

JURISDICTION : MINING WARDEN

LOCATION : PERTH

CITATION : Ross Frederick Crew v Wolfgang Michael Lorentz

CORAM : WARDEN A MAUGHAN

HEARD : 7 February 2017

DELIVERED : 31 March 2017

FILE NO/S : Objection 483849 & 483864

LICENCE NO/S : P37/8655 and P37/8656

BETWEEN : **WOLFGANG MICHAEL LORENTZ**
(Applicant)

AND

ROSS FREDERICK CREW
(Objector)

Catchwords: *Prospecting Licences, marking out, adoption of trenches, description – misnomer – turns on own facts.*

Legislation:

- *Mining Act 1978 (WA)*
- *Mining Regulations 1981*

Cases referred to:

- *Hunter Resources Limited v Melville* (1988) 164 CLR 234
- *Western Mining Corp Ltd v Jones* (unreported, Kalgoorlie Warden's Court, 27 August 1985, noted 6 AMPLA Bull 54)
- *Ex p Atkins and Egypt Holdings Pty Ltd* (unreported, WASC, FC, 10 July 1987, noted 6 AMPLA Bull 109)
- *Ex p Telstar Resources Pty Ltd* (unreported, WASC, FC, 2 June 1989, No 1347/1989, noted 8 AMPLA Bull 95)

Result:

1. *Applications refused.*

Representation:

Counsel:

Applicant : Ms Samiotis
Objector : Self-represented

Solicitors:

Applicant : McKenzie & McKenzie
Objector : Self-represented

REASONS FOR DECISION

Introduction

- 1 Wolfgang Michael Lorentz (aka Michael Wolfgang Lorentz) (“Lorentz”) marked out three prospecting licences P37/8655, P37/8656 and P37/8657.
- 2 On 18 February 2016 Lorentz lodged the three prospecting licence applications with the Department of Mines in Leonora.
- 3 On 24 March 2016 Ross Frederick Crew (“Crew”) lodged objections to the prospecting licence applications P37/8655 and P37/8656.
- 4 The applicant bears the burden of satisfying me that each of the prospecting licences were marked out in accordance with s105 of the *Mining Act 1978* read in conjunction with Regulation 59 of the *Mining Regulations 1981*. Those provisions relevantly provide:-

105. Marking out of mining tenement

- (1) *Before an application for a mining tenement other than an exploration licence, a retention licence or a miscellaneous licence is made, the land in relation to which the mining tenement is sought shall be marked out in the prescribed manner and in the prescribed shape, and for the purpose of any claim for compensation for loss or damage suffered or likely to be suffered resulting or arising therefrom under section 123, or for an order under section 124(2), the activities involved in the marking out shall be taken to be activities relating to prospecting and, as such, to constitute mining.*

59. Manner of marking out tenement (Act s. 105)

- (1) *Land in respect of which a person is seeking a mining tenement shall, except where other provision is expressly made, be marked out —*
 - (a) *by fixing firmly in the ground —*
 - (i) *at or as close as practicable to each corner or angle of the land concerned; or*
 - (ii) *if there is an existing survey mark at a corner or angle of the land concerned, as close as practicable to the survey mark without moving, changing or otherwise interfering with the survey mark, a post projecting at least 1 m above the ground; and*

- (b) *subject to subregulation (3), by either —*
 - (i) *cutting 2 clearly identifiable trenches; or*
 - (ii) *placing 2 clearly identifiable rows of stones, each at least 1 m long from each post in the general direction of the boundary lines; and*
- (c) *then by fixing firmly to one of the posts as the datum post, notice of marking out in the form of Form 20.*
- (2) *Where the land adjoins other land in respect of which the same person is seeking or holds a mining tenement, common posts and, if required, common trenches or common rows of stones may be used for the marking out of each parcel of land.*
- (3) *Where a post is fixed as close as practicable to an existing survey mark under subregulation (1)(a)(ii), marking out in the manner described in subregulation (1)(b) is not required.*

