HIGH COURT OF AUSTRALIA

14 October 2015

MOUNT BRUCE MINING PTY LIMITED v WRIGHT PROSPECTING PTY LIMITED & ANOR
WRIGHT PROSPECTING PTY LIMITED v MOUNT BRUCE MINING PTY LIMITED & ANOR

[2015] HCA 37

Today the High Court unanimously dismissed an appeal from the Court of Appeal of the Supreme Court of New South Wales ("NSWCA") in *Mount Bruce Mining Pty Limited v Wright Prospecting Pty Limited* and unanimously allowed an appeal from the NSWCA in *Wright Prospecting Pty Limited v Mount Bruce Mining Pty Limited*. The High Court held that Mount Bruce Mining Pty Limited ("MBM") is liable to pay royalties to Wright Prospecting Pty Limited and Hancock Prospecting Pty Limited (together, "Hanwright") in respect of iron ore mined in two areas of the Pilbara region of Western Australia known as "Eastern Range" and "Channar".

Hanwright, MBM and Hamersley Iron Pty Limited entered into an agreement dated 5 May 1970, which, among other things, concerned the payment of royalties by MBM in relation to iron ore mined from areas of land the subject of the agreement ("the 1970 Agreement"). Pursuant to cl 2.2 of the 1970 Agreement, MBM acquired from Hanwright the "entire rights" to the "MBM area", a term defined by reference to certain "temporary reserves" granted under the *Mining Act* 1904 (WA). Under cl 3.1 of the 1970 Agreement, royalties were payable to Hanwright on "[o]re won by MBM from the MBM area". The obligation to pay royalties extended to "all persons or corporations deriving title through or under" MBM to the "MBM area".

MBM claimed that the term "MBM area" did not refer to an area of land to which rights of occupancy had been transferred to MBM; rather, it referred to the rights themselves. The consequence of this construction would be that Eastern Range and Channar did not fall within the "MBM area" and royalties would not be payable on iron ore extracted therefrom. If MBM's construction of the term "MBM area" was incorrect, MBM claimed that royalties were, in any event, not payable in respect of iron ore extracted from a part of Channar (referred to as "Channar A") because such ore was not extracted by entities "deriving title through or under" MBM.

The Supreme Court of New South Wales rejected MBM's claims and held that royalties were payable in respect of iron ore extracted from both Eastern Range and Channar. On appeal, the NSWCA held that royalties were payable in respect of Eastern Range but not Channar A. By grant of special leave, each of the parties appealed to the High Court.

The High Court held that the term "MBM area" referred to the physical area of land that had been transferred to MBM and was not limited to the rights under the tenements that affected that land at the time of the 1970 Agreement. The Court further held that iron ore was being won from Channar A by entities "deriving title through or under" MBM. The exploitation of Channar A was carried on under a title the derivation of which was facilitated by the deployment by MBM of its own title.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

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