

**BEFORE THE LAND VALUATION TRIBUNAL
AT CHRISTCHURCH**

**CIV-2005-018-
000001 LVP 3/2004**

UNDER	Public Works Act 1981
IN THE MATTER OF	a purported notice of claim pursuant to section 84 of the Act
BETWEEN	GORDON ALLAN GRAHAM Applicant
AND	TRANSPower NEW ZEALAND LIMITED Respondent

Hearing: 20 February 2006

Appearances: Applicant for self
DJS Laing for Transpower

Judgment: 23 February 2006

DECISION OF JUDGE CP SOMERVILLE

[1] Transpower New Zealand Limited wishes to strike out Mr Graham's claim for compensation under the Public Works 1981 for the injurious affection caused by seven of Transpower's power poles to his rights under a mining title in relation to a property at Stillwater.

[2] In Transpower's view, Mr Graham's claim has no merit, is frivolous and vexatious, and amounts to an abuse of this Tribunal's processes.

[3] Mr Graham believes that he is entitled to compensation because:

- a) The original power line over the property was installed in 1927 without proper procedures being followed or compensation paid.

- b) The original line was replaced in 1999, again without the proper procedures being followed or compensation paid.

Nature of Application

[4] It is not disputed that the Tribunal has power under s35 of the Land Valuation Proceedings Act to dismiss any claim if it is satisfied that the claim is "frivolous or vexatious."

[5] Moreover, the Tribunal has inherent power to control an abuse of its processes, by striking out proceedings if necessary. *Re an enquiry into [A] Films Ltd* (No.) [1993] DCR 686.

[6] If Transpower's application is to succeed then it must satisfy the Tribunal either that the claim cannot succeed at law or that the pleadings are so deficient that they cannot be repaired by amendment or by the supplying of further particulars. *Marshall Futures Ltd v Marshall* [1992] 1 NZLR316, 322-324.

[7] In an application such as this, it is not the Tribunal's responsibility to resolve disputed questions of fact. Instead, it proceeds on the basis that the facts pleaded in the claim are true. In the present case, the claim consists of a 235 page bundle of documents incorporating valuation material and correspondence between the parties. Although this correspondence indicates that there are a number of factual differences between the parties, I will proceed on the basis that the facts as alleged by Mr Graham are true.

Factual Background as Asserted by Mr Graham

[8] Between 1873 and 1892, Mr Graham's great-grandfather, JM Langdon, acquired five adjacent pieces of land along the Buller River at Stillwater immediately adjoining the site of the Brunner Mine.

[9] When Mr Langdon died in 1917 the five titles he had purchased from the Crown were held in trust and administered by a Greymouth lawyer, Mr Guinness, as administrator and trustee.

[10] During the course of the next 24 years two power lines were erected across the property and one of those is now operated by Transpower as a 66 KV transmission line. Mr Graham says that this line was erected in 1927 on seven wooden poles. He says that this occurred without the proper procedures at the time being followed. In his view, therefore, the establishment of this line was unlawful.

[11] In 1941 Mr Langdon's estate was distributed but, just prior to distribution, Mr Guinness divided the interest in the land from the interest in the minerals contained within it, obtaining two separate certificates of title. One of those titles, CT 43/157 (Westland Registry), recognised that the registered proprietor was possessed of "all coal, fire clay, minerals, mineral oils and other veins and strata of minerals or stone" in the land together with "all such rights as may be necessary for the efficient and proper working of all such coal, fire clay, minerals, mineral oils and other veins and strata of minerals and stone including such rights as may be necessary for building shafts, pits, engine houses, bins, drives and other works in connection with such working and including the right to withdraw the support of the surface of the said land."

[12] The other certificate of title which related to the fee simple in the land, was made subject to the rights given in the mining title.

[13] In 1989 Mr Graham inherited a one-quarter share in the mining title and in March 1999 he became the sole registered proprietor after having acquired the interests of the other three co-owners.

[14] In 1999 Transpower replaced the six wooden poles with six concrete poles which may or may not have been on the same line as the previous poles which remained in situ until the new line had been constructed.

[15] In March 1999 Mr Graham wrote to Electrix Ltd, the maintenance contractors employed by Transpower to erect the new poles. After noting that he owned the minerals in the property over which Transpower's line traversed Mr Graham suggested that Transpower should enter into a contract for the use of his ground which was supporting their poles. There was then an exchange of

correspondence between Mr Graham and Transpower and their solicitors, Simpson Grierson. In the course of this correspondence Mr Graham issued, and then retracted, a trespass notice to Transpower. There was also extensive debate about the date upon which the original line had been erected and the legal basis for doing so.