5 The basis of Crew's objections are as follows:-

PL37/8655:

- i. The Form 20, or marking out paper, was marked out in the name of Michael Wolfgang Lorentz and registered on the Form 21 as Wolfgang Michael Lorentz;
- ii. South-east corner, Lorentz has cleared and re-used pre-existing trenches, i.e. no new trenches were dug;
- iii. North-east corner – Lorentz has cleared and re-used the trenches of the existing northern prospecting licence (P37/8545) – i.e. no new trenches were dug;
- iv. North-west corner – Lorentz has cleared and re-used the trenches of the northern prospecting licences (P37/8545) i.e. no new trenches were dug. These trenches are not at right angles, as his trenches should be, but going to the direction of the northern tenement.

PL 37/8656:

- v. Form 20 or marking out paper was marked out in the name of Michael Wolfgang Lorentz and registered in the name of Wolfgang Michael Lorentz;
 - vi. North-west corner - Lorentz cleared out and re-used the existing trenches – i.e. no new trenches dug.
- 6 The South-east corner of P37/8655 is the same as the north-west corner of P37/8656. They otherwise share no common boundaries.
- 7 In the course of the hearing I received *inter alia* for the following evidence:-
- i. A written statement, dated 18 November 2016, of Lorentz who also gave viva voce evidence;
 - ii. A written statement of Denise Lorentz which was tendered by consent without the need for Ms Lorentz to testify;
 - iii. Two statements from Mr Crew dated 19 October 2016. Crew also gave viva voce evidence.
- 8 The objection in relation to the execution of the Forms 20 and 21 can easily be disposed of for the following reasons:-
- i. The statement tendered by Mr Lorentz clearly describes him as using an alias consistent with the names referred to in the Forms 20 and 21 respectively;
 - ii. Within his statement, at paragraph 12, Mr Lorentz testified, and was not cross-examined on the point:-

“I’m commonly known as Michael Wolfgang Lorentz. My birth name is Wolfgang Michael Lorentz”.

- 9 S142(1) of the *Mining Act 1978* provides:-

“No misnomer or inaccurate description of any person or place or any process or document in any proceedings in a Wardens Court

under this Act initiates a process or document or the proceedings if the person or place is known or described therein so as to be commonly known”.

10 In my view, it's clear that the Applicant is the person referred to in both the Forms 20 and 21. There's no evidence to suggest otherwise. His applications ought not be refused on the basis of his use of different, although commonly used, names within the above-mentioned forms.

11 Dealing then with the objections referred to in paragraph 5(ii) and (iii) the applicant Lorentz testified:

“At the south-east and north-east corner of P37/8655 there were some markings in the area of those corners. These could not be described as a previous trench. They were not clearly identifiable and were extremely old and weathered. They were not used or cleared out but rather I recut a trench using my pick to show the relevant corners”.

12 In relation to 5(iii) Lorentz testified:

“There were no trenches at all on this corner and no indication at all of any prior marking out. The trenches cut at that corner were cut by me. There was no evidence of any trenches or pegging at that corner. That is no marks on the ground or any old pegs.”

13 In relation to the objection at paragraph 5(vi) in respect of Prospecting Licence 37/8656 Lorentz testified:

“... I did not clear out existing trenches. I cut two (2) trenches using a prospector's pick to create two (2) clearly identifiable trenches in the general direction of the boundary line from the peg which was placed according to GPS co-ordinates.”

14 Under cross-examination Lorentz was shown a photograph of the common corner, that is the south-east corner of P37/8655 and the north-west corner of P37/8656. He agreed that that corner showed 3 datum pegs, 2 with blue tape which he agreed he had placed there and a third with yellow tape he agreed was not his.

15 When shown those photographs he denied that he adopted existing trenches. He again said that he dug those trenches out.

16 In relation to the north-east corner of P37/8655 he was again shown by photograph his datum post again with blue tape on it next to another peg. He again denied that he had adopted existing trenches.

