Permitted Activity

The court found that the CMA regulates both the location of the mineral and the activity involved, and that the exploration and mining activities occurred throughout the well bore from the bottom-hole to the well head. Todd was therefore not entitled to explore and mine for petroleum using the Ohanga-2 well because such activity would occur in an area for which Todd did not have a permit.

No Lease

The court also rejected Todd's second argument as well, finding that it did not have, and was not entitled to, a lease of the Ohunga-A well site. Todd argued that according to PPL 38705 it was required to explore in accordance with good exploration and mining practice, and the obligation to P&A is inherent in good oil field practice. It further argued that the *Petroleum Regulations 1978* and the *Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 1999* place general requirements on an employer to take all practicable steps to prevent uncontrolled releases or accumulation of hazardous liquids or gases. The court concluded there was no obligation to P&A after the expiration of PPL 38705. It found there was no such obligation in the Petroleum Act 1937 unless specifically included as part of a work programme. Todd therefore had no obligation or right to P&A the Ohanga-1 well as the P&A was not part of the work programme. The P&A obligation is not generally included in exploration permits (unlike in mining permits) therefore explorers may not be under an obligation to carry out P&A. However, an obligation to perform P&A can be specifically included in the work programme accompanying the exploration permit.

CROWN MINERALS – PETROLEUM EXPLORATION – PERMIT APPLICATIONS*

TAP (New Zealand) Pty Ltd v Attorney-General of New Zealand (unreported, Court of Appeal, Wellington, 13 December 2006, CA48/06, William Young P, Robertson J, Ellen France J)

Appeal against decision declining judicial review – Competing applications for petroleum exploration permit – Treatment under current regime

Background

TAP and AWE holders of a petroleum exploration permit for the Canterbury Basin, seeking permission to explore an adjacent area, lodged a "priority in time"[1] application at 11.30am on Tuesday 22 February 2005. Details of the application were posted on the Crown Minerals website the following Friday in accordance with the Ministry's[2] usual practice. Origin Energy then lodged a competing application at 5.30pm on Monday 28 February 2005.

At Issue

The subject of this case is how competing "Priority in Time" applications for exploration permits under the *Minerals Programme for Petroleum (2005)* are treated. TAP argued that "within the same five day working period"[3] meant that a competing application had to be lodged before

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* Bryan Gundersen, Partner, Kensington Swan and Josef Bartos, Intern, Kensington Swan.

1 A form of application provided for under the *Minerals Programme for Petroleum* whereby competitive bids made within the same five days will be considered against each other.

2 Ministry of Energy.

3 *Minerals Programme for Petroleum,* clause 5.1.1.

4.30pm on Monday[4] and that Origin's application was therefore out of time and could not be considered in competition with their own. Origin argued that "within the same five day working period" meant the period from 11.30am on Tuesday 22 February to 11.30am on Tuesday 28 February 2005 and that, as their application was taken as being lodged at 7.30am on the latter date it required evaluation with TAP's. The court interpreted the phrase in the context of the overall policy and development of the *Minerals Programme* and ruled:

(a) that "the same five working day period" is to be interpreted as five twenty-four hour days commencing with the time of receipt of the first application (eg if an application is received at 11.30am on Wednesday the period runs till 11.30am the following Wednesday);

(b) when there are two or more applications for exploration over the same area the applications will be evaluated in competition and that the permit will be granted to the application considered to have the best work programme in respect of the overall purposes and policies of the regime; and

(c) a time delay in issuing review proceedings coupled with a failure to seek interim relief and give an undertaking as to damages do not assist an Appellant's case.

Conclusion

The lessons of this case are that any company applying for a permit under the *Minerals Programme for Petroleum* needs to be aware of how the time constraints on "priority in time" applications are interpreted and mindful that as any application may be treated in competition. It would be wise, therefore, to always submit as comprehensive and detailed an application as possible.

JOINT VENTURES – FIDUCIARY OBLIGATIONS – IMPORTANCE OF PROPER PROCEDURE[*]

Chirnside v Fay **[2006] NZSC 68,** (unreported, New Zealand Supreme Court, Wellington, SC CIV 7/2004, 6 September 2006, Elias, CJ, Gault, Keith, Blanchard and Tipping JJ)

Joint ventures – Defaulting fiduciary – Appropriate remedy

Background

Mr Fay and Mr Chirnside worked together from 1997 on a scheme to develop a commercial property site. Mr Chirnside was more closely involved in the project than Mr Fay and in 1999 made a conditional agreement to buy the site as trustee for a company not yet formed. When a large retail company agreed to become the development's major tenant in July 2000 Mr Chirnside proceeded with the purchase through a company in which his family trust was the chief shareholder without advising Mr Fay. Mr Fay was effectively excluded from the development although Mr Chirnside did not at any stage advise him of this. Responding eventually to Mr Fay's letters querying the situation Mr Chirnside acknowledged, by his letter of 27 November 2000, that

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4 Ibid, clause 5.1.3 "Hours of business are 7.30am to 4.30pm".

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