

IN THE MINING WARDEN'S COURT
AT LIGHTNING RIDGE
J A BAILEY, CHIEF MINING WARDEN
WEDNESDAY 6 AUGUST 2003

CASE NO. 2003/23

STJEPAN MATIC

(Complainant)

v.

JEFF INMAN

(First Respondent)

MONICA MATIC

(Second Respondent)

NIKOLA VESELCIC

(Third Respondent)

APPEARANCES:

Complainant: Appears in person unrepresented.

First Respondent: Appears in person unrepresented

Second Respondent: No appearance

Third Respondent: No appearance

ACTION: Complaint – Injunction Mining Act 1992, Section 313

HEARING DATES: Heard Lightning Ridge on 15 July 2003.
Decision given at Lightning Ridge on 6 August 2003.

DECISION

On 19th June 2003 the Complainant, Stjepan Matic, applied for an injunction under the provisions of Section 313 of the *Mining Act 1992*. His application was successful and an Injunction was issued on 23rd June 2003. The matter was set down for hearing at the Warden's Court Lightning Ridge on Tuesday 15th July 2003 to hear evidence concerning the following final relief which was sought by the Complainant:

1. I ask the Court for order for this claims No: 38671 & 27253 to be granted to me, Stjepan Matic, all parties wish I trust. To transfer or reclaim to be registered as the court wish.
2. A declaration of the nature and extent of my interest in the claim.
3. A taking of accounts in relation to all transactions and work expenses in relation to the claim since they were first registered.
4. The respondents are ordered to sign all necessary documents and things required transferring title in mining claim No's: 38671 & 27253 to the applicant.
5. If the respondents fail to sign the necessary transfer documents, the Registrar of the Mining Warden's Court be permitted to sign the said documents in the respondents place.
6. Costs.

It would appear that Mr Matic, without legal consultation, drafted the terms of "final relief" himself. Although it may have been more eloquently drafted, it was clear enough at the conclusion of the case as to what he was seeking.

At the hearing on 15th July 2003, the Complainant Stjepan Matic appeared personally unrepresented, with the assistance of an interpreter. The First Respondent, Mr Jeffrey Inman, who is the Mining Registrar at Lightning Ridge appeared before the Court without legal representation. There was no appearance by or on behalf of the Second and Third Respondents.

Mr Inman informed the court that the Department of Mineral Resources would not send legal representation to appear on his behalf and furthermore he advised the court that his superiors had instructed him to take no part in the proceedings. As he was a Defendant, he remained in court for the duration of proceedings.

Upon the court being satisfied by evidence under oath that the injunction and accompanying documentation had been properly served, in accordance with the *Mining Act 1992*, upon the Second and Third Respondents, the matter proceeded in their absence.

The only person to give evidence was Stjepan Matic, the Complainant. Together with his evidence under oath he tendered various documents in support of the matters which he orally put before the court. From that I find the following facts:

- Claim 27253 was first registered to Stjepan Matic on 12th June 1991. That claim was subsequently renewed by Mr Matic until 30th June 1999.
- The claim was transferred to Nada Lekic on 7th June 1999. That claim holder renewed the claim until 30th June 2001.
- The claim was transferred to Muniba Monica Matic, (the Second Respondent referred to in the action before the court as Monica Matic) on 29th June 2001. That claim was subsequently renewed each year until 30th June 2003.
- Mineral Claim 27253 was cancelled at the request of Monica Matic on 6th June 2003.
- Mineral Claim 38671 was first transferred to Stjepan Matic on 17th June 1997. That was renewed each year until 30th June 1999.
- The claim was transferred to Nada Lekic on 7th June 1999. It was renewed until 30th June 2002.

- That claim was transferred to Muniba Monica Matic on 5th February 2002. It was renewed until 30th June 2003.
- On 6th June 2003 the subject claim was cancelled at the request of Monica Matic.

Stjepan Matic gives evidence that he is the holder of two other mineral claims, one being a residential claim. He said that action was taken to have his wife, Monica Matic, hold both of the claims which are subject to these proceedings in her name on the condition that she would release both back to Stjepan Matic at any time he requested the same. Mr Matic produced a Statutory Declaration to the court, it was marked exhibit 4, which set out the fact that the Second Respondent, although the holder of both claims, had no rights or responsibility concerning the claims. That Statutory Declaration was signed by both the Complainant and the Second Respondent, Monica Matic.

Attached to exhibit 4, the Statutory Declaration, was an "Application for Transfer of a Mineral Claim". This was an application form which had been signed by the Second Respondent in respect of Mineral Claim 38671. It was dated 12th November 2002, some four days after the date which appears on the Statutory Declaration. I was informed by Mr Matic that this was completed by his wife and handed to him on the basis that he then had the power to file it with the Registrar after he had finished completing the same so that the claim would be transferred to him or some other person at his desire.

