JURISDICTION :

TITLE OF COURT : WARDENS COURT

LOCATION : KARRATHA

CITATION : GIFFARD -v- GIRALIA RESOURCES NL

CORAM : CAMPIONE M

HEARD : 20 JULY 2006

DELIVERED : 4 MARCH 2008

FILE NO/S : OBJECTION KR153/056

TENEMENT NO/S : SPECIAL PROSPECTING LICENCE 47/1263

BETWEEN : KANE WESLEY GIFFARD (APPLICANT)

V

GIRALIA RESOURCES NL (OBJECTOR)

Catchwords:

Special Prospecting Licence

Legislation:

Mining Act 1978 s56A(5)

Result:
That Objection KR153/056 is upheld and that Application for Special Prospecting Licence 47/1263 is refused.

Representation:

Counsel:

Applicant	:	Self Represented
Objector	:	Garry Lawton

Solicitors:

Applicant	:	Kane Wesley Giffard
First Objector	:	Lawton Lawyers

Case(s) referred to in judgment(s):

Levy and Low v Bronze Wing Gold NL (1999) 18 AMPLJ 217
Quinn v Herald Resources & others [2002] WAMW 14

1 The Applicant, Kane Giffard, has applied for a special prospecting licence 47/1263. Giralia Resources NL, ("Giralia") the holder of E47/1061 has objected to the granting of that application. The grounds of the objection are as follows:

1. Interferes with current and proposed exploration programs on E47/1061; and
2. Notice served "out of time" on Giralia Resources NL by application SPL 47/1263.

2 The matter came on for hearing in the Karratha Warden's Court on the 20th of July 2006. The applicant was self-represented.

3 Mr Giffard gave evidence in support of his application. He is employed fulltime as a supervisor and he prospects as a hobby. He anticipated that he would attend the area once every 3 months for about 10 to 12 hours. He said that the land in question is too hard to utilise a metal detector and that he proposes to use an electric jackhammer and possibly a bobcat. He also said that the process could be quite messy and that he proposed to clean it up.

4 Under cross-examination he said that he had been out to the area in question about 6 to 8 times (with verbal permission) and that he had not used any equipment out there. He anticipates that he would have to go down a couple of metres and may need to hire a backhoe and a bucket for his prospecting endeavours.

5 He said that the area in question is a pretty spot and that he envisages taking his 2 young nephews camping and prospecting out there.

6 He stated that he has no great experience as a prospector or as a miner and that he has received a warning letter from Newcrest Mining ("Newcrest") about his activities.

7 Dennis James Hawtin gave evidence on behalf of the objector. He is employed as a Mining Consultant and has been in the industry for the past 30 years. He consults to the holder of the tenement, Giralia, and is also a shareholder of that company. He is in receipt of a power of attorney authorising him to act.

8 He gave evidence of the activity by the Objector on the tenement and gave evidence of expenditure in excess of the expenditure amount by Giralia. He said that in 2006 Giralia had drilled substantially, with quite substantial results and that some 97 holes were drilled.

9 The distance between the closest drill hole and Mr Giffard's proposed licence is a distance of some 150 metres.

10 Mr Hawtin said in evidence that the results are more than encouraging and even though Newcrest is no longer part of any joint venture that Giralia proposes to continue explorations on its own or to enter into discussions for a joint venture with a major mining company. It was his evidence that Giralia has the resources to continue with the venture itself and further gave evidence of other projects that Giralia has been involved in, which he says are highly successful floats. He characterised Giralia as a substantial junior mining company and did not place any significance on the fact that Newcrest has walked away from the project.

11 He gave evidence about a drilling program and produced a diagram, which is exhibit 5 in these proceedings, showing the drilling trend. He said that Giralia was drilling in the direction of Mr Giffard's proposed SPL and that effectively it was in the middle of Giralia's next drilling venture. He described the SPL as "picking the eyes out of it".

