

**IN THE MINING WARDEN'S COURT  
AT LIGHTNING RIDGE  
J A BAILEY, CHIEF MINING WARDEN  
WEDNESDAY 29 AUGUST 2001**

**CASE NO. 2001/15**

**STJEPAN MATIC**

**v.**

**ANNA BANOVIC**

**APPEARANCES:**

Complainant:           Appears in person unrepresented.

Defendant:             No appearance of or on behalf of.

**ACTION:**             Complaint – Injunction Mining Act 1992, Sections 296, 313

**HEARING DATES:** Heard Ex-Parte, Lightning Ridge on 28 August 2001.  
Decision given at Lightning Ridge on 29 August 2001.

**DECISION**

Following an application made by the complainant, an injunction was issued against the Respondent/Defendant on 24 April, 2001, prohibiting her from selling or dealing with the title to Mineral Claim 37313 until further order of the court.

That same application sought final relief in the following terms:

- a. A declaration of the nature and extent of my interest in the claim
- b. A taking of accounts in relation to all transactions and work expenses in relation to the claim since they (sic) were first registered
- c. The respondent be ordered to sign all necessary documents and things required to transfer title in mining claim 37313 to the Applicant
- d. If the respondent fails to sign the necessary transfer documents, the Register of the Mining Wardens Court be permitted to sign the said documents in the respondents place
- e. Costs.

At this court on 3 July 2001, both the complainant and the Respondent/Defendant appeared before the court unrepresented and on that date the matter was adjourned for hearing on 28<sup>th</sup> and 29<sup>th</sup> August. Both parties indicated to the court that this date was suitable.

On 28<sup>th</sup> August 2001, the Complainant appeared before the court unrepresented, with witnesses ready to proceed. There was no appearance of the Respondent/Defendant at ten o'clock. A delay of some two hours occurred while other matters were being attended to - even with that delay, there was still no appearance of the Respondent and no communication with the court as to her non-attendance. The Complainant informed the court that he had no communication with the Respondent since the last court appearance, that is the 3 July 2001.

Consequently, the matter proceeded on an ex-parte basis.

The complainant gave evidence, together with two witnesses, who supported his evidence of him paying for and building the camp site on mineral claim 37313 himself.

In support of his case, the complainant, Stjepan Matic gave evidence that due to a spinal problem, his mining activities are limited, he is more of a "hobby" miner he said. He had registered two claims which he and a friend were going to mine; another two claims, that is mineral claim 27686 and mineral claim 37313, were registered in the name of Anna Banovic, a woman with whom he at the time had a de facto relationship. He said Mineral Claim 37313 was principally for the installation of a camp site and he was never going to mine that claim.

He mined mineral claim 27686 with a mining partner called Joseph (he surname he could not remember). That partnership was one where each share 50% of the running costs (both partners contributed mining equipment) and each to share 50% of the proceeds.

Mr. Matic was not able to produce receipts to court on the expenses he or Joseph paid. He said the expenses were hundreds of dollars rather than thousands of dollars. The expense was mainly for fuel - as it was seam opal there was no expense in puddling.

Mr. Matic gave evidence that only trace was found in mineral claim 27686 and perhaps only \$100 was obtained for it. That money went into the expenses.

He informed the court there was no agreement with Anna Banovic as to her receiving any of the proceeds of mining. If any opals had been won, he said it would simply mean that he and the Respondent would be living better than they otherwise would.

It would appear at some point of time Anna Banovic has alleged that he has won a lot of opal from the claim. He said that is simply not true.

Mr. Matic said that he borrowed the money to buy the materials and build the campsite. He said that materials were obtained from Victoria. As I said earlier,

witnesses attested as to this. Mr. Mijo Mitinovic gave evidence of assisting Mr. Matic build the campsite. Mr. Mitinovic said that Anna Banovic did not do any work on the construction of the campsite, nor to his knowledge did she mine. When asked: Did you see Anna Banovic gamble on the poker machines? He replied: "She was on them all the time"

Mr. Peter Milas also gave supporting evidence. He told the court he gave a loan of \$1,000 to Mr. Matic to assist him with the campsite. He said it has all been paid back to him, a little at a time; all the repayments came from Mr. Matic, none from Anna Banovic.

