

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *Rivard v. Brisebois*, 2006
YKSC 65

Date: 20061215
Docket No.: S.C. No. 03-B0025
Registry: Whitehorse

Between:

DOREEN FRANCES RIVARD

Plaintiff

And

ARMAND BRISEBOIS

Defendant

Before: Mr. Justice L.F. Gower

Appearances:

Doreen Frances Rivard
Peter Morawsky

Self-Represented
Counsel for the Defendant

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is an application by the plaintiff, Ms. Rivard, for an order seeking enforcement of paragraph 7 of the Consent Order made and filed December 16, 2005. Paragraph 7 ordered that the plaintiff shall be entitled to her share of any benefits in certain placer mining claims in which she has an undivided half interest as a tenant-in-common with the defendant, including any leases of those claims, from August 19, 2003 forward.

[2] The plaintiff was represented by counsel at the time of the Consent Order, but has since been representing herself. Pursuant to paragraph 8 of the Consent Order, the

defendant was required to provide, by January 13, 2006, an accounting to her of the benefits, if any, received by the defendant since August 19, 2003 from the placer mining claims registered in whole or in part in his name. The plaintiff made an application to compel the defendant to provide that accounting. In response, the defendant filed his affidavit #4 on September 25, 2006, in which he made certain admissions as to the benefits he received from his placer claims.

[3] The issue on the current application is: What is the best available evidence to use to quantify the plaintiff's entitlement of benefits?

ANALYSIS

[4] In support of the current application, the plaintiff filed her own affidavit on November 17, 2006. That affidavit contained copies of certain royalty certificates under the Yukon *Placer Mining Act*. Those certificates in turn refer to the amounts of gold recovered by Frank and Karen Hawker from the Sixty-Mile River area near Dawson Creek, Yukon. I believe it is agreed between the parties that it was Frank and Karen Hawker who were in fact mining the defendant's claims at all material times and providing a portion of the gold extracted to the defendant and his brother, Conrad Brisebois, in payment for the right to mine those claims. The total number of ounces of gold attributed to the Hawkers from the royalty certificates is 2663.081. The plaintiff further attached to her November 17, 2006 affidavit what she alleged to be a hand written memo received by her from the Mining Recorder's Office in Dawson City, dated August 28, 2006, which reads: "Royalties for Armand & Conrad Brisebois on Miller & 60 Mile. Frank Hawker 2003-2005 Total - 2,636.08/oz." Thus, the figure for the total of the

royalties on the memo is the sum of the amounts credited to the Hawkers from all of the royalty certificates.

[5] The defendant's counsel questions the veracity of the memo, as it is in handwriting only and does not contain any form of letterhead or any other indication of its authenticity. In any event, the defendant's counsel also points to the defendant's fourth affidavit, paragraph 7, which alleges that Mr. Hawker owned and mined many of his own mining claims in the same area as the defendant's claims, as well as mining the claims of several other persons. Accordingly, the defendant deposed that the royalty certificates set out the total amount of the raw gold recovered by Mr. Hawker from mining all of those properties jointly, and not just the defendant's claims.

[6] The defendant also attached to that same affidavit a single piece of correspondence allegedly drafted and signed by Frank Hawker, which confirms the amount of gold he recovered and delivered to the defendant's brother, and the price of gold over the relevant period. In particular, the note states as follows:

"Gold delivered to Conrad Brisebois as follows:

August 26 th 2004	161.35 ounces
October 13 th 2004	20.21 ounces
October 31 st 2005	106.68 ounces
August 30 th 2004	Gold was selling for \$532 Canadian/oz
November 4 th 2004	Gold was selling for \$529 Canadian/oz
October 11 th , 2005	Gold was selling for \$561 Canadian/oz
November 16 th 2005	Gold was selling for \$568 Canadian/oz

The above prices were for fine gold
Gold delivered to Conrad was raw gold".

[7] Thus, the defendant concedes that the total of the ounces listed by Mr. Hawker is the amount jointly credited to the defendant and his brother, Conrad. Accordingly, at

paragraph 8 of his fourth affidavit, the defendant deposed that “At best, 288.24 ounces [of raw gold were extracted from his placer mining claims] . . . from August 19, 2003 to the present date.”

[8] In the same affidavit, the defendant then goes on to acknowledge that the plaintiff is entitled to a one-half interest of the defendant’s share of this amount of raw gold. The defendant says his share would be one-half of 288.24, or 144.12 ounces, the other one-half share belonging to his brother, Conrad. Thus, the defendant says the plaintiff would be entitled to one-half of 144.12 ounces, or 72.06 ounces of raw gold.

