

**IN THE WARDEN'S COURT  
HELD AT PERTH**

**BEFORE: P. THOBAVEN S.M. WARDEN**

**DATES HEARD: NOVEMBER 22 AND DECEMBER 5, 1990**

**DATE DELIVERED: DECEMBER 17, 1990**

**CARNARVON WARDEN'S COURT PLAINT NO'S 8 - 11/890**

**BETWEEN:**

**BAKARRA PTY LTD**

**PLAINTIFF**

**AND**

**JULER PTY LTD**

**DEFENDANT**

**CARNARVON WARDEN'S COURT PLAINT NO. 12/890**

**BETWEEN:**

**BAKARRA PTY LTD**

**PLAINTIFF**

**AND**

**FIREHILLS GOLD N.L.**

**DEFENDANT**

**APPEARANCES:**

**Mr Richardson for Plaintiff  
Mr Bannerman for Defendants**

**RESERVED DECISION**

**1. Matter in Dispute**

**The Defendant Juler Pty Ltd holds Prospecting Licence  
No's 09/240 to 09/243 in the Gascoyne Mineral Field  
granted from 12 May 1989 to 11 May 1991 and Firehills**

Gold N.L. holds Exploration Licences No 08/291 in the Ashburton Mineral Field granted from 21 December 1988 to 20 December 1993. The two Defendant companies had common ownership and Firehills was to meet Juler's expenditure requirements, hence the matters were dealt with together.

Up to 19 November 1990 when the Plaintiff obtained certified copies of the register, there had been no expenditure reports lodged, nor exemptions granted. In respect to the Prospecting Licences the claim by the Plaintiff was that the Defendant had not met the expenditure conditions for the expenditure year ending 12 May 1990 and in respect to the Exploration Licence the expenditure conditions had not been met for the year ending 21 December 1989.

The applications for forfeiture have been made within 8 months of the year in which the expenditure was required to be made.

The Defendant contends that there has been expenditure and asks, depending on how I interpret the evidence that I find there has been the required expenditure, or in the alternative that there has been some expenditure, but I not make an order or recommendation for forfeiture.

The expenditure required per annum is as follows:

09/240	25ha	\$ 2 000
09/241	16ha	\$ 2 000
09/242	16ha	\$ 2 000
09/243	64ha	\$ 2 560
09/291	200km <sup>2</sup>	\$60 000

2. Material before the Court

Mr Malcolm McLeod gave evidence for the Plaintiff that he attended the site in mid October 1990 and found no evidence of any work in recent times.

Gregory Bennett Barnes gave evidence that he did work exceeding \$60 000 for the Defendant's group for which he is unpaid. Included in that were claims for work that he did in July to September 1989. In respect to the tenements under consideration he did 30 - 40 days work. There were two accounts. Invoice 2459B dated 30 August 1989 related to P09/240 to 09/243 for \$7412.00 and Invoice 2481A dated 30 September 1989 related to E08/291 for \$27973.25. He understood the geological reports would be used for two purposes:-

- a) to establish exactly what was there and
- b) to possibly use in the event of a float.

The contents of the reports were obtained from research of the history of the ground, and 3 - 4 field trips to obtain samples of drill holes drilled some time before.

The reason he remains unpaid is that Firehills has gone into Liquidation. He gave his evidence reasonably well and in the end I can accept his evidence that the amounts he claimed in his invoices were spent on the relevant tenements during the period being questioned.

Ross McLeod is a Director of Utah Bay Holdings. This company had an option agreement with Firehills. Members of the company did some work which he estimated or costed out to be \$50 000, but nobody was actually billed. There was an actual expenditure of \$2087. He told the Receivers and Managers of Firehills that Utah Bay had expended \$50 000. The reason he did that was to induce the Receiver Managers to continue the option agreement, but they refused to extend. He was asked to indicate in the agreement where there was a requirement for Utah Bay to spend any money to meet the expenditure requirements by Firehills, but he could not find such a provision. I have referred to the agreement and I can find no mention of such expenditure. The reason \$50 000 value of work was done was to satisfy Utah Bay whether to pay \$500 000 for the tenements as provided for in the agreement. Utah had not been asked by Firehills to expend money on Firehills behalf.

