

File No. 1912DO

L. Kamerman )  
Mining and Lands Commissioner )

Wednesday, the 28th day  
of June, 1995.

**THE MINING ACT**

**IN THE MATTER OF**

A Certificate of Interest dated the 15th day of December, 1983, and continued on the 21st day of December, 1983, respecting Mining Claims L-495894, 548785, 548835, 548836, 550008 to 550014, both inclusive, 550721 to 550730, both inclusive, 550822 to 550824, both inclusive, 550829 to 550834, both inclusive, 550836 to 550841, both inclusive and 598098, situate in the Townships of Gauthier and Lebel, in the Larder Lake Mining Division; and A Certificate of Interest dated the 24th day of January, 1984, and continued on the 31st day of January, 1984, respecting Mining Claim L-550835, situate in the Township of Gauthier, in the Larder Lake Mining Division, hereinafter referred to as the "Mining Claims";

**AND IN THE MATTER OF**

A Construction Lien dated the 27th day of July, 1984, and recorded on the 21st day of August, 1984, respecting the Mining Claims;

**AND IN THE MATTER OF**

A Certificate of Action dated the 11th day of October, 1984, and recorded on the 15th day of October, 1984, respecting the Mining Claims and filed in the Supreme Court of Ontario (Court File 562/84);

**AND IN THE MATTER OF**

An application pursuant to clause 67(1)(b) of the **Mining Act** that time be excluded in computing time within which work upon the Mining Claims is to be performed and fixing a date by which the next prescribed unit(s) of work shall be performed and filed;

**AND IN THE MATTER OF**

An application pursuant to subsection 64(4) of the **Mining Act** that the Certificates of Interest dated the 15th day of December, 1983 and the 24th day of January, 1984, be vacated and pursuant to subsection 171(4) of the **Mining Act** that the Construction Lien be cancelled;

**AND IN THE MATTER OF**

HILDA EGG

Applicant

- and -

THE MINISTER OF NORTHERN DEVELOPMENT  
AND MINES

Party of the Second Part

**ORDER**

**UPON READING** the application filed and upon hearing from Leslie L. Lukovich, Agent for the Applicant;

**1. THIS TRIBUNAL ORDERS** that the Certificate of Interest dated the 15th day of December, 1983, and continued on the 21st day of December 1983, is hereby vacated.

**2. THIS TRIBUNAL FURTHER ORDERS** that the Certificate of Interest dated the 24th day of January, 1984, and continued on the 31st day of January, 1984, is hereby vacated.

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3. **THIS TRIBUNAL FURTHER ORDERS** that the Construction Lien dated the 27th day of July, 1984, and recorded on the 21st day of August, 1984, is hereby cancelled.

4. **THIS TRIBUNAL FURTHER ORDERS** that the Certificate of Action dated the 11th day of October, 1984, and recorded on the 15th day of October, 1984, is hereby cancelled.

5. **THIS TRIBUNAL FURTHER ORDERS** that the time during which Mining Claims L-495894, 548785, 548835, 548836, 550008 to 550014, both inclusive, 550721 to 550730, both inclusive, 550822 to 550824, both inclusive, 550829 to 550834, both inclusive, 550836 to 550841, both inclusive and 598098, situate in the Townships of Gauthier and Lebel, in the Larder Lake Mining Division were pending before this tribunal and before the Supreme Court of Ontario being, the 15th day of December, 1983 to the 28th day of June, 1995, a total of 4214 days, be excluded in computing time within which work upon the aforementioned Mining Claims is to be performed.

6. **THIS TRIBUNAL FURTHER ORDERS** that the time during which Mining Claim L-550835 was pending before this tribunal and before the Supreme Court of Ontario, being the 24th day of January, 1984 to the 28th day of June, 1995, a total of 4174 days, be excluded in computing time within which work upon the aforesaid Mining Claim is to be performed.

7. **THIS TRIBUNAL FURTHER ORDERS** that the time for the performing and filing of the next unit of prescribed assessment work on Mining Claims L-548785, 548835, 548836 and 550008 to 550013, both inclusive, be and the same is fixed as the 11th day of August, 1997.

8. **THIS TRIBUNAL FURTHER ORDERS** that the time for the performing and filing of the next unit of prescribed assessment work on Mining Claim L-550014, be and the same is fixed as the 29th day of August, 1997.

