

In the Warden's Court
At Toronto in the State of
New South Wales
J A Bailey Chief Mining Warden

No. 2004/50

ALLAN HANLEN (Complainant)
v.
CENTENNIAL MANDALONG PTY. LIMITED (Defendant)

Application for injunction and other relief.

Appearances:

Mr. Hanlen, Complainant, appears in person unrepresented

Ms. Duggan of Counsel appears for the Defendant Company instructed by Naomi Simmons Solicitor of Sparke Helmore.

Hearing Date: 24th November 2004 at Toronto

Reasons for Decision.

(handed down in absence of parties at Lightning Ridge 9th December, 2004)

On 18 October 2004 Allan Hanlen took action against Centennial Mandalong Pty Limited seeking the following relief:

1. An Order for expedition for the hearing of this matter.
2. An injunction that the Defendant be restrained from proceeding with an application under Section 138 of the *Mining Act* in respect of long walls 1 and 2 of the Mandalong Mine until such time as that application is supported by accurate information as is required to be furnished to the complainant under Condition 56 of the Mining Lease attached to the development and that an intelligible P.S.M.P. be provided which the Complainant is allowed opportunity to be advised upon under the terms of said condition by his own technical consultants.
3. That the Defendant be ordered to furnish to the Complainant a property subsidence management plan in respect of the Complainant's property which utilises the hydrological data furnished by the flood study undertaken by D.I.P.N.R. and incorporates the survey data of surveyor Cadman provided to the Defendant by the Complainant at a scale which is readily intelligible.
4. That the Defendant be ordered to provide the Complainant with the payment for technical advice as specified in Condition 56 of the Mining Lease.
5. An order that the Defendant do all such things and sign all such documents necessary to give full effect to the orders of this court and in the event that any party fails to do such things then the Registrar of the Chief Warden's Court shall be empowered to do so.
6. Any other order that this honourable court deems fit.
7. Costs.

This case was set down for a Directions Hearing at the Warden's Court Toronto on the 24th November 2004. Prior to that date the Defendant company filed the following Notice of Motion:

- i. These proceedings be struck out;
- ii. The Complainant pay the Defendant's costs

Upon the grounds that:

1. The Mining Warden does not have jurisdiction to hear this matter or to order relief sought.

At the hearing on the 24th November 2004 Ms Duggan of Counsel put submissions to the court in support of the Notice of Motion. Mr Hanlen, who was unrepresented, also put submissions before the court opposing the Notice of Motion.

At the conclusion of those submissions I indicated to the parties that I required some time to give consideration to the submissions. However, I foreshadowed that the Defendant's company would probably be successful in the Notice of Motion. The purpose of giving that indication was to obviate the necessity to then conduct a Directions Hearing in respect of the matter filed before the court.

In giving consideration to the submissions put to the court in respect of the Notice of Motion I do conclude that the Defendant company is successful in relation to that Notice of Motion and the Summons will be struck out. I now propose to publish my reasons for that decision.

Ms Duggan tendered to the court a written outline of submissions she was going to present. There are facts set out at the beginning of that document which succinctly put the present position of this matter before the court. I propose to utilise those facts.

FACTS

1. The Defendant holds a Mining Lease No. 1443 dated 1 March 1999 granted by the Minister for Mineral Resources of the State of New South Wales ("the Minister") to extract coal by way of long wall mining for the area the subject of the Mining Lease.

2. The Claimant is a landowner whose property is located above long wall panels 1 and 2 of the mine the subject of the Mining Lease (“Mandalong Mine”).
3. By Notice of determination dated 14 October 1998 the Minister for Urban Affairs & Planning (“DIPNR”) granted development consent to the Defendant pursuant to the provisions of the Environment Planning & Assessment Act for the following:-

“Extension to underground coal mining activities for Cooranbong Colliery, establishment of mine access site, modification to coal preparation and transportation system and establishment of coarse reject and placement areas (‘the development’).”

4. By operation of s.138 of the Coal Mines Regulation Act 1982 an approval is required from the Department of Mineral Resources (“DMR”) prior to the commencement of mining. The Defendant has lodged with the DMR an application pursuant to s.138 of the Coal Mines Regulation Act (“the s.138 application”). The s.138 application has not been determined by the DMR.

Ms Duggan outlined the general principles applicable in applications for summary dismissal. She referred therein to a few cases that were decided some years ago but there can be no challenge to the validity of the submissions along those lines.

