

**IN THE MATTER BEFORE THE PROVINCIAL
MINING RECORDER**

**IN THE MATTER OF: untagged mining claim (assigned 3014566) staked in Tyrrell
Township, Larder Lake Mining Division**

**AND IN THE MATTER OF: "Filed Only" application to record 3008019 staked in Tyrrell
Township and which encompasses approximately the same area as 3014566**

ALSO IN THE MATTER OF: a dispute filed by

GARFIELD PINKERTON

Disputant

-against application to record 3014566 in the name of-

ALEXANDER HARRIS CLARK

Respondent

UPON: consideration of the evidence submitted by the parties,

I ORDER: that the dispute is hereby dismissed.

**I FURTHER ORDER THAT: the time for affixing tags as required by Section 16 (2) of
staking regulation 7/96 is hereby extended to July 6th, 2004.**

**I FURTHER ORDER: that the time for which 3014566 was pending before the recorder,
being 291 days, will be excluded and a new anniversary date for reporting work will be set
pursuant to Section 67(2) of the Mining Act. January 6th, 2006 is fixed as the date by which
the first unit of assessment work must be performed and filed on Mining Claim 3014566
and all subsequent anniversary dates are deemed to be January 6th.**

**I FURTHER ORDER: that "filed Only" application to record 3008019 is hereby cancelled
effective the date of this order**

Originally Signed by Roy Denomme
Roy Denomme
Provincial Mining Recorder

Dated at Sudbury this 6th day of January 2004.

Note: Parties have the right of appeal to the Mining and Lands Commissioner as indicated in Section 112 of the Mining Act RSO 1990. An appeal must be filed within 30 days of the date of this decision.

A hearing was held on Wednesday December 10, 2003 to determine this matter. Garfield Pinkerton attended in person and made submissions on behalf of the disputant. Robert MacCallum attended in person as a witness for the disputant. Alexander Harris Clark attended in person and made submissions on behalf of the respondent.

BACKGROUND:

On March 14th, 2003 Alexander Harris Clark, staked a 1 unit mining claim in Tyrrell Township Larder Lake Mining Division. The mining claim is a fraction approximately 80 metres in width (east/west) and 400 metres in length (north/south) tying on to other existing mining claims in the area. The staker indicated on his application to record that the mining claim was staked without using tags. Upon filing the application to record in the Provincial Recording Office on March 21, 2003, tag number 3014566 was issued to the mining claim. (For the purposes of this decision this mining claim will be referred to as 3014566).

On March 21, 2003 Garfield Pinkerton, with the assistance of Robert MacCallum, after determining 3014566 was not staked in compliance with the provisions of the Mining Act, restaked approximately same area covered by 3014566. On March 31, 2003 an application to record was filed in the Larder Lake Mining Lands Consultants office. It was taken as "Filed Only" and on April 17th, 2003 a dispute was filed against mining claim 3014566.

The dispute alleges that 3014566 was invalid for three reasons:

1. There were no tags on Post #1 and Post #4.
2. No posts were erected at the #2 and #3 locations or tied onto previous staking.
3. Posts are not legal size.

The disputant submitted 4 photos as evidence. The first photo is suggested to be the #2 post for 1221741 (however the numbers cannot be made out). The second and third photos are suggested to be of the #1 and the #4 posts respectively for 3014566. The fourth photo shows a blaze (from the Clark staking).

Mr. Pinkerton submitted that he and Mr. MacCallum first proceeded to the southeastern corner (#2 location) of the area to be staked. He looked around (within a 20 to 25 metre radius) and did not see any evidence of staking (so they erected their #2 post). They then proceeded to the #3 location where again they did not see any evidence of staking,

and therefore erected their number 3 post, (tied on to old claim posts in the area). They proceeded north to the # 4 location. At this location they found a claim post which the disputant alleges was 2 1/2" to 3" square (inscribed by Clark) at which location they erected their #4 post. They headed east about 50 metres and found another post without a tag. Seventy-five metres east from this location was the old claim post for mining claim (1221)741 #1 location, and posts for (1221)621 and (1221)622, mining claims to the north. A claim line was blazed northward at this location. This is where they erected the #1 post for 3008019. He did not see any blazes heading south at this location.

When asked by Clark on cross examination about snow conditions at the time of staking, Mr. Pinkerton indicated that there was quite a bit of snow on the ground, although it had not snowed the day of staking. He further added that the snow in that area did not leave until April or May.

Mr. MacCallum's only submission as witness for the disputant was that the testimony of Pinkerton was the truth. He made no further submissions.

