

IN THE WARDEN'S COURT  
HOLDEN AT SYDNEY  
ON 11TH JULY, 1986  
BEFORE J.L. McMAHON,  
CHIEF MINING WARDEN.

AUSTRALIAN GAS LIGHT COMPANY (Applicant)  
v.  
O'GRADY & OTHERS (Defendants)

BENCH:

On 19th June, 1986 I heard evidence and argument in respect of an application by the applicant for an Injunction under Section 144 of the Mining Act, 1973. The application was resisted by the defendants.

The application sought that I grant an Injunction until further order restraining the defendants from hindering, obstructing or otherwise interfering with access by the applicant, its servants or agents on the land of the defendants for any purpose relating to operations under Petroleum Exploration Licence No. 260 and further that they be similarly restrained from hindering the applicant from doing any act which the applicant was authorised to do by the Act or the licence on the land. Thirdly that the defendants be similarly restrained from doing any act whereby the right, title or interest of the operations proposed to be carried out on the land might be adversely affected. An additional order was sought which will be referred to herein as Order 4 that the defendants be restrained from obstructing exercise by the applicant of its rights and duties under the licence and the Petroleum Act by refusing consent to any application by the applicant for any development consent which may be necessary for carrying out of the operations on the land. Finally, costs were sought by the applicant.

There is no dispute that the applicant holds Petroleum Exploration Licence No. 260 and that the defendants, Mr. Philip O'Grady and Judith O'Grady own or have interests in ownership of the lands of a property called "Tidappy" over which

the licence extends. The other defendant, Jennifer Burrell, is said to be an occupier, at least in part, of those lands. At an earlier hearing before me on 29th May, 1986, relying upon oral and affidavit service, I granted an Injunction under Section 144(4) of the Mining Act against the defendants because I considered there was extraordinary urgency in the matter. That ran only for a period of one month from 30th May, 1986.

Two additional affidavits were filed with the Court on 19th June, one dated 18th June, 1986 from Mr. Christopher Herbert, a geologist who has had the carriage of the matter to date on behalf of the applicant and the other from Mr. Claus Kuball. Mr. Herbert's affidavit stated that proceedings had been brought by the defendants in the Land and Environment Court against the applicant. Those matters were listed for 17th June, 1986 and have been set down for hearing at that court on 28th and 29th July, 1986. The application before that court was being resisted by the applicant herein but a development consent to Camden Council had been prepared in case it was required after the July hearing. Paragraphs 7 and 8 of Mr. Herbert's affidavit read as follows:

- "7. The Australian Gas Light Company requires continuing access to the land owned by Phillip O'Grady and Judith O'Grady and known employees (sic), agents and contractors can enter upon the land to survey, measure and estimate requirements for exploration and associated operations as provided under the Petroleum Act, 1955.
8. There are materials presently on the land and The Australian Gas Light Company requires access to those materials."

The affidavit by Mr. Kuball simply stated that he had attempted to serve the development application upon Mr. Philip O'Grady but had been asked by Mr. O'Grady to forward it to the solicitors for the applicant.

Legal argument has taken place as to the Warden's powers to grant an Injunction, bearing in mind that there is no provision in the Petroleum Act specifically relating to those powers. What the Petroleum Act does by Section

57 say is that the Warden's Court under the Mining Act, 1973 shall be the Warden's Court for the purposes of the Petroleum Act and "the provisions of Part IX of the Mining Act, 1973 shall apply accordingly". Notwithstanding the persuasive and well-researched nature of the submissions made by Mr. Talbot who appears for the defendants, I am satisfied that Section 57 operates to the extent that it allows Section 144 to be availed of by a person who holds a Petroleum Licence under the Petroleum Act. I believe that a Petroleum Licence is "property" within the meaning of Section 144 which falls within Part IX of the Mining Act and that Section 57 of the Petroleum Act was not enacted as he submits simply to allow for proceedings under Section 58 of that Act to be administered. To this extent I do not recede from and in fact adopt the findings which I made on the application which I heard on 29th May and granted on 30th May, 1986 when the Injunction on the basis of extraordinary urgency was issued.

There the matter cannot end. As I indicated at the conclusion of the latest hearing, I am troubled by a state of affairs which has been shown to exist since 30th May, 1986. As at that date and the preceding day, I had evidence from Mr. Herbert that the applicant was in urgent need to get onto the defendants' land. One of the factors was that the borehole to be sunk was the second in a series of three and that drilling contractors would have to be put off or employed elsewhere if the programme were not allowed to continue. There was in evidence an undisputed statement that Mr. O'Grady had said that he would obstruct entry and Mr. O'Grady had been in Court on 29th May and had not sought to give evidence. One would have therefore thought that the Injunction having been granted that since then the applicant would have sought to take physical advantage of it and that there would be an attempt or a series of attempts made by the applicant's employees to visit the site and to continue with the work which was said to be so extraordinarily urgent and they were in such desperate need to do.

This has not occurred.

Evidence from Mr. Herbert on 19th June is that since the Injunction was granted no attempt has been made by the applicant to visit the defendants' land. Furthermore, no reason was advanced for this absence of action although I assume that as the legal situation as to the need for development consent was not clear, the applicant herein did not feel comfortable in proceeding onto the defendants' land inspite of the existence of the Injunction restraining the defendants from interfering with such entry. Now, Mr. Margo, on behalf of the applicant, has indicated that notwithstanding paragraph 7 of Mr. Herbert's affidavit, the applicant may seek further entry between the present time and the hearing date before the Land and Environment Court, to do something more to the land than simply survey, measure and estimate requirements for exploration and associated operations. It is suggested that perhaps for instance the entry of machinery and perhaps road construction material may take place. So, to affidavit evidence as recent as 18th June, these were said on 19th June to be additional requirements. On the other hand, Mr. Talbot has said that his client is perfectly willing to give entry to allow for the activities as envisaged by Mr. Herbert in paragraph 7 but further access for other activities could not be agreed to. Notwithstanding the attempt by myself to have the parties compromise as to this situation, at the conclusion of the hearing on 19th June, that is where the matter rests.

I am asked to grant an Injunction which would in effect make a person liable to a penalty of \$1,000 each day for disobedience. While there was certainly evidence before me on 29th May that there was extraordinary urgency and there was obstruction, in my opinion there is now no further evidence about obstruction. There is no evidence before me which is acceptable that the defendants have disobeyed the Injunction granted on 30th May and indeed I am

not satisfied on the sworn evidence that any situation is likely to be created before the Land and Environment Court hearing on 28th and 29th July which would necessitate the granting of an Injunction. For this reason I exercise my discretion and refuse the application.

Mr. Margo made a request that I give consideration to granting paragraph 4 of the order sought. To grant such an application would, in my opinion, be requiring a person not to exercise a right under an Act of Parliament which that person may feel he is entitled to exercise. The rationale behind such a feeling may be correct or it might be incorrect and the legal situation may be obvious to an objective observer. In another case, which I think applies here, the legal situation may not be as clear nor as definite; but whatever circumstances apply, a citizen is still entitled to have the matter properly ventilated before an appropriate jurisdiction. That jurisdiction is the Land and Environment Court and not the Warden's Court, and there is no way that I would be a party to granting an Injunction seeking to prevent a person from refusing consent as sought by Order No. 4. I exercise my discretion also to refuse that application.

The papers are marked "Application for Injunction Refused". The applicant is to pay the defendants' costs of the hearing in the sum of \$480 on or before 15th August, 1986.