

THE MINING ACT

Appeal No. 2229DO

Linda Kamerman)
Mining and Lands Commissioner)

Friday, the 29th day
of January, 1993.

IN THE MATTER OF

Mining Claims P-871718 and 871719, situate in the Township of
Mountjoy, in the Porcupine Mining Division;

AND IN THE MATTER OF

Mining Claims P-968233 and 968228, being restakings of the mining
claims;

AND IN THE MATTER OF

An application for relief from forfeiture under clause 86(1)(c) of the
Mining Act, R.S.O. 1980, c. 268 and rectification of report of work
number 299/86.

B E T W E E N:

COMSTATE RESOURCES LIMITED

Applicant

- and -

DANIEL DENIS CARON

Respondent

ORDER

WHEREAS an application for relief from forfeiture and amendment to a report
of work was received by the tribunal on May 25, 1987 from Zahavy Mines Limited (hereinafter
referred to as "Zahavy"), who may have an interest in Mining Claims P-871718 and 871719,

AND WHEREAS the hearing of this matter was scheduled for the 7th day of
January, 1993 in the City of Toronto, in the Province of Ontario between Comstate Resources
Limited (hereinafter referred to as "Comstate") as holder of the forfeited mining claims and
Daniel Denis Caron as restaker of the mining claims, with Zahavy and Comstate having been
duly notified of the hearing of the application by registered mail in accordance with subsection
115(3) of the **Mining Act**, failed to appear;

ON READING THE application filed and on hearing from the respondent,

1. THIS TRIBUNAL ORDERS that the application for relief from forfeiture of Mining Claims P-871718 and 871719, in the Township of Mountjoy, in the Porcupine Mining Division is dismissed.

2. THIS TRIBUNAL FURTHER ORDERS that the time during which Mining Claims P-968233 and 968228, in the Township of Mountjoy, in the Porcupine Mining Division, were under pending proceedings, being May 25, 1987 to January 29, 1993 is excluded in computing time within which work upon the Mining Claims is to be performed.

3. THIS TRIBUNAL FURTHER ORDERS that December 11, 1994 is fixed as the date by which the first and second prescribed units of work shall be performed and filed.

4. THIS TRIBUNAL FURTHER ORDERS that costs fixed in the amount of \$500 be paid by Zahavy to the respondent, Daniel Denis Caron.

5. THIS TRIBUNAL FURTHER ORDERS that the entries of "pending proceedings" on the abstracts for Mining Claims P-968233 and 968228, in the Township of Mountjoy, in the Porcupine Mining Division, dated September 28, 1987 be vacated.

IT IS FURTHER DIRECTED that upon payment of the required fees, this order be filed in the Office of the Mining Recorder for the Porcupine Mining Division.

DATED this 29th day of January, 1993.

Original signed by

L. Kamerman
MINING AND LANDS COMMISSIONER.

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COMSTATE RESOURCES LIMITED

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- and -

DANIEL DENIS CARON

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REASONS

Background

This matter arose through an application for relief from forfeiture and amendment
to a report of work made by Zahavy Mines Limited (hereinafter referred to as "Zahavy") on May
25, 1987. Mining Claims P-871718 and 871719, in the

Township of Mountjoy, in the Porcupine Mining Division, were staked by Bruce Raine on November 6, 1985 and were recorded on November 27, 1985. All interest in both claims was transferred to Comstate Resources Limited (hereinafter referred to as "Comstate").

A report of work dated September 4, 1986, showing Comstate as the recorded holder, and certified by Peter T. George of Zahavy, was received in the office of the Mining Recorder, Porcupine Mining Division on September 10, 1986. Assessment work performed on three mining claims was applied to and recorded on twenty mining claims, two of which were Mining Claims P-867718 and 867719, in the Township of Mountjoy, Porcupine Mining Division.

By letter to the Mining Recorder dated May 1, 1987, Zahavy advised that an error was made in the report of work, which was not picked up by the Mining Recorder. The letter states in part:

Claims P867718 and 867719 (hilited (sic) on the attached copy) are not part of the Mountjoy property that we have under option from Comstate, in fact I do not know if they even belong to Comstate.

The claim numbers on the form should read P871718 and 871719.

Zahavy requested to be advised of the status of the claims and asked for direction in how to rectify the situation.

On May 15, 1987, the Acting Mining Recorder for the Porcupine Mining Division wrote to Zahavy to advise that Mining Claims P-871718 and 871719 were cancelled, and that the lands were restaked by Daniel Denis Caron on March 29, 1987. These were recorded as Mining Claims P-968228 and 968233 on April 3, 1987. Copies of the abstracts show that Mining Claims P-871718 and 871719 were cancelled on December 15, 1986.