Mr Matic gave evidence that his marriage to Monica Matic had come to an end and that he had a new "girlfriend" and that his wife Monica had a new "boyfriend". He informed the court that this was an amicable arrangement and that they were both still good friends with each other. It would appear from what he informed the court that the Statutory Declaration, which is exhibit 4, was signed by his wife some time after they had separated.

It appears that the amicable arrangement between the two parties came to an unexpected end, so far as Stjepan Matic was concerned, in the early hours of the 6th June 2003. Mr Matic gave evidence that his wife turned up at his campsite in the early hours of the morning and an altercation occurred. It was this same day in which it appears from the records tendered to the court that Monica Matic attended the Mining Registrar's office and cancelled both claim 27253 and claim 38671.

Upon hearing that the claims were cancelled Mr Matic took action to re-peg claim 27253 on 10th June 2003. That application was held by the Mining Registrar pending the expiration of an Opal Prospecting Lease which was over the area.

Before Mr Matic lodged an application over the area which was Mineral Claim 38671, the Third Respondent pegged the claim and filed an application. That application is currently pending subject to the Third Respondent undertaking the Mine Safety Course.

Mr Matic explained to the court that he had originally requested other people, more recently his wife, to hold both of the subject claims on his behalf. He did this because he was seeking to peg out other areas with which he had some interest. He informed the court that it was always his intention to retain both of these claims and eventually to construct a residence on Mineral Claim 38671. On that area there is currently a shed in which he stores some tools, but he has plans drawn up to convert that into a proper residential area.

When questioned as to what he was seeking, in relation to the "final relief" which he filed with the court, Mr Matic explained that Item No. 1 means that he simply wants both Mineral Claims 38671 and 27253 to be handed back to him. He further indicated that he was not seeking item 3 of the "final relief" nor was he seeking Item 6 which was costs.

Mr Matic gave evidence that he is currently the claim holder of two claims, one of which is a residential claim. When I explained to him that if he continued to hold those claims I would have no power to order that the subject claims be transferred to him, as it would be contrary to the Act. Mr Matic indicated that as far as Mineral

Claim 27253 is concerned, the person who has lodged the claim application over that area did so with his concurrence and there is an existing agreement as to Mr Matic's equitable rights with that person. Consequently he informed the court there is no need for the court to make any order in respect of that claim.

Mineral Claim 38671 is in fact a residential claim, and Mr Matic would be unable to retain his current residential claim and have transferred to him Mineral Claim 38671, even if he did dispose of the current claim of his which is not a residential claim.

Mr Matic indicated that his current residential claim has on it a residence which is of a substantial nature, far more substantial than that structure which is presently upon Mineral Claim 38671. Consequently Mr Matic does not wish to transfer his interests in his current residential claim.

It was pointed out to Mr Matic that the court could not make an order that Mineral Claim 38671 be transferred to him, whilst he is the current holder of two mineral claims, or, as Mineral Claim 38671 is a residential claim, the court could not have that claim transferred to Mr Matic while he is the holder of another residential claim.

CONCLUSION

From the evidence before the court it is quite clear that Mr Matic has an equitable interest in one hundred percent of Mineral Claim 27253 and Mineral Claim 38671. The agreement with his wife Monica Matic was that she was to hold those claims to the interest of Mr Matic, who was to pay all expenses concerning the claims and further that she was to transfer them back to him at his request.

It is clear that the action by Monica Matic to cancel the claim was contrary to the agreement, which had been entered into between the Complainant and Monica Matic.

The Complainant, Stjepan Matic has the right to have his equitable interest restored back to each mineral claim. It is clear that the current pending application over Mineral Claim 27253 has no competing interest and, subject to the conclusion of this case and the uplifting of the Injunction, there appears to be no basis upon which the Mining Registrar should not grant that claim to the existing applicant. The evidence

before the court is that the existing applicant has an agreement with Mr Matic which satisfies Mr Matic.

It now remains for the court to make an appropriate order to ensure that Mr Matic's one hundred percent equitable interest in Mineral Claim 38671 is restored.

To ensure that occurs I make the following orders:

- 1. THAT THE MINING REGISTRAR, LIGHTNING RIDGE, REINSTATE TO MONICA MATIC MINERAL CLAIM 38671 WHICH WAS CANCELLED BY HER ON 6TH JUNE 2003.**
- 2. THAT STJEPAN MATIC BE ALLOWED TO SIGN, AS AGENT FOR MONICA MATIC, AN APPLICATION TO RENEW THE SUBJECT CLAIM.**
- 3. THAT THE MINING REGISTRAR, LIGHTNING RIDGE, NOT PROCESS ANY APPLICATION BY MONICA MATIC TO CANCEL OR TRANSFER MINERAL CLAIM 38671 WITHOUT THE WRITTEN CONCURRENCE OF STJEPAN MATIC.**
- 4. ALL COSTS IN RESPECT OF THE RENEWAL OR TRANSFER OF MINERAL CLAIM 38671 ARE TO BE MET BY STJEPAN MATIC.**

I MAKE NO ORDER AS TO COSTS OF THESE PROCEEDINGS.

**J A Bailey
Chief Mining Warden**