QUEENSLAND

JURISDICTION OF LAND AND RESOURCES TRIBUNAL AND OPERATION OF SECTION 307(4) OF THE *MINERAL RESOURCES ACT 1989*[*]

Trevor James Lee v Kokstad Mining Pty Ltd [2007] QCA 248 (Queensland Court of Appeal, 3 August 2007, Jerrard JA, Wilson and Douglas JJ)

Mining law – Jurisdiction of Land and Resources Tribunal – Interpretation of s 307 of the Mineral Resources Act 1989

Background

In this case the Queensland Court of Appeal determined points concerning the jurisdiction of the Land and Resources Tribunal and the proper operation of s 307(4) of the *Mineral Resources Act*, which applies when a mining lease application is amended to abandon part of the surface area. The decision finally laid to rest an argument between parties that had given rise to numerous decisions, some of which fitted within the legal principles as known and understood in Queensland over a long period of time and others which seemed at odds with these principles.

The Mining Lease Application

Kokstad Mining Pty Ltd (Kokstad) is seeking (still, the grant is not yet made) the grant of Mining Lease No 50207 for the purpose of mining sodium bicarbonate, sodium carbonate, and sodium chloride. The mining operation will involve a bore or bores being drilled into an underground aquifer and salty water being pumped to the surface, and then being separated into the various salts and water (as a by-product) through a series of ponds using reverse osmosis and evaporation.

The original application for ML 50207 had the same surface area as underground area. Three properties were, each in part, covered by this surface area. One of these properties was owned by Mr Lee, the appellant, and originally the evaporation ponds and other surface infrastructure were to be located on Mr Lee's land. Landowners having surface area on their land are entitled to compensation for the mining activities. This compensation has to be agreed or determined by the Tribunal prior to the grant.

The Conduct in the Courts

The course of the matter was as follows:

- 7 February 2005 – Land and Resources Tribunal, constituted by Mining Referee Mr Windridge, recommended that ML 50207 be granted of the whole of the application area.[1]
- 6 December 2005 – Land and Resources Tribunal, constituted by President Koppenol, set aside the recommendation and ordered that the appellant, Mr Lee lodge his objections, if any, to the grant of the mining lease by 23 December 2005.[2] Under the *Land and Resources Tribunal Act* (s 67), there is a right of appeal on a question of law. That appeal must be lodged within 28 days of the decision (an absolute limit: there is no provision for leave to extend time). Kokstad did not lodge an appeal.

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[*] Zoë Farmer, Solicitor for Kokstad Mining Pty Limited in this matter from March 2006.

[1] *Kokstad Mining Pty Ltd* [2004] QLRT 16.

[2] *Lee v Kokstad Mining Pty Ltd* [2005] QLRT 160.

- March 2006 through to August 2006 – The Land and Resources Tribunal, constituted by Deputy President Smith, managed Mr Lee's 'objection' as something of an oddity, it being recognised that it was not a 'duly lodged objection' under the *Mineral Resources Act*, having not been made within the statutory time limit for such objection, but, on the other hand, the decision of President Koppenol of 6 December 2005 not having been appealed by Kokstad, either.
- 31 May 2006 – Kokstad abandoned the surface area of ML 50207 over Mr Lee's land. In accordance with the statutory requirements (s 307(4), *Mineral Resources Act*), Kokstad filed an amended mining lease application showing the area in respect of which the application was to remain in force.
- August 2006 – Mr Warrian, another of the three landowners, attempted to join in the proceedings and sought to lodge 'late objections' to the 'amended' mining lease application.
- In the course of dealing with Mr Warrian's application, Kokstad raised issues of the Tribunal's jurisdiction to entertain a late objection. The Tribunal, constituted by Deputy President Smith, set down a number of questions of law for determination before proceeding further. These questions went to matters concerning both Mr Lee's and Mr Warrian's position before the Tribunal.
- 23 October 2006 – The Land and Resources Tribunal determined that the decision of President Koppenol of 6 December 2005 was made without jurisdiction and was of no effect. The Tribunal also considered the operation of s 307(4) of the *Mineral Resources Act*, which provides that if part of the surface area of a mining lease application is abandoned, the application must be amended to show the area in respect of which the application is to remain in force and 'the amended application shall proceed in respect of that area in accordance with this part'. Mr Lee argued that s 307(4) required the process of applying for the mining lease to be re-started, giving fresh rights of objection. The Tribunal found that this was not the case, and that s 307(4) simply meant that the application carried on from the point in the process that it had already reached.[3]

  Mr Lee appealed to the Court of Appeal.