[9] The defendant then goes on in his fourth affidavit to state that approximately 25 percent of the raw gold mined contains impurities and consequently only 75 percent could be considered refined gold. On that basis, he estimates of 75 percent of the plaintiff’s entitlement of 72.06 ounces of raw gold could be considered refined gold. Thus, the defendant concludes that the plaintiff is entitled to a total of 54.045 ounces of refined (or fine) gold.

[10] During an earlier hearing before me, on a previous application by the plaintiff, she indicated her disagreement with the statements of the defendant in his fourth affidavit as to the amount of gold recovered from the subject mining claims. However, I indicated to her at the time, firstly, that the defendant was taking issue with her figure of 2,636.08 ounces, for reasons which appeared valid on their face (as I just stated), and secondly, that if the plaintiff wished to challenge the defendant’s accounting, then it seemed to me that her only option was to apply to cross-examine the defendant on his affidavit. Unfortunately, due to some serious medical complications, intervening hospitalization,

and an apparent shortage of funds, the plaintiff has been unable to pursue that option. Thus, on the present hearing, I indicated that, in order to grant the plaintiff relief pursuant to paragraph 7 of the Consent Order of December 16, 2005, I would have to rely on the defendant's admissions as to the amount of refined gold to which the plaintiff is entitled, since that is the only, and therefore the best, evidence of the plaintiff's entitlement. The plaintiff seemed content that I proceed on that basis.

[11] To be clear, I find, for the purposes of this application, that the plaintiff is entitled to 54.045 ounces, as of October 31, 2005, being the last recorded date by Mr. Hawker.

[12] As for the value of that gold, the price of gold per ounce has varied from August 19, 2003 to date. On this point, I find that the plaintiff has provided the best evidence in the affidavit of Dave Cook filed November 17, 2006, which attached a printout of the price of gold which Mr. Cook obtained from the Internet. Those prices were all stated to be in US dollars, as follows (with Canadian dollars in parenthesis):¹

August 29, 2003	\$360.00 per ounce	(\$498.60 Cdn)
November 10, 2003	\$382.00 per ounce	(\$500.73 Cdn)
August 28, 2004	\$400.00 per ounce	(\$525.56 Cdn)
November 9, 2004	\$440.00 per ounce	(\$525.80 Cdn)
June 16, 2005	\$420.00 per ounce	(\$519.79 Cdn)
August 28, 2005	\$445.00 per ounce	(\$532.09 Cdn)
November 9, 2005	\$475.00 per ounce	(\$563.21 Cdn)
June 16, 2006	\$600.00 per ounce	(\$673.38 Cdn)
August 28, 2006	\$640.00 per ounce	(\$711.68 Cdn)
November 9, 2006	\$620.00 per ounce	(\$700.04 Cdn).

[13] Based on the foregoing, I am able to do a rough calculation of the probable value of the plaintiff's share of the refined gold recovered according to the defendant's fourth

¹ See Appendix A for the calculations of the US/Canadian exchange rates.

affidavit:

Dates	Calculations	Ounces	Price	Total
August 19/03 to August 26/04	161.35 oz x .25 x .75	30.25 oz	30.25 x \$525.56 (using August 28, 2004 price)	\$15,898.19
August 27/04 to October 13/04	20.21 oz x .25 x .75	3.789 oz	3.789 x \$525.68 (using average of August & November 04 prices: \$525.56 + \$525.80 / 2 = \$525.68)	\$ 1,991.80
October 14/04 to October 31/05	106.68 oz x .25 x .75	20.00 oz	20.00 x \$525.81 (using average of August 04, November 04, June 05, August 05: \$525.56 + \$525.80 + \$519.79 + \$532.09 / 4 = \$525.81)	\$10,516.20
	TOTAL	54.045 oz	TOTAL	\$28,406.19

CONCLUSION

[14] I therefore order that the defendant pay to the plaintiff the amount of \$28,406.19, representing the plaintiff's entitlement to her share of the benefits from the placer mining claims in which the plaintiff has an undivided half interest as a tenant-in-common together with the defendant, including any leases of those claims, to October 31, 2005.

 GOWER J.

IN THE SUPREME COURT OF THE YUKON TERRITORY

S.C. No. 03-B00025

BETWEEN:

DOREEN FRANCES RIVARD

Plaintiff

And

ARMAND BRISEBOIS

Defendant

REASONS FOR JUDGMENT

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