9. **THIS TRIBUNAL FURTHER ORDERS** that the time for the performing and filing of the next unit of prescribed assessment work on Mining Claims L-550721 to 550730, both inclusive, 550822 and 550823, be and the same is fixed as the 30th day of October, 1997.

10. **THIS TRIBUNAL FURTHER ORDERS** that the time for the performing and filing of the next unit of prescribed assessment work on Mining Claim L-550824, be and the same is fixed as the 25th day of November, 1997.

11. **THIS TRIBUNAL FURTHER ORDERS** that the time for the performing and filing of the next unit of prescribed assessment work on Mining Claims L-550829 to 550831, both inclusive and 550833, be and the same is fixed as the 16th day of June, 1998.

12. **THIS TRIBUNAL FURTHER ORDERS** that the time for the performing and filing of the next unit of prescribed assessment work on Mining Claim L-550832, be and the same is fixed as the 16th day of June, 1997.

13. **THIS TRIBUNAL FURTHER ORDERS** that the time for the performing and filing of the next unit of prescribed assessment work on Mining Claim L-550834, be and the same is fixed as the 15th day of June, 1997.

14. **THIS TRIBUNAL FURTHER ORDERS** that the time for the performing and filing of the next unit of prescribed assessment work on Mining Claim L-550835, be and the same is fixed as the 7th day of May, 1998.

15. **THIS TRIBUNAL FURTHER ORDERS** that the time for the performing and filing of the next unit of prescribed assessment work on Mining Claims L-550836 to 550839, both inclusive, be and the same is fixed as the 1st day of June, 1998.

16. **THIS TRIBUNAL FURTHER ORDERS** that the time for the performing and filing of the next unit of prescribed assessment work on Mining Claims L-550840 and 550841, be and the same is fixed as the 18th day of June, 1996.

17. **THIS TRIBUNAL FURTHER ORDERS** that the time for the performing and filing of the next unit of prescribed assessment work on Mining Claim L-598098, be and the same is fixed as the 2nd day of November, 1998.

18. **THIS TRIBUNAL FURTHER ORDERS** that the time for the performing and filing of the next unit of prescribed assessment work on Mining Claim L-495894, be and the same is fixed as the 18th day of May, 2001.

**IT IS FURTHER DIRECTED** that upon payment of the required fees, this Order shall be filed in the Office of the Mining Recorder for the Larder Lake Mining Division.

**DATED** this 28th day of June, 1995.

Original signed by

L. Kamerman  
MINING AND LANDS COMMISSIONER

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Mining and Lands Commissioner )

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**THE MINING ACT**

**IN THE MATTER OF**

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**AND IN THE MATTER OF**

A Construction Lien dated the 27th day of July, 1984, and recorded on the 21st day of August, 1984, respecting the Mining Claims;

**AND IN THE MATTER OF**

A Certificate of Action dated the 11th day of October, 1984, and recorded on the 15th day of October, 1984, respecting the Mining Claims and filed in the Supreme Court of Ontario (Court File 562/84);

**AND IN THE MATTER OF**

An application pursuant to clause 67(1)(b) of the **Mining Act** that time be excluded in computing time within which work upon the Mining Claims is to be performed and fixing a date by which the next prescribed unit(s) of work shall be performed and filed;

**AND IN THE MATTER OF**

An application pursuant to subsection 64(4) of the **Mining Act** that the Certificates of Interest dated the 15th day of December, 1983 and the 24th day of January, 1984, be vacated and pursuant to subsection 171(4) of the **Mining Act** that the Construction Lien be cancelled;

**AND IN THE MATTER OF**

HILDA EGG

Applicant

- and -

THE MINISTER OF NORTHERN DEVELOPMENT  
AND MINES

Party of the Second Part

**REASONS**

**Nature of the Applications:**

An application for an Order pursuant to clause 67(1)(b) of the **Mining Act**, R.S.O. 1990, c. M.14. (the "**Mining Act**") to have the time during which the Mining Claims were under pending proceedings excluded was formally received from Leslie Lukovich by this tribunal on October 21, 1994. Mr. Lukovich is the husband of the applicant and her duly appointed agent in legal matters, as evidenced by an authorization dated September 7, 1994 addressed to Mr. Roy Spooner, Mining Recorder for the Larker Lake Mining Division, which sets out that Leslie Lukovich Senior is her authorized agent in dealing with the Mining Claims. The signature on the authorization is "Hilda Egg - Mrs. Hilda Lukovich". A copy of this authorization was also sent to the tribunal.