Alexander Edward Duperouzel was the Manager in charge of the receivership of Firehills Gold, and investigated the day to day matters. It was endeavoured to have admitted evidence related to expenditure. I ruled it inadmissible as there was no ground for me to determine what properties the expenditure should be apportioned to.

Other evidence was tendered but had no effect on the case.

3. Matter to be decided

- 1) Should the 2 accounts outstanding to Barnes be allowed as expenditure, and if the account remains unpaid should it be classed as expenditure.
- 2) Should the amount of \$50 000 be allowed as expenditure.
- 3) If I find that the expenditure requirements have not been fully met, should I forfeit and recommend forfeiture of the Prospecting Licences or Exploration Licence or alternatively should I make some other order not resulting in the Defendant's losing the ground.

4. Conclusions

Barnes Account

As already indicated, I am prepared to accept Barnes' evidence that he did do the work at the request of Firehills and Juler. Mr Malcolm McLeod said he saw no evidence of people having been there when he

visited in October 1990. Barnes said he had been there in July/August 1989 and had been bogged and taken some samples. Given the minimal disturbance by Barnes, I am prepared to conclude that when McLeod visited there would have been no signs of activity. I therefore do not really consider there is a conflict in the evidence.

It may be that in the end the material prepared by Barnes could have been used for a prospectus, but the original reason he did the work was to try to establish what was there. There was no evidence produced to me, to make me conclude that the nature of Barnes work was only suitable for a prospectus. I am therefore prepared to conclude that work was done as part of the preparation for exploring.

The plaintiff raises the point that the money has not been paid out and therefore not expended. There is no doubt that the money is owing for the work done. There is a liability for Firehills/Juler to pay the money out. The figure represents expenses which if it wasn't for the liquidation of the company he would be paid. Unfortunately, Regulations 15 and 21, read as follows:-

"shall expend in mining on in connection with mining".

It does not differentiate between work done and paid for and work done and unpaid for. The Act is concerned with the performance of work to a

specified value, on an annual basis. The Act is not concerned with the niceties of book keeping or how liabilities are to be met.

Mr Richardson referred me to the case of Jones and Connell v Sanidine N.L., a decision given by Warden Brown in Kalgoorlie on 15 December 1987, as a proposition that where a party such as the Defendant in these proceedings is claiming expenditure then it has to be actually paid out. The position in that case was not the same as the matter I have in hand. In that case it does not seem that the defendant incurred an expenditure liability for Mr Zhenmin's work, Warden Brown's words were "..... in my view, to only claim for expenditure actually incurred .....". Warden Brown did not go so far as to say whether the payment had to change hands.

Given that the reason for the non payment is the liquidation of the company I am prepared to accept that the work done by Barnes should be accepted as expenditure.

#### Expenditure of \$50 000

It is plain from the option agreement that \$50 000 or any amount was not required to be expended by Utah Bay on account of Firehills Gold and Juler. I am satisfied that money was spent by Utah Bay for its own reasons. Therefore it should not be allowed as expenditure.

Forfeiture or Otherwise

On P09/240 - 09/243 held by Juler there was to have been a total expenditure of \$8560. Barnes account amounts to \$7412. I do not consider that short fall to be of great significance. In fact it is at the lower end of the scale.

On E08/291 held by Firehills Gold the defendant was required to spend \$60 000 but only \$27 973.25 was accounted for. That amount was for the preparation of reports. The total work require 3 - 4 visits by Barnes over an 8 month period and involving Barnes and a field hand and involved 30 - 40 days work in total.

In cross examination he said that for Firehills Gold alone there were 3 visits and for Firehills Gold/Juler one visit.

I consider that the Defendant has demonstrated to me that the failure is such as to not recommend forfeiture. It is not a situation where no substantial effort had been made. If no real effort had been made I would have recommended forfeiture.

As to P09/240 - 09/243 I impose no penalty at all.

As to E08/291 I impose or fine of \$300 to be remitted to the plaintiff, to be paid within 1 month.



Costs

In this matter the plaintiff has been successful in proving its case. One of the main contributing factors has been the failure of the Defendant Companies to lodge the necessary Form 5 within the required period.



P.G. THOBAVEN, S.M.  
WARDEN

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