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# The Mining and Lands Commissioner Le Commissaire aux mines et aux terres

Russell Yurkow )  
Deputy Mining and Lands Commissioner )

Friday, the 9th day  
of August, 1991.

IN THE MATTER OF

An appeal from a decision of the Mining Recorder for the  
Larder Lake Mining Division.

B E T W E E N:

RAYMOND THOMAS GARVEY

Appellant

- and -

THE MINISTER OF MINES

Respondent

## O R D E R

This is an appeal from an administrative decision of the mining recorder in Kirkland Lake to refuse to record four claims staked by the appellant.

The claims were originally held by Jimmy King. Mr. King recorded the claims on April 10th, 1990. With the end of March 31st, 1991, the claims forfeited by operation of law because Mr. King's licence expired.

A short time before April 10th, 1991, Mr. Garvey checked the records in the recorder's office and determined that no work had been recorded on the claims. At the time, the forfeit that resulted from the expiry of the licence was not yet recorded on the abstracts of the claims. On the basis of his search in the recorder's office, Mr. Garvey assumed that the claims would forfeit on April 10th, 1991 for failure to perform and record work. On April 11th, 1991, he restaked the four claims.

In the meanwhile, Larry Salo restaked the four claims on April 6th, 1991

and had his restaked claims recorded on April 8th, 1991.

On April 12th, 1991, Mr. Garvey attended at the recorder's office to record his restakings only to be told that Mr. Salo had already staked and recorded the four claims. At the time that Mr. Garvey restaked, the land was not open for staking. On the 16th of April, 1991, Mr. Garvey appealed the recorder's refusal to accept and record his restaking of the four claims.

The basis of Mr. Garvey's appeal was that he acted, in good faith, on the information that he received at the recorder's office. He wants the recorder to record his restaking and, by logical implication, cancel the claims staked by Mr. Salo.

The recorder, Mr. Cuda, had, in person and by extensive letter, explained the legal position to Mr. Garvey. The recorder is to be commended for the lengthy and persuasive summary that he provided of relevant case law. On the basis of the material filed, I can see no possible basis for the appeal.

The records in a recorder's office can not be perfect. There are a number of provisions in the Mining Act under which claims may forfeit by operation of law. It is not possible for these to be immediately shown on the record. A staker has thirty days to record a staking. Until the staking is recorded, it will not shown on the records. Every prospector takes the chance that the records may not be current. Whatever the state of the records, Mr. Garvey must have seen restakings of Mr. Salo when he went out to do his own restaking.

The claims are a square block of four claims that are enclosed on all sides by other recorded claims. It is not credible that Mr. Garvey would not have seen signs of staking that occurred six days earlier. However, whether he was aware of the earlier staking or not, is irrelevant. When he went out to stake, the land was already staked and, therefore, no longer open for staking.

For the reasons stated, I consider that the appeal is without merit. Mr. Garvey, however, has the right to an opportunity to present his case and to be fully heard. If he chooses to exercise this right, the Tribunal is prepared to hear his arguments and to reconsider its decision. The decision, at this stage, is tentative and based on the material filed to date.

If the appeal is to proceed, the current recorded claim holder, Don Humby, is entitled to be added as a third party to protect his interest. Mr. Humby

acquired title, on May 29th, 1991, by way of a transfer of interest.

In view of the Tribunal's tentative conclusions on the merits of the appeal, it is exercising its discretion under section 143 of the Mining Act to order security for costs. If the appeal proceeds and Mr. Garvey is not successful, costs would likely be awarded to both the Minister of Mines and to the third party.

IT IS ORDERED that, by the 30th day of August, 1991, Mr. Garvey deposit with the Mining and Lands Commissioner a certified cheque in the amount of \$1,500 as security for the costs of the respondent and the third party if a third party is added.

TAKE NOTE that if the certified cheque is not deposited as ordered the appeal will be dismissed.

DATED this 9th day of August, 1991.

Original signed by  
R. Yurkow

R. Yurkow  
Deputy Mining and Lands Commissioner