On May 15, 1987 Zahavy applied to the tribunal requesting relief from forfeiture, pursuant to clause 86(1)(c) of the **Mining Act**, R.S.O. 1980, c. 268 (the "old **Mining Act**"). An appointment for hearing dated September 21, 1987 set the matter down to be heard in Timmins on November 3, 1987. The hearing was not proceeded with, as the parties were attempting to reach a settlement. The tribunal was never

advised that the matter had been settled and that the original application for relief from forfeiture should be dismissed.

On September 1, 1992, a memorandum was received from the Legal Services Branch of the Ministry of Northern Development and Mines, with enclosures, requesting a duplicate copy of a final order be sent to the Mining Recorder for the Porcupine Mining Division if one had been issued.

On November 16, 1992, an appointment for hearing was issued to the parties on the application, with a copy sent to the attention of Peter T. George of Zahavy, setting January 7, 1993 for the hearing of this matter.

Evidence and Submissions

At the hearing on January 7, 1993, the only persons in attendance were Daniel Denis Caron and his father Emile. Mr. Caron stated that his grandfather owned farmland one quarter of a mile from the mining claims in question. He stated that he personally staked Mining Claims P-968228 and 968233. Six months later, he received a letter stating that he should release his claims, as the prior claims had been cancelled in error. Mr. Caron did not have a copy of the letter and while he initially believed that it had been sent by the tribunal, upon reflection he could not recall who the sender was. In discussions with Dale Pyke, Mr. Caron had been told that the matter concerned an honest mistake, and after seeking legal advice from Mr. Ristimaki, Mr. Caron concluded that he would not be successful in opposing the application for relief from forfeiture. Mr. Pyke advised that the hearing of the matter would be cancelled.

The tribunal discussed with Mr. Caron a transfer of Mining Claims P-968228 and 968233, which had been filed by Zahavy on December 21, 1987 in support of the proposition that the matter had been settled. When asked by the tribunal whether he had signed the transfer, Mr. Caron said that he had. He stated that he had been advised by Mr. Ristimaki that the forfeiture of the Comstate claims was an honest mistake, and that he did not have a good case. Mr. Caron stated that he received \$250 per claim from Zahavy, which only would cover the cost of staking, and no consideration was received for his time or the value of the Mining Claims. Mr. Caron stated that he wished to be able to work the Mining Claims, as he did not regard the transfer as a valid document. Alternatively, he asked that he be given fair compensation for the transfer. Mr. Caron made it quite clear that the issue of his

potential continuing interest in the Mining Claims was the only reason he attended the hearing.

Mr. Caron submitted that the matter of the application for relief from forfeiture should have been dealt with in Timmins in 1987. As a result of the delay and rescheduling, he was obliged to incur the expense of driving to Toronto. He stated that he should be reimbursed for these costs. In the event that the tribunal were to dismiss the application and make an order excluding time during which the matter was under pending proceedings, Mr. Caron stated that he had no submissions concerning whether the assessment provisions of the old **Mining Act** or the **Mining Act**, R.S.O. 1990, c. M.14 (the "new **Mining Act**") would apply.

Findings of Fact

The tribunal finds, in the absence at the hearing of the applicant of record, Comstate or the actual applicant, Zahavy, that the application for relief from forfeiture will be dismissed.

As part of settlement discussions, the tribunal finds that it has no jurisdiction to make any determinations concerning matters which arose as a result of those discussions. Concerning the transfer of the Mining Claims, the tribunal cannot make a determination on the validity of the transfer, that is whether they are void or voidable, as Zahavy did not receive notice that this would be an issue at the hearing. The issue of the validity of the transfer remains unresolved between Mr. Caron and Zahavy.

The notation of "pending proceedings" entered on the abstracts for Mining Claims P-968233 and 968228, in the Township of Mountjoy, in the Porcupine Mining Division, recorded in the name of Daniel Denis Caron, will be vacated in accordance with these findings.

Clause 79(1)(c) of the old **Mining Act** allows the Commissioner to exclude time for performing work on a mining claim, where there are proceedings pending and where the Commissioner is satisfied that the delay in settling the matter is not the fault of the recorded holder. Subsection 76(1) sets out the amount of work

required to be performed by the recorded holder to keep the claim in good standing, set out as days. A total of 200 days of work were required to be performed over five years. During the first year, twenty days of work are required, during the second through fourth years, forty days are required, and in the fifth year, sixty days are required.

Subsection 67(1) of the new **Mining Act** sets out that time for performing work shall be excluded, and gives the Commissioner discretion to make an order fixing the date by which the next prescribed units of work are to be performed and reported. Subsection (2) is new, and sets out that once an order excluding time is made, the date fixed for performance becomes the "anniversary date" for purposes of future work, replacing the definition contained in section 1 of the **Act**. Subsection 65(1) sets out the requirements for assessment work, which are prescribed by section 2 of Ontario Regulation 116/91. The requirements have changed from the old **Mining Act**, and now work must be performed having a minimum value as set out. During the first year, no assessment work need be performed. During each subsequent year, \$400 per year must be performed.

