

Mining and Lands Tribunal
Tribunal des Mines et des Terres



ISSUE DATE: October 26, 2018

CASE NO.: MA 015-16

PROCEEDING COMMENCED UNDER section 68 of the *Mining Act*, R.S.O. 1990, c. M.14, as amended

Applicant: Ashley Gold Mines Limited
Respondent: Estate of Barry Ken McCombe
Subject: Application to vest the Mining Claim interests of Barry Ken McCombe, deceased, in the Applicant
Cell Mining Claims: 179577, 246281, 302901, 134391, 134392, 179576, 187024, 281480, 302900, 320337 and 341191, situate in the Townships of Charters and Corkill, Larder Lake Mining Division
MLT Case No.: MA 015-16
MLT Case Name: Ashley Gold Mines Limited v. McCombe (Estate)
Heard: In writing

APPEARANCES:

Parties

Representative

Ashley Gold Mines Limited

David G. LaRocque

Estate of Barry Ken McCombe

Elaine White

ORDER OF THE TRIBUNAL DELIVERED BY MAUREEN CARTER-WHITNEY

REASONS

Background

[1] Barry Ken McCombe (ENDM Client #300793), listed as the recorded holder of a 10% interest in Mining Claim L-1226888, (now converted to Cell Mining Claims 179577, 246281, 302901, 134391, 134392, 179576, 187024, 281480, 302900, 320337 and 341191, respectively) situated in the Townships of Charters and Corkill, in the Larder Lake Mining Division (“Mining Claim”) died on June 2, 2015. Mr. McCombe resided in New Liskeard, Ontario.

[2] An application under s. 68 of the *Mining Act* for a vesting order of the interests of Mr. McCombe in the Mining Claim was received from David LaRocque, President of Ashley Gold Mines Limited (“Applicant”), (ENDM Client #402937) by the Office of the Mining and Lands Commissioner, now the Mining and Lands Tribunal (“Tribunal”), on November 16, 2016. Supporting documentation was filed on September 21, 2018.

Relevant Legislation

Mining Act

68 Where two or more persons are the holders of an unpatented mining claim, they shall contribute proportionately to their respective interests, or as they otherwise agree between themselves, to the work required to be done thereon or to a survey, patent or the first year’s rental of a lease, and, in case of default by any holder, the Tribunal, upon the application of any other holder and upon notice to and after hearing all persons interested or such of them as appear, may make an order vesting the interest of the defaulter in the other co-owners or in any of them upon such terms and conditions and in such proportions as it considers just.

74(1) Where the Provincial Recording Office is notified of the death of the holder of an unpatented mining claim, the mining claim shall not be forfeited under section 72, and shall not otherwise lapse or be cancelled under any provision of this Act, until after the day that is 12 months after the day of the claim holder’s death.

Analysis

[3] All documentation required by the Tribunal was filed on November 16, 2016, September 21, 2018 and October 12 and 15, 2018. In support of the application, the Applicant set out in the Affidavit of David LaRocque and Christopher Jason Ploeger, dated September 21, 2018, that the Applicant owns 90% of the Mining Claim, that Mr. McCombe is the owner of 10% of the Mining Claim and further, that the Affidavit was made for the purpose of applying under s. 68 for an order vesting Mr. McCombe's interest in the Applicant.

[4] Elaine White, Executrix for the Estate of Barry Ken McCombe, informed the Tribunal through her Affidavit dated October 15, 2018, that Mr. McCombe died intestate, that she had reviewed the application and that she had no objection to the granting of this application by the Tribunal.

[5] The abstract for the Mining Claim, which forms the subject matter of this application, dated September 21, 2018, sets out that Barry Ken McCombe is deceased. It also confirms numerous transactions outlining the performance and filing of prescribed assessment work by the Applicant and its predecessor in title, Aurora-Larder Mining Corporation Limited (a wholly owned subsidiary of the Applicant), along with CJP Exploration Inc., from 2000 to the date of this application. Mr. LaRocque and Mr. Ploeger also confirmed in their Affidavit that Mr. McCombe never performed any work on the Mining Claim, nor had he paid for any of his proportionate share of assessment work as a co-holder.

[6] Mr. McCombe has been deceased for a period of more than one year. After this period of time, the legislative freeze imposed by s. 74 lapses and other sections of the *Mining Act* become operational.

[7] This matter is a case in which a co-owner of a Mining Claim has been in default of the obligation to pay and/or to perform a proportionate share of assessment work, within the meaning of s. 68 of the *Mining Act*. Furthermore, the application to vest is not contested by the Estate of Mr. McCombe. Given the default and the positions of the parties, the Tribunal finds that the application will be granted and that it will vest the interest of Barry Ken McCombe, deceased, in the Applicant.

[8] The Tribunal notes that the Applicant is not seeking an extension of time in which to perform and file prescribed assessment work on the Mining Claim, that it has kept the Mining Claim in good standing and that the due date for the Mining Claim is in 2020.

[9] The Tribunal notes that, after the issuance of this Order, Ashley Gold Mines Limited will own the Mining Claim as to a 100% interest.

ORDER

[10] The Tribunal orders that the interest of Barry Ken McCombe, deceased, in Mining Claim L-1226888, (now Cell Mining Claims 179577, 246281, 302901, 134391, 134392, 179576, 187024, 281480, 302900, 320337 and 341191, respectively) be and is hereby vested in Ashley Gold Mines Limited, pursuant to s. 68 of the *Mining Act*.

[11] The Tribunal further orders that no costs shall be payable by either party to this application.

[12] The Tribunal further orders that, pursuant to s. 129(4) of the *Mining Act*, a copy of this Order shall be forwarded to the Provincial Mining Recorder who is hereby directed to amend the records in the Provincial Recording Office as necessary and in accordance with s. 129(4).

“Maureen Carter-Whitney”

MAUREEN CARTER-WHITNEY
VICE-CHAIR

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Mining and Lands Tribunal

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