This application follows an earlier application by the Minister of Northern Development and Mines dated December 30, 1993, made pursuant to subsections 64(4) and 171(4) of the **Mining Act** seeking to have the two Certificates of Interest and one Construction Lien vacated and cancelled respectively.

### **Background:**

#### Certificates of Interest

CUNA of Ontario Credit Union Limited of Burlington, Ontario ("CUNA"), applied for and was granted Certificates of Interest dated December 15, 1983 and January 24, 1984, in respect of the Mining Claims, with the Certificates of Interest having been continued on December 21, 1983 and January 31, 1984, respectively. The nature of the proceedings instituted was an application by CUNA to set aside the transfer of the Mining Claims dated February 8, 1983 to Hilda Egg by 262654 Investments Limited on the grounds that the transfers were alleged to be contrary to the **Fraudulent Conveyances Act**, R.S.O. 1980, c. 176. In a letter dated February 27, 1984, Brian M. Jenkins, then Solicitor for CUNA, informed the tribunal that the matter of the alleged fraudulent conveyance would be heard by the Supreme Court of Ontario, in the Judicial District of York, in Toronto, Ontario, (Court File 13003/83) and indicated that, if any application were made before the tribunal to vacate the Certificates of Interest, his client would seek to have the matter transferred to the Supreme Court of Ontario pursuant to section 128 of the **Mining Act**, R.S.O. 1980, c. 268 (the "1980 **Mining Act**").

The action bearing Court File 13003/83 was discontinued on consent, without costs, by Order of Mr. Justice Edward Then of the Ontario Court (General Division) on May 5, 1992, in accordance with paragraph eight of the Minutes of Settlement dated March 13, 1992.

#### Construction Lien

On July 23, 1984 and July 27, 1984, two Actions involving Walter Egg as the Plaintiff and Hilda Egg as the Respondent were commenced in the Supreme Court of Ontario in the Judicial District of Temiskaming in Haileybury, Ontario, (Court Files 561/84 and 562/84, respectively). On July 27, 1984, a Claim for Lien under Section 34



of the **Construction Lien Act, 1983**, listing the Mining Claims, was completed by Walter Egg and a construction lien was registered on the abstracts for the Mining Claims on August 21, 1984. On October 11, 1984, Gilbert R. Maille, solicitor for Walter Egg, wrote to the Mining Recorder requesting that a Certificate of Action of the same date pursuant to the **Construction Lien Act, 1983**, Schedule A of which sets out all of the Mining Claims, be registered against the abstracts.

These Actions were dismissed without costs through the Orders of Mr. Justice J.D. Bernstein dated June 19, 1995.

#### Cancelled Mining Claims

The Minister of Northern Development and Mines cancelled Mining Claim L-495894 on August 27, 1985, and cancelled Mining Claim L-550832 on September 24, 1985, pursuant to clauses 85(1)(e) and 85(1)(c), respectively, of the 1980 **Mining Act**, thereby putting Mining Claim L-5508312 into retroactive forfeiture effective December 3, 1983.

On December 21, 1994, the Mining Recorder for the Larder Lake Mining Division ordered that Mining Claims L-495894 and 550832 be put back in the record book as active mining claims.

#### **Findings:**

The tribunal has determined that the Minister of Northern Development and Mines does not oppose the application pursuant to clause 67(1)(b) for an exclusion of time. Normally, the tribunal does not hear from other parties in these matters, as they are applications and not **lis inter partes**. However, as it was the Minister which initiated the action in this matter, having been aware that the Mining Claims had been inactive for over ten years, the tribunal has determined that it would be proper to consider the position of the Minister.

Although an inordinate period of time has been involved in resolving these matters, there is no evidence available to the tribunal to make a finding that this delay

is the fault of the applicant. In the absence of such evidence, the tribunal finds that it will exercise its jurisdiction and exclude time during which the proceedings were pending before the Supreme Court of Ontario, which became the Ontario Court (General Division).