Mr. Matic gave evidence that Anna Banovic did not contribute any money whatsoever to the mineral claims, even the registration fees were paid by him.

Exhibits were produced by Mr. Matic, firstly copies of the records of the Mining Registrar, indicating that mineral claims 27686, and 37313 were registered in the name of Anna Banovic. Mineral claim 27686 has now been allowed to lapse by Ms. Banovic. Mineral claim 37313 is still on foot. He produced photos of the campsite, as it is today and during construction.

A dispute between Mr. Matic and Ms. Banovic came before the court in early 1997. Both parties were represented by members of the legal profession on that occasion. That matter was settled and orders were made in accordance with the terms that were filed by consent.

Those orders were eventually vacated by the court, at the request of the complainant.

Although there was never, according to Mr. Matic, any agreement with Anna Banovic as to her receiving any proceeds of mining; and although she took no part in mining or contributing any funds to mining of any claim - her support came from domestic duties around the camp site on mineral claim 37313.

Mr. Matic is now re-visiting the settlement reached between the parties in 1997. In simple terms, that agreement was that Mr. Matic would pay Ms. Banovic the sum of \$30,000, in two instalments of \$15,000 and then Ms. Banovic would transfer both claims over to Mr. Matic. It was noted on the terms of settlement that Ms. Banovic had vacated the campsite and it was acknowledged that Mr. Matic could then reside thereon.

One can only assume, that as the previous case was settled, the terms of that settlement must have been a fair and equitable distribution of assets at that time.

On the evidence before the court, no mining has taken place since then.

In respect of the settlement of the previous case, regrettably Mr. Matic only managed to pay one of the two instalments of \$15,000. He produced evidence of payment of that sum to the respondents solicitors. He was unable to meet the second instalment. He intended to auction the campsite to get the extra money but was no successful, due to a downturn in opals at the time. As he was unable to meet his obligations under the terms of settlement, one can assume it was this reason why Anna Banovic did not transfer the claims to him.

It is Mr. Matic's submission now that as he has paid \$15,000 and through her own fault of allowing one claim to lapse, Ms. Banovic only has one claim left, then that claim, 37313, should be transferred to him.

Another matter is relevance is that when he signed the terms of settlement, Mr. Matic was unaware that Ms. Banovic had removed all of the furniture from the campsite. He signed the terms on the understanding that all the furniture was still there.

Anna Banovic was well aware of this case being listed for hearing but has not seized upon her right to present any evidence before the court. The evidence of Mr. Matic is uncontested. I have no reason not to accept the evidence of Mr. Matic and his witnesses.

On the evidence before the court, I am satisfied on the balance of probabilities that the payment of \$15,000 by the complainant to the Respondent in 1997 is sufficient for the legal interest in mineral claim 37313 to be transferred from Anna Banovic to Stjepan Matic, in all the circumstances.

The manner in which this case transpired, there is not need for the court to be involved in the taking of accounts concerning transactions and expenses since the claim was registered.

Accordingly, I propose to make order in accordance with final relief c) and d) sought.

Mr. Matic also requested the court make orders for the payment of his costs. He said that he has an amount of \$6,000 outstanding in legal fees resulting from the last case. In this present matter before the court, he himself drafted the legal documents filed with the Registry (and paid the fee of \$130) and he represented himself on all occasions when the matter came before the court. Consequently, there are no current legal fees applicable.

Any order for costs are always at the Courts discretion. In this matter, the professional costs sought relate to an earlier case between the parties. I notice that the order of the court in respect of that matter, which was by consent, was that each part shall pay their own costs.

I can see no valid reason as to why the court should now revisit the costs issue in that case and award them against one of the parties in this case.

Consequently, the only order for costs will be the filing fee lodged by Mr. Matic. I make no order for professional costs.

The orders of the court are:

- a) The respondent Anna Banovic is hereby ordered to sign all necessary documents and things required to transfer title in mining claim 37313 to the complainant Stjepan Matic
- b) 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
- c) Any costs related to the transfer to be paid by the complainant, Stjepan Matic
- d) The respondent paid costs to the complainant in the sum of \$130 on or before 26 September 2001.
- e) I make no order as to professional costs in this matter.

**J A Bailey**  
**Chief Mining Warden**

Lightning Ridge  
29 August 2001.