

**IN THE MINING WARDEN'S COURT
HELD AT LIGHTNING RIDGE
ON THURSDAY 18TH NOVEMBER 2004
J A BAILEY, CHIEF MINING WARDEN**

CASE NO. 2004/27

PETER LEONARD JUDGE

(Complainant)

v.

PETER WAYNE STANLEY

(Defendant)

**INJUNCTION UNDER THE PROVISIONS OF S313 OF THE MINING ACT 1992
CONCERNING MINERAL CLAIM 22103R**

APPEARANCES AT HEARING:

Mr W Browne, Solicitor, Browne Jeppesen & Sligar appears for and with the Complainant

Defendant appeared unrepresented on 8 September 2004. No appearance of Defendant on other occasions

**HEARING DATES: 8 September 2004, 7 October 2004, and 2 November 2004 at
Lightning Ridge**

DECISION

HANDED DOWN IN ABSENCE OF PARTIES

On the 29 June 2004, following an application by the Complainant, an injunction was issued against the Defendant under the provisions of Section 313 of the Mining Act 1992. The application for the issue of the injunction also sought the following "final relief":

1. The transfer of the claim back into the name of Peter Leonard Judge
2. An order that the Defendant do all such things and sign all such documents to give full effects to the order of the court and failing the Defendant doing all such things and signing all such documents, power to the Mining Registrar to do all such things and sign all such documents as to give effect to the orders of the court.
3. Costs
4. Any other orders the honourable court sees fit.

Evidence was first given in the matter at the Warden's Court, Lightning Ridge, on the 8th September 2004 and was finalised on the 2nd November 2004.

The facts in the matter are not really in dispute, except for one particular aspect. The following undisputed facts were put to the court.

Peter Leonard Judge was the registered owner of Mineral Claim 22103R, such claim having thereon a residence.

An agreement was reached between Mr Judge and the Defendant Peter Wayne Stanley, wherein Mr Judge was to transfer the claim to Mr Stanley in return for a consideration of \$10,000.

Mr Stanley took occupation of the claim after the agreement was entered. On the 25th August 2003 the claim was transferred to Mr Stanley.

Mr Stanley paid the sum of \$7000 to Mr Judge in October 2003. This money was the proceeds of a First Home Buyers grant, which was obtained by Mr Stanley.

The sum of \$3,000 is still to be paid, under the agreement, by Mr Stanley. The condition upon which payment of that amount was to be made is in dispute.

It would appear from the evidence, that other than discussions between the parties as to the amount of the consideration for the transfer and when Mr Stanley was going to pay \$7,000, no firm arrangements had been made between the parties as to the arrangements for the payment of the balance of \$3,000.

Mr Judge gave evidence that he and the Defendant spoke about the matter in December 2003 and that there was an agreement to pay the balance off at the rate of \$50 per week.

It is the evidence of the Defendant that the arrangement was that the \$3,000 was to be paid whenever the Defendant could afford to pay it.

Although both Mr Stanley and Mr Judge are adamant that he is correct in relation to the arrangements for the outstanding balance, I find it hard to accept that Mr Judge would agree that the payment of the balance would be open ended, as suggested by Mr. Stanley. In December 2003, Mr Stanley was living at the campsite, and according to Mr Judge, was in receipt of benefits that enabled him, after living expenses, to pay \$50 per week. It is not a large sum of money each week and at that rate would take 60 weeks to pay: This appears to be a generous offer on the part of Mr Judge. I find on the balance of probabilities that there was an arrangement between the parties that Mr. Stanley was to pay the outstanding balance at the rate of \$50 per week, commencing in December 2003.

Mr Stanley makes it plain in giving evidence that he is not in a position to make any offer as to the payment of the balance. At present he is living in Queensland and did not have the fare to get to court. He was only able to get to court on the 8th September 2004 by hitchhiking. Furthermore, he has no funds to renew the claim or to pay the Council rates.

It was Mr Stanley's intention, prior to this agreement being reached, to gain a residence for the purpose of persuading the Family Court to give him custody of his child. He now informs this court that the residence is inadequate for that purpose and consequently has no real interest in retaining the mineral claim.

