

**IN THE MINING WARDEN'S COURT
AT LIGHTNING RIDGE
J A BAILEY, CHIEF MINING WARDEN
FRIDAY 14 DECEMBER 2001**

CASE NO. 2001/39

STJEPAN MATIC

v.

NADA LEKIC

APPEARANCES:

Complainant: Appears in person unrepresented.

Defendant: No appearance of or on behalf of.

ACTION: Complaint – Injunction Mining Act 1992, Section 313

HEARING DATE: Heard Ex-Parte, Lightning Ridge on 14 December 2001.
Decision given at Lightning Ridge on 14 December 2001.

DECISION

On 27 November 2001 the Complainant, Stjepan Matic, by way of praecipe, requested the following interim relief:

1. The respondent be prevented from selling or dealing with the title to claim number 38671 until further order of the court.

After considering details set out in accompanying affidavits, I issued an injunction on 28 November 2001 in accordance with the interim relief sought.

The final relief sought in the praecipe was as follows:

1. A declaration of the nature and extent of my interest in the claim.
2. A taking of accounts in relation to all transactions and work expenses in relation to the claim since they were first registered.
3. The respondent be ordered to sign all necessary documents and things required to transfer title in mining claim 38671 to the Applicant.
4. If the respondent fails 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.
5. Costs.

The matter came before the Warden's Court at Lightning Ridge on Friday 14th December 2001. At the hearing the Complainant appeared in person, unrepresented. There was no appearance of the Respondent. After being satisfied as to proof of service of the summons upon the Respondent, I dealt with the matter ex parte.

From the evidence produced at the court, I find, on the balance of probabilities, the following facts:

- (a) On 17th June 1997 mineral claim 38671 was transferred to the Complainant Stjepan Matic.

- (b) On 7th June 1999 the Complainant transferred the claim to Nada Lekic, the Respondent. At the time the Respondent was a friend of the Complainant and the transfer was to assist the Complainant obtain another claim.
- (c) The agreement in relation to the transfer was that the Respondent was not to work or sell the claim without the permission of the Complainant and that the Respondent would transfer the claim back to the Complainant immediately upon request.
- (d) The Complainant paid for the transfer of title and also the renewal fee each year until 2001.
- (e) In June 2001, when the Complainant offered to pay for the renewal, the Respondent refused the money and said words to the effect "the claim is mine".
- (f) Mineral Claim 38671 has not been mined for many years, certainly not since it was transferred to the respondent. The claim is currently designated as a Residential Claim.
- (g) Although there is no residence upon the claim at the moment, it is the Complainant's wish to construct a residence on that claim.
- (h) There was no agreement between the parties that they should share the proceeds of any opal won by the Complainant from any other claim in which he had an interest.
- (i) The Complainant has requested the respondent to transfer Mineral Claim 38671 back to him and she has refused.
- (j) The bond of \$200 which is held by the Registrar in respect of Mineral Claim 38671, in the name of Nada Lekic, was money which was given by the Complainant to the Respondent for that purpose.

On the evidence before the court, I can see no reason as to why the Complainant should not be granted the orders he sought. The only outstanding money is the renewal fee paid by the Respondent in 2001. Under the original agreement, the Complainant should have paid the renewal fee. I can see no reason why the Complainant should not pay the Respondent for her expenses for that renewal.

ACCORDINGLY, I make the following orders:

1. The complainant, Stjepan Matic, is entitled to a 100% interest in Mineral Claim 38671.
2. The Complainant, Stjepan Matic, is to pay the Respondent, Nada Lekic, the sum of \$196.00 being the renewal fee for Mineral Claim 36871 for 2001.
3. The Respondent, Nada Lekic, is to transfer title in Mineral Claim 38671 to the Complainant, Stjepan Matic.
4. The Complainant, Stjepan Matic, is to pay the costs of the transfer mentioned in order 3.
5. If the Respondent has not complied with order 3 within 28 days of this order, the Mining Registrar, Lightning Ridge is authorised to sign the necessary documents to enable order 3 to be put into effect.
6. The refund by the Registrar to the Respondent, of the \$200.00 bond held on Mineral Claim 38671, will be full satisfaction of the Complainant's obligation under order 2 above.

As the Complainant issued the process himself and was not legally represented at court, I do not propose to make any orders for costs.

J A Bailey
Chief Mining Warden
Lightning Ridge
14 December 2001