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NATURAL RESOURCES

Silbrico Corp. v. Ortiz, 878 F.2d 333

Author: Judge Baldock

Plaintiff, Silbrico, as titleholder of a perlite processing mill, instituted this suit pursuant to 28 U.S.C. § 2201, seeking a declaratory judgment as to the legal effect of the mill's surface encroachment upon an unpatented lode mining claim owned by defendant, Ortiz. Ortiz appealed the district court's decision that he had no standing to complain of the encroachment in view of the Multiple Use Mining Act of 1955, 30 U.S.C. § 612 ("Act"). Ortiz also requested legal fees and expenses under an indemnification clause in the lease with Silbrico.

The Tenth Circuit held that the district court properly applied the Act, rather than the Mining Law of 1872, 30 U.S.C. § 26. Ortiz's purported 1957 amendment changing two placer claims to what were more properly classified as eight lode claims could not relate back to the 1955 Act. The Act's legislative history indicated that surface uses which do not impede the claim owner's mining operations are permitted. Because Ortiz suffered no injury due to the processing mill's encroachment, he was entitled to neither equitable nor legal relief. The court also determined that the lease between the parties expired prior to Silbrico's action, so Ortiz could not recover attorney's fees and costs thereunder. The judgment was affirmed.