After the evidence was received on the 8th September 2004, the matter was adjourned to a further hearing and this gave the defendant an opportunity to put some concrete proposal to the court as to the payment of the outstanding balance or some other alternative arrangement to resolve this matter. At that point of time Mr Stanley informed the court that he was not sure whether he would be able to return back again but left the court on the understanding that if he was not able to return on the next occasion he should communicate, by mail or other means, to either the court or to the Complainant's solicitor Mr Browne, as to any suggestions as to the resolution of this matter.

When the matter came back before the court on the 7th October 2004 there was no appearance of Mr Stanley, nor had there been any communications between himself and the court or between himself and the Complainant's solicitor. The matter was then adjourned to a further date to allow the Complainant to present additional evidence to the court.

At one point of time the court expressed concern in that if the request of the Complainant was granted and the mineral claim was transferred back to him, it would appear that the Complainant, who has already received \$7,000 from the Defendant, would be obtaining an unjust enrichment.

The submissions of Mr Browne focused on that aspect.

To simply give a judgement to the Complainant that the Defendant pays the outstanding \$3,000 would be futile. There would be very little chance of enforcing the debt from what appears to be an impoverished Defendant - (the Defendant now residing interstate makes recovery that much more difficult). It is clear from Mr Stanley's evidence that he

would not be able to renew the claim nor to pay the Council rates. Nor would he have the resources to remove the structure from the claim when the mineral claim expires.

Mr Browne put to the court that Mr Judge would not be obtaining any unjust enrichment if the claim were returned to him. He tended a current valuation of the campsite, that valuation is currently \$7,900. It then was submitted that values in the area have fallen since the claim was transferred to the Defendant. It was submitted that if Mr Judge sold it now for \$7,900, he would receive the sum of \$4,900 above the sum of \$10,000, which was the agreement with Mr Stanley. \

Mr Browne submitted that the Complainant has paid expenses from money that he has received, which were expenses that should have been borne either by the Defendant or would not have been necessary expenses if this matter had not proceeded to court. Exhibit 9 is a receipt for \$372.50 being money paid on behalf of Mr Stanley for the transfer, the stamp duty and the bond money concerning the subject mineral claim. Exhibit 7 is a receipt for \$55 for the valuation document, which was tended to court. Exhibit 8 refers to payments by Mr Judge to the Walgett Shire Council for the campsite. I note that the receipt in respect of the payment of that sum of money covers, in effect, two mineral claims. The sum, which is relevant to the mineral claim in question, is \$44.41. Exhibit 4 is in respect of payment made to the Walgett Shire Council that involved the payment of rates, which appeared to have accrued prior to the transfer of the claim to Mr Stanley. Finally, Mr Browne tended a document that was in effect a Bill of Costs for the legal expenses in relation to bringing this matter before the court. That amounted to the sum of \$3,611.22. In respect to that document, which is Exhibit 10, to award that amount of money to the Complainant would be to give the Complainant indemnity costs in respect of his success in this matter. Although the Defendant is entitled to costs under the provisions of the Mining Act, I do not see that he would be entitled to indemnity costs.

If the court accumulates the expenses listed above, together with the "bill of costs", it totals \$4,083.13

It was Mr Browne's submission that the difference between that latter sum and the \$4,900 is such that the court would give consideration to the time that Mr Judge has to put into this particular proceedings and form an opinion that in granting the order sought by the Complainant, he would not receive any unjust enrichment.

I take into account those submissions by Mr Browne and I propose to make an order wherein the Defendant will transfer the claim back to the Complainant. However, I will further make an order that the Complainant pay to the Defendant the sum of \$1,000. Having regard to the fact that I have given consideration to the legal expenses of the Complainant in relation to the sum of money which I have determined ought to be refunded to the Defendant, I decline to make an order as to professional costs in relation to this matter.

The orders of the court will be:

1. The Defendant, Peter Wayne Stanley, is to transfer mineral claim 22103R to the Complainant, Peter Leonard Judge.
2. The Defendant is to do all such things and sign all such documents to give full effect of order 1 on or before the 13th December 2004. Failing the Defendant doing all such things and signing all such documents, the court gives power to the Mining Registrar, Lightning Ridge to do all such things and sign all such documents as to give effect to the order of the court.
3. I make no order for costs.