

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *Aurora Mines Inc. v. Mariah Mining Corporation et al*
2004 YKSC 65

Date: 20040830
Docket: S.C. No. 04-A0066
Registry: Whitehorse

Between:

AURORA MINES INC.

Petitioner

And:

**MARIAH MINING CORPORATION and
THE SHERIFF FOR THE YUKON TERRITORY**

Respondents

Before: Mr. Justice R.S. Veale

Appearances:

Grant Macdonald, Q.C.
Debbie P. Hoffman
Penelope Gawn

Counsel for the Petitioner
Counsel for Mariah Mining Corporation
Counsel for the Sheriff for the Yukon Territory

REASONS FOR JUDGMENT DELIVERED FROM THE BENCH

[1] VEALE J. (Oral): I will reserve on this and do written reasons because it is sufficiently complex that I do not want to go through all the facts and arguments orally. I am prepared now to make a decision which will be on the broad brush strokes. It may require, after I do it, some further discussion on areas that I have left my decision unclear. So what I am doing now is just giving you the bare-bones decision to be followed by written reasons.

[2] I guess firstly, I find that the seizure, as done on June 10 and the subsequent days, I find that to be commercially reasonable. Thus, the costs of seizure that are reasonable flow from that but I am going to be specific with respect to what costs are appropriate. So I would order that the legal costs associated with the seizure are to be taxed on a solicitor and own client basis.

[3] I am going to disallow the \$500.00 (US) a day claim. I will allow the cost to the Sheriff's office, and in my view, these costs should be done in Canadian funds, just so we have a simple amount to pay because they are all really Canadian fund costs and there is no reason to convert them. So the costs that I consider to be valid are the Sheriff's costs, whatever that number is, the travel costs incurred by Mr. Heasley, and convert those to Canadian.

[4] However, in my view, the reasonable commercial method of seizure would be to have stored these items at Barchen's property.

[5] With respect to the application today, I am going to order that the costs of Mariah Mining Corporation be assessed on a solicitor and own client basis as well.

[6] Now, I can put a date on when these costs are to be paid in order to have the equipment released but I want to hear from you on whether it is appropriate in the circumstances to do so because we have no idea what the number is.

[7] By the way, I should say as well, just to make it clear, that the promissory note amount should be recoverable but I am not going to give you an opinion on whose calculation is correct. Surely you can work that out.

[8] MS. HOFFMAN: My friend and I can work that out, My Lord.

[9] THE COURT: Yes. It is obviously in US funds.

[10] So I ask you for submissions on that issue about setting a date and what is realistic because if we set a date and you don't have the numbers or you don't have agreement or time to get back to court, it creates obvious problems. Would it be better for the two of you to go to the Trial Coordinator -- I know you are going on holidays, Ms. Hoffman -- go to the Trial Coordinator, get the next available time before me so that you can either come and say "here is our agreement," or come back and have further submissions because I think it is going to be difficult to arrive at those numbers without some affidavit material.

[11] MS. HOFFMAN: My Lord, I am thinking two thoughts here. The first one is that I am leaving on Thursday and I am completely booked in court, tomorrow and Wednesday.

[12] THE COURT: Right. No, I don't think you are going to do anything between now and then.

[13] MS. HOFFMAN: I can't. So if my friend and I -- my friend, I don't think is aware that I am gone until October the 12th but I am just hoping that if my friend and I are going to be discussing this after I come back, that that would not -- if he was seeking anything further in terms of damages, that my being out of the jurisdiction ---

[14] THE COURT: I am not worried about his damages because he can bring that on at any time. What I am concerned about is surely Mr Macdonald's going to say "What do I have to pay and when to get this stuff released?"

[15] MS. HOFFMAN: Well, perhaps now that my friend has my dates he could tell you what his thoughts are.

[16] MR. MACDONALD: Well, the first is one point of clarification. I take it from what Your Lordship is saying that the Arkinstall invoice is disallowed. I don't think you said that specifically but I infer that from what you said.

[17] THE COURT: Yes.

[18] MR. MACDONALD: Well, I would hope that within the next two days we could make an effort. I appreciate my friend is in court but then if she is not going to be back until October 12th, we can make an effort to determine what the amount is going to be. On the other hand ---

[19] THE COURT: The other thing I could do but this is to your prejudice though, I could say that counsel will attempt to negotiate a number and if it is not negotiated, whatever the number is, by October 31st. I mean, I could put a time on it so that ---

[20] MR. MACDONALD: --- mining season is finished, to all intents and purposes so in some ways it doesn't matter terribly when we get the equipment back at this point. So if it has to wait until Ms. Hoffman is back, so be it. If we can sort it out earlier, so much the better.

[21] THE COURT: Sure. I will just say all other matters adjourned generally.

[22] MS. HOFFMAN: Perhaps, My Lord, if I could just make an indication to Madam Clerk, because I am not going to be here, if you could just contact -- normally I would be contacted but contact Mr. Lackowicz when the Reasons for Judgment come in. He is acquainted with this file so if a note could be made on the file.

[23] THE COURT: It might be wise for counsel to get some time after October 12th just in case you don't resolve things.

[24] MS. HOFFMAN: Thank you, My Lord.

[25] THE COURT: Thank you.

VEALE J.