I will refer now to Item No. 2 in the Relief which was sought by Mr Hanlen. He is seeking “an injunction that the Defendant be restrained from proceeding with an application under Section 138 of the Mining Act...”. From submissions put to the court it would appear that Mr Hanlen was in fact referring to Section 138 of the Coal Mines Regulation Act and not Section 138 of the Mining Act.

It is the mining company’s submission that the company had already made an application to the Minister under the provisions of s.138 of the Coal Mines Regulation Act 1982 and consequently any injunction would be futile as the company no longer has to do anything in relation to its application under Section 138. It was submitted that it is now up to the Minister to make a determination in respect of that application

and if any person or body has to be restrained by way of injunction it is not the mining company but the Minister.

Provisions of Section 138 of the *Coal Mines Regulation Act 1982*:

138 Bord and pillar system to be used in underground mines

(1) No method of mining other than the bord and pillar system shall be used in an underground mine except with the approval of the Minister given on the recommendation of the Chief Inspector and subject to such conditions as the Minister may impose.

(2) Where the bord and pillar system of mining is used:

(a) the pillars shall be of such dimensions as may be prescribed,
(b) the width of the roadways, bords, cut-throughs, headings and pillar splits shall not exceed the prescribed width,

(c) the Chief Inspector may approve or direct a variation in the dimensions of pillars,

(d) the Chief Inspector may approve or direct a variation in the width of the roadways, bords, cut-throughs, headings or pillar splits, and

(e) pillars shall not be removed except with the approval in writing of the Minister and subject to such conditions as the Minister may impose.

(3) For the purposes of this section, a pillar shall be deemed to have been removed if its dimensions are reduced to less than:

(a) the prescribed dimensions, or

(b) such other dimensions as the Chief Inspector has approved or directed pursuant to subsection (2) (c).

It was Ms Duggan's submission that the avenue open for Mr Hanlen at this point of time is to make representations to either the Chief Inspector of Mines or the Minister for Mineral Resources as the application is in the hands of those persons at present.

Mr. Hanlen did not challenge the fact that an application had already been lodged under the provisions of S.138 of the *Coal Mines Regulation Act 1982*. In his reply, he

reiterated that condition 56 of the Mining Lease stipulates that conditions laid down by the development consent must be adhered to before any approval would be given under S.138 of the *Coal Mines Regulation Act 1982*.

If an application had not been lodged under S.138, it may be that this court would have jurisdiction to consider Mr. Hanlen's request, however, this Court has no power at this point of time, to intervene with any decision making process of the Minister, in respect of the subject application. Consequently, an application for an injunction sought by Mr. Hanlen, on that ground, must fail.

Concerning item 3 of the relief sought by Mr. Hanlen, it was submitted on behalf of the Mining Company that this court does not have jurisdiction to entertain a mandatory injunction, it only has, in accordance with S.312(a) to (d), power to entertain an injunction restricting the mining company from doing certain things. It was submitted by Mr. Hanlen that the Court has the power to grant him access to certain documents and to the payment of money by the mining company, having regard to certain matters outlined in the Development Consent.

Mr. Hanlen referred to conditions 13, 14 and 15 of the Development Consent. I gain the impression that Mr. Hanlen is indicating that he has certain rights under the development consent and that this court has the power to make orders requiring the mining company to comply with the conditions of the development consent which enables him to have access to documents and to have the mining company to pay for his expenses in obtaining independent expert reports.

Item 3 of the "immediate relief" sought by Mr Hanlen in his praecipe, does not make it clear whether Mr. Hanlen is seeking an injunction or merely an order. If he is seeking an injunction, then I must concur with the submission of Ms. Duggan that this court does not have jurisdiction to grant mandatory relief. If he is seeking an order, nothing has been shown to this court in respect of the conditions of Mining Lease 1443 or any section of the *Mining Act 1992* that enables a warden's court to make such an order. Consequently, item 3 of the relief sought by Mr. Hanlen must fail.

The other matter to be considered is item 4 of the relief sought by Mr. Hanlen, that is, an order for the payment of money for technical advice. The submissions appear to be on par with those concerning relief number 3. It is my opinion that this court does not have jurisdiction to entertain this claim by Mr. Hanlen.

For those reasons mentioned, it is necessary to uphold the notice of motion and to strike out the proceedings.

In the notice of motion, the mining company sought costs in respect of this action. At the hearing on the 24th November 2004, the request for costs were withdrawn.

The orders of the court will be:

PROCEEDINGS STRUCK OUT FOR WANT OF JURISDICTION

THERE IS NO ORDER FOR COSTS.