REGULATIONS: 92 107
TENEMENTS: EXPLORATION LICENCE 59/319

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IN THE WARDEN'S COURT
HELD AT PERTH

BEFORE: P. Thobaven S.M. Warden

DATE HEARD: 13 March 1990

BETWEEN:

Reynolds Australia Metals Ltd and Forsayth Gibson Ltd — Applicants

Capricorn Resources Aust N.L. — Objector

Appearances: Mr Stephenson for applicants
Mr Lawton for objector

The matter was heard on 13 March 1990 and the decision given on the same date.

This is a report to the Minister in respect to those proceedings.

1. MATTER IN DISPUTE

The applicant has applied for Exploration Licence No 59/319 situated at Roy Well in the Yalgoo Mineral Field. The Exploration Licence is comprised of two separate pieces of land. They are not connected in any way. By Objection No 11/890 the objector claims that the tenement is not of the required shape as required by Regulation 92. The objector has also applied for the two portions of ground, the most northerly by way of an Exploration Licence and the most southerly by way of two Prospecting Licences.

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2. MATERIAL BEFORE THE COURT

No evidence was taken in this matter, both parties relying upon addresses.

During the course of the case Application to Amend No 544H/890 was lodged, the effect of which was to delete the smaller portion applied for and retain the northern portion. By the applicant's own documentation this reduced the area being sought from 24.66 square kilometres to 20 square kilometres.

3. SUBMISSIONS

Firstly the applicant in effect asked me to rule on the validity of the shape, arising out of the objection. I made a decision upholding the objection, and the applicant then asked that the application to amend be accepted and that I deal with the matter on the amended boundaries and make a recommendation for approval on the new boundaries.

3.1. APPLICANT'S SUBMISSIONS ON THE OBJECTION

Regulation 92 does not require that the ground be made up of one contiguous area, if the presence of the boundaries of other mining tenements, or natural features do not allow it. The Warden can allow a variation of the shape, or otherwise the Minister may make the decision.

In Regulation 92 the word "shall" is not mandatory, because it is qualified by the second part of the regulation.

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3.2 OBJECTOR'S SUBMISSION ON THE OBJECTION

The resolution lies in the interpretation of Regulation 92. One has to look at what is generally required. It should be in the form of a rectangle.

The ground is to be a single piece. If necessary the shape can be varied because of the factors outlined in the regulation. Basically the shape has to be some variation of a rectangle, if it is not a rectangle.

The regulation allows for the variation of the shape, not the variation of the shapes.

It was not envisaged that a mining tenement would be of areas not contiguous. If such a practise was to be allowed the following problem could arise. If ten areas were relinquished from an Exploration Licence, then the ten areas could he applied for as here. This would lead to difficulties in the administration of the Act.

Regulation 92 deals with shape in the singular and not shapes in the plural.

3.3. APPLICANT'S SUBMISSION ON THE APPLICATION TO AMEND

Before dealing with this submission I must point out that throughout these proceedings nothing was put to me as to who actually registers the application to amend. The thrust of the submission was that on the basis that the application to amend would be registered and my recommendation for the granting of the northern area only was sought.

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The submission is as follows:

This application for the Exploration Licence was lodged first in time. By Regulation 107 an application for a mining tenement may be amended. Upon registration of the application to amend the application will conform with the requirements of the act.

The priority in respect to the northern piece of ground would be preserved.

Under Section 105A(2), in the case of an Exploration Licence the initial requirement is the lodging of the application at the Mining Registrar's office. The other tenements gain their priority through pegging.

If the provisions of Regulation 107 are ignored, then violence would be done to Section 105A and the present applicant would lose the priority. If Regulation 107 is not applied then that would not allow it to have effect.

3.4 OBJECTOR'S SUBMISSIONS ON THE APPLICATION TO AMEND

The objector objects to the granting of the amendment, because the objector has applied for the northern area as an Exploration Licence and marked out the southern area as two Prospecting Licences.

If the application to amend was to have the effect sought by the applicant, it would mean that the application to amend would have to be made retrospective to maintain priority under Section 105A.

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Sections 57 and 58 refer to the Exploration Licence in that it shall be of the prescribed shape. Other Wardens have held that the word "shall" in this context is mandatory. This doctrine has been applied in the past and has not been appealed against.

In Hunter -v- Melville, Wilson J. said that the words mean what they say.

To grant the amendment would severely prejudice those others who have applied properly.

When applying Section 105A, the one who first complies is the one who first complies with the Act.

4. CONCLUSION

4.1 CONCLUSIONS AS TO THE OBJECTION

The relevant legislation are Sections 57 and 65 and Regulation 92.

By Section 57 the tenement shall have the shape prescribed. Regulation 92 supplies the prescribed shape.

This regulation refers to shape in the singular. The regulation envisages the land being within one external boundary.

The only variation to this scheme is Section 65. This section allows for 1, 2 or 3 discrete portions after an Exploration Licence has been reduced in area. This is an isolated provision because of the special circumstances.

My conclusion is that the mining tenement should consist of one shape, and an applicant cannot apply for two pieces of land in the one application.

Therefore the shape of the mining tenement does not comply with the prescribed shape.

4.2 CONCLUSION AS TO THE RECOMMENDATION BASED ON THE AMENDED AREA

The applicant is asking me to make a recommendation for approval on the northerly section of ground applied for, based on the proposed registration of the application to amend.

It is clear by Regulation 92 as to the shape. In my view this application as applied for could not have been granted on the basis that it did not comply as far as the shape is concerned.

To allow parties to apply for non-contiguous pieces of land and from that obtain some sort of priority under Section 105A to a portion of it, and then abandon other pieces of ground when the original application would fail is not what was intended.

Section 57(2)(b) refers to the granting of the Exploration Licence of the prescribed shape. The scheme of the act is that through Regulation 92 the prescribed shape is described. The grant is based upon the application, and the application contains the prescribed shape in the description.

It appears to me that it is a prerequisite that the shape applied for comply with the provisions of the Act, before it can be granted.

Therefore even if the application to amend was registered, I would recommend refusal on the grounds that the original application was bad.