. An interlocutory injunction would appear to be a better vehicle for achieving that result. In fact, Titan made an urgent oral application for such an injunction during the hearing of this application, but later in the hearing withdrew that oral application. Of course, if it were possible for Titan to lodge a more restrictive caveat relating purely to the disputed sandstone on the 10 hectare area, such a caveat, if effective, may give some protection to Titan's interests in so far as it sought to prevent the sub-lease or assignment of the disputed sandstone in situ. I make no findings on whether or nor the Act would allow such a caveat to be lodged.
- [10] Given my views as expressed above, the question is, what orders should be made on this application? In this regard, the decision of the Queensland Full Court in *Queensland Estates Pty Ltd v Co-Ownership Land Development Pty Limited*<sup>2</sup> is of considerable assistance. In that matter, which related to a caveat under the *Real Property Acts 1861*, the Full Court found the caveat too wide in its original form. The Full Court held that the respondent should have leave to amend its caveat within 14 days, and that in default of amendment it should lapse. In my view, similar orders should be made in this matter. The Tribunal clearly has power to make such orders pursuant to s 305(3) of the Act.
- [11] In the circumstances, and given that the final hearing of this matter is fast approaching, I order that Titan have leave until 4pm Friday, 31 August 2007 to amend its caveat, and that in default of amendment the caveat be removed.

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<sup>2</sup> 1969 QD.R 150

[12] As regards costs, in the circumstances I consider that costs of and incidental to this application be reserved until the final determination of the application and counter-claim.