

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

**IN THE MATTER OF: Recorded Mining Claims 3005907, 3005895, 3005970 and 3005971, located in Yarrow Township, Larder Lake Mining Division, (hereinafter referred to as the “Contact claims”);**

**AND IN THE MATTER OF: Mining claim 4209550 located in Yarrow Township, and taken as “filed only”, as it overlaps portions of the “Contact Claims” (hereinafter referred to as the “Vincent Claim”);**

**AND IN THE MATTER OF: a dispute filed by**

**Pierre Vincent for  
Jean-Pierre Nose**

**Disputant**

**- against recorded mining claims held by -**

**Contact Diamond Corporation**

**Respondent**

**UPON: consideration of the evidence submitted by the parties,**

**I ORDER: that the dispute in part is allowed. And that mining claims 3005907, 3005895, 3005970, and 3005971 are hereby cancelled as of the date of this order;**

**I FURTHER ORDER: that “Filed Only” claim 4209550, is hereby cancelled as of this date.**

**I FURTHER ORDER: that by separate order, the land contained by mining claims 3005907, 3005895, 3005970 and 3005971, will be withdrawn from staking until such time that the appeal period for this decision is over.**

**Dated at Sudbury, this 29<sup>th</sup> day of December, 2006.**

*Original signed by Roy Denomme*

**Roy Denomme  
Provincial Mining Recorder**

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

A hearing was held on May 17<sup>th</sup> 2006, to determine this matter. Jean-Pierre Nosé and Pierre Vincent attended in person for the Disputant. Denis Paul Presseault attended on behalf of **Contact Diamond Corporation**, as the Respondent.

### **BACKGROUND:**

According to the application to record filed in the Provincial Recording Office, Denis Presseault and 5 crew, staked four 16-unit mining claims 3005907, 3005970, 3005971, and 3005895, on November 7<sup>th</sup>, 2005, as part of a larger block of mining claims staked on behalf of Contact Diamond Corporation. The staking crew included Denis Presseault as recording licensee and Paul Presseault, Alain Sigouin, Francois Gauthier, Arvial Chief and Steven Polson.

According to the application filed in the Provincial Recording Office, Pierre Vincent as recording Licensee and Jean-Pierre Nosé, staked an untagged 16-unit mining claim (and recorded as 4209550) on November 26<sup>th</sup> through November 27<sup>th</sup>, 2005. The application to record was filed in the Mining Land Consultant's Office in Larder Lake on November 28<sup>th</sup>, 2005, and recorded as of that date.

On December 2, 2005, the Contact claims were filed in the Mining Land Consultant's Office in Larder Lake.

The Vincent claim was wholly encompassed by the Contact claims. Pursuant to Subsection 46(3) of the Mining Act, and because the Contact claims had a prior completion time, on December 21<sup>st</sup>, 2005 the Vincent claim was cancelled, the Contact claims recorded and notice of this sent to Mr. Vincent.

On January 19<sup>th</sup>, 2006 Mr. Vincent filed a dispute against the Contact claims. In his statement of claim, Mr. Vincent alleges that the Contact claims were not completed on November 7<sup>th</sup>, 2005 but was completed some time after this date.

### **EVIDENCE:**

The disputant submitted a statement, documenting observations from November 27<sup>th</sup>, 2005 and May 6<sup>th</sup>, 2006. On November 27<sup>th</sup>, 2005, Mr. Nosé and Mr. Vincent, witnessed tracks in the snow from another staker, who was driving a blue Chevy sub-compact car. It states that in the late afternoon of November 27<sup>th</sup>, as they were leaving the areas they observed that the north boundary of 3005970 was not completed and the common line between 3005970 and 3005971 had not yet been established.

On their return to the property on May 6<sup>th</sup>, 2006, they observed that the common post for the #4 of 3005970 and the #3 of 3005907 had yet to be erected. They also observed that the common post for the #1 of 3005970 and the #4 of 3005970 had an erection date of November 27<sup>th</sup>. The disputants also supplied a map showing the location of these observations.

Along with the statement and map, two sets of photographs were submitted as evidence. The first set was pictures of the Vincent claim and included the four corner posts for 4209550, as well as some of the line posts and claim lines.

The second set of photographs were of the Contact claims and specifically of the common claim post for the #1 of 3005970, the #2 of 3005907, the #3 of 3005895, and the #4 of 3005971. