105 (73)

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IN THE WARDEN'S COURT)
)
OF WESTERN AUSTRALIA)
)
HELD AT KALGOORLIE)

Heard: 29.07.88

Delivered: 05.08.88

IN THE MATTER of
Application for Prospecting
Licence No. 27/880 and
Objection No. 38/878

BETWEEN: BARACUS PTY LTD AND
SUCCESS HOLDINGS PTY LTD

Applicants

and

JOHN NORMAN REGAN

Objector

Mr W P Brooks, a Director of Baracus Pty Ltd, appeared for the Applicants with leave of the Court.

No appearance by Objector.

REASONS FOR DECISION

WARDEN I.G. BROWN S.M.

This matter concerns an application for a Prospecting Licence No. 27/880 by BARACUS Pty Ltd and SUCCESS HOLDINGS Pty Ltd, (the applicants), which was marked out at 3 seconds past midnight on 9 July, 1987. The ground was described in an application dated 9 July, 1987 as being identical to late surveyed Mineral Claim 27/1607 and consisted of 118.9 hectares.

An objection No. 38/878 was lodged with the Mining Registrar at Kalgoorlie on 7 August, 1987 by John Norman REGAN "the objector", and the grounds of that objection were:

"1. Drilling programme currently running and incomplete;

2. Prospecting Licence 27/504 expired on 9 July, 1987 and renewal was inadvertently forgotten".

The objection was listed for hearing at 2.15pm on 29 July, 1988. Mr W Brooks, a Director of Baracus Pty Ltd appeared and there was no appearance by or on behalf of the objector. I had previously received from the objector a written request for the hearing to be adjourned on the basis that he had left for the Eastern States on 20 July, 1988 due to a family illness. I ascertained that the applicants opposed the adjournment and directed that the Mining Registrar write to the objector in the following terms:

"Dear Sir

APPLICATION FOR PROSPECTING LICENCE 27/880 BY BARACUS PTY LTD AND SUCCESS HOLDINGS PTY LTD - OBJECTION 38/878 BY YOURSELF.

I refer to your request that the above matter, which is listed for hearing on Friday, 29 July, 1988, be adjourned. I advise that the Warden has declined to grant an adjournment and directed that the hearing proceed as listed. Yours faithfully - MINING REGISTRAR - 25 July, 1988."

The reasons for refusing this request for an adjournment include the fact that the application has been outstanding since July 1987 and any further hearing date would, due to limited court dates, be in 1989. This is clearly prejudicial to the interests of the applicants. In addition the actual grounds of objection do not on their face appear to have merit or substance and in the absence of any amendment to the grounds

of objection I considered that the hearing should proceed in the absence of the objector.

Mr Brooks informed me that there had been some telephone contact between the objector and representatives of the applicant prior to 20 July, 1988 but no settlement of the matter had been reached. Mr Brooks submitted that the previous tenement (Prospecting Licence 27/504) was the subject of an initial grant for a period of two years from 9 July, 1985 until midnight 8 July, 1987) pursuant to section 45 (1) of the Mining Act 1978 ("the Act") and expired on that day, ie 8 July, 1987. In the absence of any application by the objector (who was the holder of Prospecting Licence 27/504) to extend that prospecting licence for a further period of two years pursuant to subsection 45 (3) of the Act the ground was open for marking out purposes at the time the applicants did so.

The Mining Registrar's records at Kalgoorlie confirm that no application for extension was received from the present objector and this fact is confirmed by the objector in his second ground of objection. It is a well established matter of law that unless the holder of a prospecting licence actually applies for an extension prior to the expiry of the initial two year period the Minister has no power to extend the term of the prospecting licence.

There is clearly no discretion given to the Warden to grant an extension of time for persons to lodge a late application under subsection 45 (3) although the objector may have felt that the Warden had such a discretion. In my view there is no merit in either ground of objection and even if the objector had appeared and given evidence of a full scale drilling programme on the subject ground during the period he was the holder this

could have been of no relevance to the issue of whether I should uphold or dismiss his objection.

There is no attack on the marking out by the applicants and I have not required evidence of marking out to be given although a witness was available to give that evidence. I am satisfied that the ground was open at the time it was marked out and as there is no merit in either of the grounds of objection the objection is dismissed and the application is granted.

ORDERS:

1. Objection No. 38/878 dismissed.
2. Application for Prospecting Licence No. 27/880 granted.

I.G. BROWN S.M.