[2001] WAMW 32

JURISDICTION	**:**	MINING WARDEN
TITLE OF COURT	**:**	OPEN COURT
LOCATION	**:**	MEEKATHARRA
CITATION	**:**	BROSNAN –v- HOCKLEY
CORAM	**:**	WILSON SM
HEARD	**:**	18 OCTOBER 2001
DELIVERED	**:**	20 NOVEMBER 2001
FILE NO/S	**:**	OBJECTION 11/012
TENEMENT NO/S	**:**	PL 51/2415-20
BETWEEN	**:**	ALAN NEVILLE BROSNAN Objector and DESMOND JAMES HOCKLEY Applicant

Catchwords:

Application\Prospecting Licence\Objection
Objection\Surrender\Prosepecting Licence
Application\Prospecting Licence\Surrender

Legislation:

Mining Regulations(WA) r.43 (1)

Result:

Objection Upheld
Applications for Prospecting Licences refused

Representation:

Brosnan appeared in person
Hockley appeared in person

Cases Referred to in Judgment:

Nil

On 25 May 2000 Craig Beaton ("Beaton") was granted Prospecting Licence's 51/2358 to 2365 inclusive (the PL's).

At 11.40am on 23 July 2001, Beaton lodged instruments of surrender with the Mining Registrar at Meekatharra ("the MR") being Surrenders 2 to 9/012 (inclusive) ("the Surrenders"). The Surrenders were in respect to the PL's.

Further, on 23 July, at a time after 11.40am, Desmond James Hockley ("Hockley") marked out applications for Prospecting Licences 51-2415 – 2420 inclusive ("the Applications"). The last day for Objections to be lodged against the grant of the Applications was 27 August 2001.

On 13 August 2001 at 9.30am, Alan Neville Brosnan ("Brosnan") lodged with the MR, Objection 11/012 ("the Objection") against the grant of the Applications made by Hockley.

The grounds of Brosnan's Objection against the grant of the Application's are that "the ground was not available". Brosnan seeks that the Applications be refused.

On 7 August 2001, the Surrenders where rejected by the Department of Mineral and Petroleum Resources ("DMPR") retrospective to the date they were lodged being 11.40am on 23 July 2001. The MR, Jason Lloyd Hiscock, gave evidence that the reason for the rejection of the Surrenders was that the Surrenders failed to comply with regulation 43(1) of the Mining Regulations (WA) 1981 ("r.43 (1)").

R.43 (1) requires the instrument of Licence also be lodged with the MR at the same time as the notice of Surrender (Form 12). Beaton failed to lodge the instrument of Licence for the PL's. Therefore, the Surrenders were rejected.

Brosnan produced into evidence certified copies of the PL's from the sub-registrar (" the Sub-Register") of the MR at Meekatharra.

The Sub-Registrar reveals that the Surrenders had been lodged at 11.40am on 23 July 2001. The MR also produced into evidence a copy of page 82 of the Dealing Advice Sheet ("the DAS") from DMPR in Perth. The DAS establishes that the Surrender had been rejected as at the time of lodgement being, 11.40am 27 July 2001. The MR, further produced into evidence page 4 of the Perth DMPR registrar ("the Register") for the PL's. The Register reveals that the Surrenders have not been recorded on the Registrar as they had been rejected.

Hockley gave evidence that he became aware that the PL's "were dead" when he went to the DMPR in Perth about 12 July 2001. Hockley is adamant that the PL's recorded as "dead". He then travelled from Perth to Meekatharra on 23 July 2001 and marked out the Applications. Hockley came to MR's office and lodged the Applications.

Whilst he was at the MR's office, he says he was assisted by one of the MR staff who identified that there was additional land that he could apply for. As a result of that, he says he went out and marked out further ground and then lodged a further Application at the MR's Office.

Hockley gave evidence that the Objections by Brosnan come as a surprise to him. He is adamant that the land he applied for in the Applications was recorded was "Dead" on the Tendex in Perth. Hockley further says that he checked the Tendex in Meekatharra for the land identified he knew was an old tenement, P51/2338, which he knew was "dead".

Hockley previously held an interest in the land comprised in the Applications prior to Beaton.

Hockley is adamant that the land comprised in the Applications was open for Mining when he was assisted by staff at MR's to apply for a greater area.

Brosnan maintains the Sub-Registrar of the at MR Meekatharra, the Registrar from DMPR, the DAS, and the evidence of the MR at Meekatharra establishes that the ground applied for by Hockley is not open for mining as the PL's are still current and remain so until 24 May 2004.

I do not accept the evidence of Hockley as to his apparent observations that the PL's were "dead".

Hockley's evidence in this regard was confusing as to the exact tenement that he checked on the Tendex at DMPR in Perth. In any event, the tenement that he checked was not the same number as any of the PL's that belonged to Beaton.

I also do not accept that the PL's were "dead" when checked at DMPR in Perth by Hockley on or about the 12 July 2001. Hockley claims that he didn't know that the Surrenders for the PL's were going to be lodged on 23 July 2001.

It appears to me that Hockley has inspected the Tendex relating to an old prospecting licence, which he previously held, and covers some of the land, which is now the subject of the Applications.

Hockley did not except the intervening event of the rejection of the Surrenders in respect to the PL's. In any event, the Applications were subject to Objection until the 27 August 2001, by any person for any reason.

Even if, Hockley had been aware that the Surrender of the PL's had been lodged by Beaton, it would not have altered the fact that the same circumstances, which now prevail, would not have unfolded.

Hockley has no control over whether the Surrender was rejected by DMPR in Perth or not.

I accept the evidence of Brosnan and MR at Meekatharra that the Surrenders had been lodged with DMPR Meekatharra in respect to the PL's at the time Hockley marked out his Applications. I further accept that the Surrenders were subsequently rejected by DMPR in Perth because the instrument of license had not been returned as required by r. 43 (1).

I find that the PL's are, at the hearing of the Objections and Applications are still current, and remain so until they expire, are forfeited or surrendered.

Further, I find that the land applied for by Hockley was not open for mining at the time that the Applications were lodged with the MR at Meekatharra. Accordingly, I uphold the Objections by Brosnan to the Applications.

I note it appears from the DMPR appraisals of the Applications that some of the land applied for by Hockley may not totally to encroachment onto the PL's. There may be some land open for mining.

Accordingly, I refuse applications for Prospecting Licences 51/2415, 2417 and 2420 in their entirety.

I approve the grant of any portion of applications for Prospecting Licences 51/2415, 2418 and 2419 that do not encroach upon any other tenements, but otherwise refuse the applications.