Mr. Clark in his response filed a report as evidence which contained a covering letter, a sketch showing the location of mining claim 3014566 relative to other claims (including the Pinkerton claim), and 13 photos showing claim posts and claim lines.

Clark referred to this report during his submission and gave an account of the staking. He submitted that the fraction was inadvertently created in September of 1996 when he had staked 1221668 to the east and at the same time a competitor had staked a claim to the west, the fraction being left as a result of where each had started. In discussion with the competitor at a later date it was agreed that the competitor would stake the fraction. This mining claim subsequently came open again for staking.

Mr. Clark submitted that he started at the #1 post location and tied into his #4 post for 1221668 the claim on record to the east. He indicates that Pinkerton's #1 is located 52 metres east of this location (and therefore overstakes 1221668). He continued south along the east boundary of 1221668 and erected his #2 at the location of the #3 of 1221668. He proceeded west approximately 104 metres along the north boundary of 1221664 (active mining claim to the south) and erected his #3 post. He then proceeded north but had problems continuing his west boundary south of the Jubby trail. He proceeded back to his number 2 post, north until he hit the road and walked up the road to where his west boundary intersects the road. He proceeded north from there to his #4 post which was erected beside a post for the mining claim to the north.

He further submitted that upon inspection (at a later date) that his #3 post (a loose post) was found buried under the snow.

Both parties indicated that there was a significant amount of snow in the bush at the time of staking. However there was some rain which occurred near the time that both claims were staked.

On review of the evidence presented at the hearing a number of things appear evident:

1. That the Clark claim was staked without using tags which is confirmed on the application to record. Therefore there is no staking deficiency in the affixing of tags. Clark indicates that the tags were not subsequently affixed, because a dispute was filed, and correspondence from the Provincial Recording Office indicated that staking evidence must not be disturbed. The staking of claim 3008019 by Pinkerton was carried out within 7 days of the Clark staking and well within the six months allowed for affixing tags pursuant to Section 16 (2) of staking regulation 7/96. This would explain why the tags were not affixed at the time of the Pinkerton staking.
2. There was no evidence presented by the disputant to confirm the #2 and #3 posts were not erected for mining claim 3014566. There was a submission that the post could not be found and that a search of the area within 20 to 25 metres of the assumed location was carried out without success. The submission from Clark that the #2 post and #3 post for 3014566 were located some 30 plus metres south of Pinkerton's #2 and #3 could give reason for the posts not being found. Confirmation that significant amounts of snow were still evident in the bush and the fact that Clark's #3 was a loose post, could contribute to that post not being located. Clark's report provides photos, which he submits to be of the #2 and #3 posts for mining claim 3014566. However the angle of photography does not provide conclusive evidence that they are of these two posts. It remains that without compelling evidence to the contrary, the tribunal must assume that the #2 and #3 post for 3014566 were erected at the time of staking.
3. There was little evidence submitted by the disputant to substantiate the allegation that "the posts were not even close to being of legal size". The two photos submitted by the disputant showing claim posts do not provide any clear measurement of the post. The respondent submits photographs showing claim posts size relative to claim tags and a hip chain. On review of these photographs, it is inconclusive as to whether all posts conform to the requirements under the Act. Although it is clear that the posts do not substantially exceed the requirements for post size, this tribunal concludes that the #3 post is clearly undersized and will require replacement.

In his report, Clark indicates that the south boundary of 3014566 is tied on to the north boundary of active mining claim 1221664. Records in the Provincial Recorders office indicate active mining claim 1219495 is also tied on to the north boundary mining 1221664. Mining claim 1219495 is a fractional mining claim with a width of less than 100 metres. Therefore it appears that the south boundary of 3014566 may overlap 1219495.

Section 43 of the Mining Act States:

- (1) Substantial compliance as nearly as circumstances will reasonably permit with the requirements of this Act and the regulations as the staking out of mining claims is sufficient
- (2) The staking out of a mining claim shall be deemed to be in substantial compliance with the requirements of the Act and regulations even if there is a failure to comply with a number of specific staking requirements if,
 - (a) the failure to comply is not likely to mislead any licensee desiring to stake a claim in the vicinity;
 - (b) it is apparent that an attempt has been made in good faith by the licensee to comply with the requirements of this Act and the regulations.

Based on the evidence filed this tribunal is satisfied that mining claim 3014566 does substantially comply with the provisions of Section 43 of the Mining Act and that any noted deficiencies can be corrected by order of the Mining Recorder.

The dispute against mining claim 3014566 is therefore dismissed.

An order of the Mining Recorder will subsequently be issued to correct deficiencies with this mining claim.

Roy Denomme
Provincial Mining Recorder