

IN THE WARDEN'S COURT
HOLDEN AT SYDNEY
ON 20TH JUNE 1990
BEFORE J L McMAHON
CHIEF MINING WARDEN

TOM WYNEN (Complainant)
v
MONA J DUCHATEL (Defendant)

The within has been a consideration by me of the submissions presented in writing by the parties through their solicitors following upon the making of a formal complaint by the complainant before the Mining Registrar at Broken Hill on 29th August, 1989. On that occasion the complainant had alleged that the defendant had failed to comply with Regulation 13 to the Mining Act in that she had failed properly to mark out expired Claim 794. The Registrar issued his summons and the matter was originally returnable before me at the Warden's Court, Broken Hill on 17th October, 1989.

Regulation 13 provides a mechanism whereby a person desirous of marking out a claim is given directions as to how to mark that out. Section 27 to the Act provides that a person wishing to apply for registration of a claim shall, before lodging his application (a) mark out in the manner prescribed the area of land over which he wishes the claim to be registered.

In this particular matter the complainant had alleged that there was nothing on the ground itself to indicate that the marking out had taken place.

The purpose of marking out any ground which is desired by a claimant to be the subject of a claim registered under Part IV of the Mining Act is that possession for the purposes of the Act having been considered by the claimant to be his at the time of marking out, the public could readily see that and therefore there would not be duplication or conflict in respect

of that particular area of land. However it seems to me that while the marking out is an essential step as laid down by the Act the fact that Regulation 13 is not particularly and exactly complied with should not be fatal to the validity of any claim which is subsequently registered, provided the public could be reasonably put on notice that a claim application existed.

In this particular matter the facts of the defendant's situation as outlined in correspondence are that she is a person now in her 86th year. Claim 794 in the White Cliffs opal fields had been occupied by her and her late husband for a period of 21 years and with the assistance of her three sons, son-in-law and nine grandchildren she had worked the claim in the past and intended to occupy it for the same purpose in the future. Claims are only registered for a twelve monthly period being the financial year from 1st July to 30th June, and in June 1989 when renewal was imminent the defendant was in ill health and did not renew the registration of Claim 794. That registration having expired on 30th June 1989 it would have been open to any person including the complainant to seek, from 1st July 1989, to register a claim over the same land. No-one sought to do so and on 6th July 1989 the defendant then realising her oversight wrote a cheque for \$25 which was then the cost of a new registration and lodged that money with an application for the registration of a new claim over the same land which had been previously covered by Claim 794 with the Mining Registrar at Broken Hill. That registration took place on 11th July 1989 and Claim 794 was given the new number 1600.

With a view to identification of claims, Regulation 16A provides that within fourteen days of the registration of a claim the registered holder shall affix two metal identification tags to each post on the claim. There are

other provisions in Regulation 16A intended to the same end. So from 11th July 1989 the defendant had until 25th July 1989 to place the necessary metal tags on the claim. The defendant says that she did in fact place posts in position prior to the time of registration of Claim No 1600 and she alleged that the complainant's son had removed them. This is denied by the complainant and as to this matter I make no formal finding because of the doubt and because other facts have guided me to a conclusion without having to find one way or the other. One matter of which I am satisfied however is that on 22nd July 1989 the defendant requested a Mr Neave-Young the Secretary of the Miners Association at White Cliffs to attach the metal tags to the posts and according to the defendant it was Mr Young who found no actual identification posts in place. Further I am satisfied he informed the complainant on 22nd July 1989 that he had been asked to go to the site to attach the new metal tags and that was still within the fourteen days period.

From the complainant's point of view he approached two officers of the Department of Minerals and Energy, Mr Keith Chilman and Mr George Diamantes, requesting assistance. This was on 20th July 1989. He informed them that there were no current year tags attached to the corner posts of the claim and was advised to speak to a Lorraine Lowe at the Broken Hill Court House to find out the current status of Claim 794. Later he advised the two officers that Claim 794 had not been renewed and the officers with that information pulled four corner posts out of the claim area and assisted the complainant to mark out a claim over land part of which was formerly included in Claim 794. This was still within the 14 day period as allowed by Section 16A. However on Monday 24th July 1989, also still within the fourteen day period during which the defendant had time to place the tags on the claim, Mr Neave Young from White Cliffs had advised the officers

that the new registration had been effected over the claim. The complainant confirms that he also had had a conversation with Mr Young on 22nd July 1989 and was given similar information.

Because of the distance involved in attending Broken Hill and ethical difficulties which one of the practitioners had who acted for the defendant in the matter, when the matter was called on at Broken Hill on 17th October 1989 it was adjourned generally to be listed in Sydney on seven days notice to the parties and for me to await written submissions. Those submissions have now been received and are the basis for the within judgment.

The defendant has been, on the evidence, the holder of the claim for many years and in fact occupied it with her late husband. Her version of the facts is that the claim was in effect identified by the means of the placement of posts and that is confirmed by the officers who assisted the complainant in removing posts. Those posts therefore were a compliance in some measure with Regulation 13, but in any case registration having been effected on 11th July 1989 following the defendant's application to do so on 6th July 1989 the actions by the complainant in seeking to register another claim over some of the land the subject of former Claim 794 and subsequently 1600 would appear to me to be out of order. Furthermore, the fourteen day period having not expired at the time of the complainant's marking out of the area renders his application for the registration of a claim invalid so far as it relates to the land covered by registered Claim Number 1600.

THE COMPLAINT IS DISMISSED. Neither solicitor made any reference in their written submissions to costs and, in the circumstances, I direct that the parties pay their own costs.