[16] On 14 June 1999 Mr Graham wrote to Simpson Grierson as Transpower's solicitors seeking "compensation under the Public Works Act 1981 under ss2 and 63 of compensation for injurious affection where no land taken." He quantified his claim by stating that there were seven transmission poles, each of which required a 100 square metres of earth for support and he sought rent for each pole from 1927 until March 1999 at 20 cents a square metre.

[17] By reply of 16 July 1999 Simpson Grierson rejected the claim for compensation on the basis that there was no legal basis to the claim as any right to compensation had expired many years before.

[18] There was further correspondence between Mr Graham and Simpson Grierson until November 1999 following which there was no contact until the present claim was filed in the Land Valuation Tribunal at Greymouth on 31 August 2005.

The Source of Mr Graham's Rights to Compensation

[19] This Tribunal only has jurisdiction to determine compensation due to Mr Graham under the Public Works Act 1981, whether that arises under s60 of that Act or s57 of the Electricity Act 1992 which provides that, in certain limited circumstances, compensation is to be made and determined "within the time and in the manner provided by the Public Works Act 1981."

[20] In either case, s78 of the Public Works 1981 provides that "a claim for compensation under this Act or any former Act relating to public works shall not be made after a period of two years from either the date of the proclamation or declaration taking land or, in any other case, after the execution of the works or the exercise of the power out of which the claim to compensation has arisen."

[21] That period of two years can be extended to a period not exceeding six years if the authority responsible for the work agrees, or failing agreement, as is determined on appeal by this Tribunal.

[22] Once that claim has been served, the claimant is entitled to file a copy of the claim together with a notice requiring it to be heard by the Tribunal "at any time after the expiration of 30 working days after the service of the claim."

[23] Special forms are provided for both the making of the claim and the notice requiring the matter to be heard by the Tribunal. This Tribunal, therefore, has no jurisdiction unless Mr Graham has:

- a) filed a proper request for his claim to be heard by this Tribunal; and
- b) at least 30 days before filing that request and no later than two years after the execution of the works in respect of which he claims compensation, filed a proper notice of claim against Transpower.

When Were the Works Executed?

[24] There are only two possibilities:

- a) 1927 when the original line was installed; or
- b) 1999 when it was replaced.

Has a Proper Notice of Claim Been Filed, and if so, When?

[25] The appropriate form for the notice of claim is set out in the third schedule to the Public Works Act 1981 as Form B. That form is reproduced below:

Claim to Compensation Under The Public Works Act 1981

TO (Insert either the [Minister of Lands] or the name of the local authority, as the case may be). The public work described in Table A below has been or is about to be executed by your authority, and the land described in Table B below, in which I have an interest as described in Table C below, has been or will be injuriously affected or damaged by the work because
(State items

of claim with a reference number to each, and give in each case full particulars of the nature and extent of each item).

I claim the sum of \$ as compensation for all loss arising out of the execution of the said work, which sum is made up as follows:

Sum claimed for injurious

affection: Sum claimed for

damage: Sum claimed for

disturbance:

(State reference number and short heading of each item of claim previously detailed, and the amount claimed in respect of each item separately.)

TOTAL CLAIM:

Dated at..... thisday of. 19

Claimant: (Full

name) Address for

service:

(Signature)

[26] The only document remotely resembling that form is Mr Graham's letter of 14 June 1999 referred to in paragraph [16] above but I do not consider that it can properly be classified as a formal notice of claim because:

- a) No attempt is made to follow the form.
- b) It does not purport to be a formal notice of claim.
- c) It clearly relates to the original construction of the line 52 years earlier.
- d) It specifically excludes a claim for maintenance or operation of the line and is therefore outside s57 of the Electricity Act.
- e) It was not accompanied by a valuation report signed by a registered valuer as required by s82(2).

- f) It was not properly served in that it was only sent to Transpower's solicitors and was not served upon the Corporation.

Was a Proper Notice Filed with the Tribunal?

[27] Although extensive submissions were made by counsel for Transpower on this issue, it is not necessary for me to decide it as I have found that there was no valid notice of claim made with Transpower that could be referred to the Tribunal.

Conclusion

[28] As there is no foundation to Mr Graham's application it will be struck out as an abuse of process.

[29] Transpower seeks costs and is to file and serve written submissions on that issue by 17 March 2006. Mr Graham will have until 31 March 2006 to file and serve his response. Transpower will then have until 7 April to file a reply.

CP Somerville
Chairman