The tribunal recognizes that an application pursuant to clause 67(1)(b) of the **Mining Act** constitutes a proceeding within the meaning of that clause for the purposes of exercising its jurisdiction. Therefore, for purposes of this application, the time during which the Mining Claims were under pending proceedings will be from the issuance of the respective certificate of pending proceedings to the date of the tribunal's order.

Therefore, in accordance with these findings, the tribunal finds that the Certificates of Interest dated December 15, 1983 and January 24, 1984, respectively, will be vacated.

Accordingly the time during which Mining Claims L-495894, 548785, 548835, 548836, 550008 to 550014, both inclusive, 550721 to 550730, both inclusive, 550822 to 550824, both inclusive, 550829 to 550834, both inclusive, 550836 to 550841, both inclusive and 598098, situate in the Townships of Gauthier and Lebel, in the Larder Lake Mining Division were pending before this tribunal and before the Supreme Court of Ontario and Ontario Court (General Division) being a total of 4214 days, be excluded in computing time within which work upon the aforementioned Mining Claims is to be performed.

Similarly, the time during which Mining Claim L-550835 was pending before this tribunal and before the Supreme Court of Ontario and Ontario Court (General Division), being a total of 4174 days, be excluded in computing time within which work upon the aforesaid Mining Claim is to be performed.

In accordance with these findings the dates by which the next prescribed unit of assessment work shall be performed and filed are fixed as follows: Mining Claims L-548785, 548835, 548836, 550008 to 550013, both inclusive, is fixed as August 11, 1997; Mining Claim L-550014 is fixed as August 29, 1997; Mining Claims L-550721 to 550730, both inclusive, 550822 and 550823, is fixed as October 30, 1997; Mining Claim L-550824 is fixed as November 25, 1997; Mining Claims L-550829 to 550831, both inclusive and 550833 is fixed as June 16, 1998; Mining Claim L-550832 is fixed as June 16, 1997; Mining Claim L-550834 is fixed as June 15, 1997; Mining Claim L-550835 is fixed as May 7, 1998; Mining Claims L-550836 to 550839, both inclusive, is fixed as June 1, 1998; Mining Claims

L-550840 and 550841 is fixed as June 18, 1996; Mining Claim L-598098 is fixed as November 2, 1998; and Mining Claim L-495894 is fixed as May 18, 2001.

Pursuant to subsection 171(4) of the **Mining Act**, the tribunal may cancel a construction lien, where it determines that the lien is not made in good faith, is made for some improper purpose or unduly embarrasses the owner. As stated above, there is no indication that matter of the lien arose due to bad faith or for an improper purpose. However, it was disclosed by Mr. Lukovich that Walter Egg is the brother of the applicant, Hilda Egg. Whether the failure to prosecute this matter and bring it to an earlier conclusion is the result of some family history has not been disclosed. It is clear that, once the matter before the Court has been discontinued, as opposed to dismissed, the failure on the part of Walter Egg to apply to have the Certificate of Action vacated from the abstracts reflects yet another protracted piece of this lengthy history. In this regard, the tribunal finds that this situation is likely unduly embarrassing to Ms. Egg who, once the matter was concluded in the Courts, should be free to deal with her Mining Claims not only as she sees fit, but in compliance with her obligations under the **Mining Act**.

A similar finding was made by Commissioner Ferguson in **Kingswood Exploration Limited v. Markstay Diamond Drillers Limited**, 6 M.C.C. 232, at page 235, where he states:

As the interests of holders of unpatented mining claims is not of record in the registry office system or the land titles system and are only on record in the office of the Mining Recorder subsection 185(2) [now 171(2)] of the **Mining Act** provides for the recording of the registrations required under the **Mechanics' Lien Act** in the office of the recorder. Subsection 4 provides methods whereby such recordings can be dealt with and while the provisions are not completely parallel with subsection 29(2) of the **Mechanics' Lien Act**, it would seem that the express provisions of the **Mining Act** would, if not prevail over the **Mechanics' Lien Act**, provide an appropriate remedy.

The continuance of the Certificate of Action on the Mining Claims after the discontinuance of the action constitutes a cloud on the interest of the owner, Hilda Egg.

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Therefore, in accordance with its jurisdiction under subsection 171(4), the tribunal finds that the Construction Lien filed by Walter Egg which was recorded on August 21, 1984 be cancelled and the Certificate of Action filed by Walter Egg which was recorded on October 15, 1984 be vacated.