- 3 August 2007 – The Court of Appeal dismissed the appeal and made a declaration that the orders made by the Land and Resources Tribunal constituted by President Koppenol on 6 December 2005 having been made without jurisdiction were of no effect.[4] (Although a request had not been made in the appeal documents about this declaration, in the hearing of the matter, it was determined that, should the Tribunal favour Kokstad's argument, it may be appropriate to make such a declaration so as to avoid the need for any further proceedings to deal with the point.)

Outcomes

Relevant points in the Court of Appeal's decision were:

1. The decision emphasises the limited nature of the Land and Resources Tribunal's jurisdiction (and now more limited on account of jurisdiction moving to the Land Court). It is not a superior court of general jurisdiction. Although it is established as a court of record, it is not a superior court of record. Unlike a superior court of record, there was no presumption that the

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3 *Kokstad Mining Pty Ltd v Lee* [2006] QLRT 122.
4 *Lee v Kokstad Mining Pty Ltd* [2007] QCA 248.

Tribunal was acting within jurisdiction. Even though Kokstad had not appealed the order made by the President on 6 December 2005, this did not save those orders from invalidity. As the Tribunal had acted without jurisdiction, its orders of 6 December 2005 were of no effect. The court cited its earlier decision in *Lacey v Juunyjuwarra People and Anor*[5] in relation to the limitations on the Tribunal's jurisdiction.

2. The Court of Appeal made a number of statements in support of its earlier decision in *ACI Operations Pty Ltd v Quandamooka Lands Council Aboriginal Corporation*[6] which decided that the Land and Resources Tribunal (now the Land Court) had no power to hear from an objector except in relation to a matter raised in a 'duly lodged objection'.

3. Section 307(4) of the *Mineral Resources Act*, in requiring an amended application the subject of a partial abandonment to 'proceed in respect of that area in accordance with this part', does not require a restart of the mining lease application proceedings, thus giving rise to fresh objection rights. It simply requires the application to continue from its then current place in the process.

COURT OF APPEAL SETS ASIDE TRIBUNAL'S RULING ON GREENHOUSE OBJECTIONS*

Queensland Conservation Council Inc v Xstrata Coal Queensland Pty Ltd & Ors [2007] QCA 338

Mining lease – Coal – Environmental approvals – Objections – Greenhouse gas emissions – Global warming – Climate change – Conditions – Natural justice – Amendment of particulars – Validating legislation.

Background

The basic facts of this case involved an application by a mining company (Xstrata and its joint venture partners) for additional surface area mining rights and associated environmental approvals to allow the expansion of its existing Newlands Coal Mine in Central Queensland. Conservation groups, primarily the Queensland Conservation Council (QCC), objected to the grant, with the central issue being objections based upon the greenhouse gas emissions associated with the mining operations and the subsequent use (ie burning) of the coal by third parties.

QCC was seeking conditions to be imposed upon the mining lease which would require the mining company to reduce, offset or abate the greenhouse gas emissions associated with the mining operations and the subsequent 'downstream' use of the coal. Initially, the conservation groups had sought a 100% offset of all such emissions, but later sought to amend the particulars of its objections such that only a 10% offset of the 'downstream' emissions be imposed. The Queensland Land and Resources Tribunal (LRT) did not allow QCC to amend its particulars in this way.

In February 2007 the LRT ruled against QCC and decided not to impose any such greenhouse reduction, abatement or offset conditions.[1] The details of this case and the decision have been

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5 *Lacey v Juunyjuwarra People and Anor* [2004] QCA 297.

6 *ACI Operations Pty Ltd v Quandamooka Lands Council Aboriginal Corporation* [2002] 1 Qd R 347.

* Ben Zillmann, Partner, Allens Arthur Robinson. The author and Allens Arthur Robinson represented Xstrata Coal Queensland Pty Ltd in these proceedings.

1 R*e Xstrata Coal Queensland Pty Ltd & Ors* [2007] QLRT 33 (Koppenol P).