

project for the purposes of s 102(2)(h) of the Mining Act 1978 as recently defined by the Full Court in *Re: Warden Calder SM; ex parte St Barbara Mines Limited* [1999] WASCA 25.

It was contended by WMC that the mining lease and 14 other contiguous mining and exploration tenements formed the Golden Ridge Project. Evidence showed that the tenements were linked by a geological sequence known as the Western Ultramafic belt, known to host nickel sulphide mineralisation.

The Blair Nickel Mine was located on another mining lease on the Golden Ridge Project Area. During the relevant expenditure year the Blair Nickel Mine was put on care and maintenance due to record lows in prevailing nickel prices. Nevertheless, the actual costs of mining at the Blair Nickel Mine during the period (of approximately \$1.6 million) if apportioned over the Project Area meant that the expenditure requirements of the mining lease were satisfied. Evidence was also led of WMC's plan for exploration through the Project area, the changes to the plan caused by the fall in nickel prices and new opportunities resulting from advances in nickel laterite technology.

Warden Woods gave an ex tempore decision. She made a finding that the Golden Ridge Project constituted a project for the purposes of s 102(2)(h) of the *Mining Act* and recommended that a certificate of exemption be granted.

EXPLORATION LICENCE – FORFEITURE APPLICATION – LATE LODGMENT OF EXPENDITURE FORM – TIMELY COMPLIANCE MANDATORY – DECLARATION OF INVALIDITY OF LODGMENT*

Shadmar Pty Ltd v Silver Gecko Pty Ltd

(Perth Warden's Court, 10 March 2000)

Background

Shadmar had made application for forfeiture of an exploration licence held by Silver Gecko. Silver Gecko was in liquidation. Someone unknown had lodged a Form 5 in respect of the tenement for the relevant expenditure year, out of time.

Orders Sought

Shadmar sought declarations first that the Form 5 had been accepted for lodgment by the Department contrary to law and secondly, in the alternative that the register be corrected by deleting the Form 5 and specifying the expenditure for the year as Nil.

Evidence

An affidavit was produced by Shadmar from the liquidator of Silver Gecko acknowledging service of the summons claiming forfeiture of the licence, consenting to the declarations sought and indicating that no other person was authorised to act on behalf of Silver Gecko.

* Tim Kavenagh, Corsers, Perth.

Findings

The Court was satisfied that no person other than the liquidator was authorised to act on behalf of Silver Gecko. The Warden agreed that the Warden's Court had the power to grant a declaration by virtue of s 134(5) of the *Mining Act* when read with s 25(6) of the *Supreme Court Act* and Order 18 Rule 16 of the *Supreme Court Rules*.

The Warden accepted there was a legal controversy, namely whether the Form 5 had been lodged contrary to law and that Shadmar had a real interest in the question to be determined.

Thirdly, the Warden found there was a real contradictor, namely the person who had lodged the Form 5 who "could have had no other objective than to avoid the tenement being placed at the risk of forfeiture".

Finally the Warden agreed with the view of Warden Packington (*Luff v Midreef Pty Ltd & Minister for Mines*, Carnarvon Warden's Court, 11 May 1999) that the requirement under reg 32 of the *Mining Regulations* 1981 (WA) that a Form 5 be lodged within 60 days of the tenement year is mandatory rather than directory such that lodgment after the deadline is not a valid compliance with s 82.

Declarations

Accordingly, the Warden declared that the Form 5 had been lodged contrary to law and declared (sic) that the register be amended by deleting reference to the Form 5.

APPLICATION FOR EXEMPTION – MOTION TO STRIKE OUT – WHETHER MAKING OR LODGEMENT OF APPLICATION WHEN FEE NOT PAID – LATE PAYMENT OF FEE – EXTENSION OF TIME – WHETHER WARDEN HAD POWER TO EXTEND TIME FOR LODGEMENT OF APPLICATION FOR EXEMPTION – S 102 MINING ACT 1978 (WA) - REGS 54(1), 54(1A), 104 MINING REGULATIONS 1981 (WA)*

***Jadetex Minerals Pty Ltd v Stephen Grant Povey* [2000] WAMW 4**

(Warden's Court, Perth, 6 July 2000)

Background

Stephen Grant Povey ("the objector") lodged complaints on 9 September 1999 seeking forfeiture of the exploration licences held by Jadetex Minerals Pty Ltd ("Jadetex") because Jadetex had not complied with the prescribed expenditure requirements for the year ended 3 June 1999.

On 14 October 1999 Jadetex lodged an application for exemption from expenditure requirements pursuant to s 102 of the *Mining Act* 1978 (WA) ("the Act") and reg 54 of the *Mining Regulations* 1981 ("the Regulations"). The applications for exemption were not lodged within 60 days of 3 June 1999, being the end of the year to which the exemption relates as required by reg 54(1a) of the Regulations.

However, on 14 October 1999 Warden Calder granted an extension of time under reg 104 of the Regulations for lodgment of the applications for exemption to 4.00pm on 14 October 1999. Although

* Tim MacKinnon, Blake Dawson Waldron, Perth.