The tribunal finds that it is satisfied that the delay in resolving this matter was not caused by Mr. Caron, who had been led to believe that the matter was settled. Therefore, the time during which the matter was under "pending proceedings" will be excluded. While the entry was made on the abstracts on September 28, 1987, several days after the initial appointment for hearing was issued by the tribunal, in fact, the application for relief from forfeiture was made on May 25, 1987. Therefore, the tribunal finds that the computation of the time to be excluded will commence on May 25, 1987 and end with the date of the issuance of this order, being January 29, 1993. Therefore, a total of 365 days will be allowed for performance of the first unit of assessment work on Mining Claims P-968228 and 968233 by adding to the date of recording, April 3, 1987 three hundred and sixty-five days, not including the dates which are included.

The question of which assessment provisions must apply was not argued at the hearing. Essentially, in determining which provision should apply, the question of whether any assessment work must be performed and reported within the first year after the exclusion is in issue.

The transitional provisions contained in Part XIV of the new **Mining Act** does not specifically deal with the issue. Subsection 206(2) deals with the situation where

five years of assessment work, or 200 days, have already been performed with clause 206(2)(a) allowing the recorded holder to continue performing annual assessment work as prescribed under section 65. Clause 206(2)(b) allows the recorded holder who has performed 200 days of work to apply and pay for a lease under the provisions of the old **Mining Act**.

Similarly, subsection 21(1) of Ontario Regulation 116/91, which provides for the conversion of number of days to dollars, on the basis of \$22 per day, is only effective on the date the regulation comes into force, namely June 3, 1991.

Section 10 of the **Interpretation Act**, R.S.O. 1990, c. I.11 reads as follows:

10. Every Act shall be deemed to be remedial, whether its immediate purport is to direct the doing of anything that the Legislature deems to be for the public good or to prevent or punish the doing of any thing that it deems to be contrary to the public good, and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit.

Two cases referred to in Maxwell on the **Interpretation of Statutes**, 12th ed. (1969), p. 45 deal with this issue. In **Nokes v. Doncaster Amalgamated Collieries, Ltd.** [1940] A.C. 1014 at p. 1022, Viscount Simon L.C. states:

If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.

Similarly in **Shannon Realities, Ltd. v. Ville de St. Michel** [1924] A.C. 185 Lord Shaw at page 192 states:

Where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system.

....7

Section 46 of the **Mining Amendment Act, 1989**, S.O. 1989, c.62 sets out, in part, "Section 76 of the said Act is repealed and the following is substituted therefore:...", with the provisions of what is now section 65 of the new **Mining Act** set out in full.

The tribunal notes that section 14 of the **Interpretation Act** deals with revocation, repeal and substitution. Clause 14(1)(c) reads as follows:

14. (1) Where an Act is repealed or where a regulation is revoked, the repeal or revocation does not, except in this Act otherwise provided,

.....

(c) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the Act, regulation or thing so repealed or revoked;

Subsection 14(2) does not have a clause which specifically gives guidance where there is substitution of "... a right, privilege, obligation or liability acquired, accrued or accruing...". The tribunal finds that the requirement to perform and report assessment work is an obligation.

Section 20 of Ontario Regulation 116/91 provides for conversion of work days into dollars, with the conversion to be performed on June 3, 1991. The tribunal is satisfied that the specific requirements for assessment work to be performed fall within section 10 of the **Interpretation Act**, whereby the requirements to perform assessment work after June 3, 1991 must be in accordance with the new **Mining Act**, giving the section its broad and liberal meaning. To find otherwise would contemplate a dual system of assessment work to be performed on a mining claim, with no provision for conversion between the two. This was clearly not the intent of the new **Mining Act**.

The tribunal finds that the first and second units of assessment work, being \$400, shall be performed by December 11, 1994.

As Mr. Caron was required to incur the expense of driving to Toronto to attend the hearing of this matter when, as he pointed out, it could have been heard in Timmins in 1987, the Tribunal finds that he is entitled to his expenses in this matter to be paid by Zahavy Mines Limited, the actual applicant in this matter. Costs shall be fixed at \$500.00.

Conclusions

In accordance with the above findings, the application for relief from forfeiture is dismissed.

The time during which the resolution of this matter was before the Tribunal is excluded and the dates for the performance and filing of the first and second units of assessment work, as contemplated by subsection 65(1) of the **Mining Act**, R.S.O. 1990, c. M14, are fixed as December 11, 1994.

Costs to be paid by Zahavy to Daniel Denis Caron are fixed at \$500.00.