12 He was concerned about the impact of any SPL on any negotiations with any joint venturer.

13 He was cross-examined on the report and it was put to him that the report was less than encouraging with low gold values and that the report recommended that no further work was warranted. He maintained that Giralia had had "sniffs" of gold, as he described them, and that it was a report commissioned from the point of view of Newcrest as opposed to Giralia. He conceded that there had been no drilling since Newcrest pulled out, but by way of explanation said that the season had only just begun.

14 Exhibit 8 in these proceedings is the report of the Director, Geological Surveys in respect of the prospecting carried on by the holder of the primary tenement on the land to which the application relates.

15 The provisions of section 56A of the Mining Act apply to this application for a special prospecting licence. Subsection (5) of that section provides as follows:

"After hearing an objection referred to in subsection (4), the Warden may refuse the application for the special prospecting licence concerned on the ground that prospecting for gold on the land to which that application relates would result in undue detriment to the prospecting being carried on by the holder of the primary tenement or he may recommend that application to the Minister……

16 In Levy and Low v Bronze Wing Gold NL (1999) 18 AMPLJ 217 the Court found that there existed no onus of proof on the Applicant or the Objector. Rather, a Warden, based upon the evidence presented, should ask:

"Could the grant of the SPL with appropriate conditions be made without the prospecting which the grant would allow resulting in undue detriment to the prospecting being carried out by the objector on the prospecting licence" And then if the answer to that question is negative, the Warden should refuse the application."

17 In Quinn v Herald Resources & others [2002] WAMW 14 Warden Wilson said the following in relation to that case:

"In that case the Warden was of the opinion that a Warden, considering the evidence and making a decision, should, in reaching his conclusion upon asking the above question, consider the following matters or the following factors:

a) The prospecting conducted on the tenement by the objector and past holders on the tenement and the use the objector has made of the results of that prospecting:

b) The prospecting work the objector intends to carry out on the whole of the prospecting licence;

c) The prospecting work the objector and applicant intended to carry out on and in the vicinity of the SPL;

d) The likelihood of the objector and applicant carrying out that prospecting work;

e) The present and future capacity of the objector and applicant (both financial and technical) to carry out the prospecting work;

f) The size and nature of the SPL application and the proximity of the SPL to work proposed to be done by the objector on the prospecting licence, and

g) The bona fides of the applicant.

18 I agree with Wardens Calder and Wilson and have applied the above factors to the evidence before me.

19 I accept that the Applicant is bona fide in his application. He is a small time prospector who has identified an area and wishes to try his luck there. He also plans to use it as a focus to take his younger nephews away camping to experience the great outdoors. He admitted that his visits to the area would be fairly infrequent. He has no ulterior motive or lack of bona fides.

20 I am satisfied that Giralia is actively mining and exploring on the land in question and is bona fide in it's assertion that it is looking for a replacement joint venture partner. I accept that the report commissioned was written from the perspective of Newcrest as opposed to Giralia and is not really indicative of Giralia's position or intent.

21 I am satisfied that the granting of the SPL will cause undue detriment to Giralia. As put by Mr Hawtin the granting of the SPL would be "picking the eyes out of" the area that Giralia now wish to explore and in the path of the drills that have been identified as being the most prospective. The SPL is directly in the path of the proposed drilling pattern. I am also satisfied that the granting of the SPL will affect the viability of the project to attract a further joint venture partner. It is clear from the evidence that Giralia have continued to actively mine and explore the area and have expended considerably more than their expenditure requirement on the land.

22 I cannot think of any condition that I could apply which would lessen the impact of the apparent undue detriment to the Objector.

23 I find that having considered all of the evidence and having asked the question posed in the Levy v Bronze Wing case, that undue detriment would occur to Giralia exploration activity even with the imposition of conditions should the SPL be recommended for grant.

24 For those reasons I recommend that Objection KR153/056 be upheld and that application for Special Prospecting Licence 47/1263 be refused.