17 He was shown photographs of the north-west corner of P37/8655 and again recognised his peg. He agreed that the angle of the trench dug by him there was not a right angle – “it is none the less in the general direction of the boundary”.

18 By his own evidence, Exhibit 6 to his statement, Lorentz concedes the trench is 40° to the west of where it ought to have been dug.

19 In relation to the evidence he had not re-dug existing trenches Crew put to Lorentz to his Response to Objection filed in these proceedings and dated 27th June 2016. At paragraph 2 of his response Mr Lorentz states as follows:

“Regulation 57(Part V Division 1) sets out the manner in which a tenement shall be marked out.

Clause (1)(b)(i) specified, “cutting two clearly identifiable trenches”; or clause (1)(b)(ii) specifies placing two clearly identifiable rows of stone”.

Regulation 59(1)(b)(i) does not preclude the use of old existing trenches nor does it require that new trenches be cut.

I used old, existing trenches where they were correctly placed and recut them using hand pick thus complying with regulation 59(1)(b)(i).”

20 Lorentz agreed his response was factually correct. With respect to Lorentz that response does not properly reflect the law.

21 *Hunter Resources Limited v Melville* (1988) 164 CLR 234 is the High Court authority for a proposition that marking out requirements under the *Mining Act* and *Regulations* are required to be strictly complied with.

22 The following case are cited in Hunt on Mining Law of Western Australia Fifth Edition 2015 Hunt Kavenagh Hunt in relation to adopting pre-existing markings:

“(6) *Adopting prior marking out – prior marking out, either pegs or trenches, cannot later be adopted: in Western Mining Corp Ltd v Jones (unreported, Kalgoorlie Warden’s Court, 27 August 1985, noted 6 AMPLA Bull 54) an application was refused because the surveyor marking out the ground sought to adopt the marking out along one boundary of a mining tenement which he had marked out for the same applicant 18 months previously.*

In Ex p Atkins and Egypt Holdings Pty Ltd (unreported, WASC, FC, 10 July 1987, noted 6 AMPLA Bull 109) the warden held (and the Full Court confirmed) that marking out undertaken the previous night could not be adopted.

In Ex p Telstar Resources Pty Ltd (unreported, WASC, FC, 2 June 1989, No 1347/1989, noted 8 AMPLA Bull 95), the use by one applicant of another applicant’s trenches was ruled impermissible.

23 Mrs Lorentz’ statement includes an assertion –

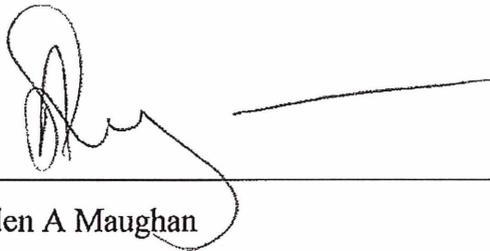
“Whilst there were some marking out on the ground at south-east and north-east corners of Prospecting Licence P37/8655 they were not clearly (my emphasis) a trench.”

24 On the basis of:

- i. The response filed by Mr Lorentz which demonstrates an incorrect understanding of the law;
- ii. The fact that in relation to a number of corners both Mr & Mrs Lorentz stated in their statement there were some markings on the ground but these markings could not be described as a trench;
- iii. That in his statement Lorentz refers to **recut** (my emphasis) as opposed to cut trench;
- iv. The wrong angle of the boundary cut at the north-west corner of P37/8655;

I cannot be satisfied that he marked out his tenements other than by adopting existing trenches and/or by cutting a trench not on the boundary.

- 25 Whilst I accept that it is impossible to adopt a trench if you are not aware at the time of doing so that the trench in fact existed, this is a case where there were 'markings' which ought to have alerted Lorentz to the possibility.
- 26 In all the circumstances his applications for prospecting licences must therefore be refused.

A handwritten signature in black ink, appearing to read 'A Maughan', is written over a horizontal line. The signature is stylized and cursive.

Warden A Maughan

31 March 2017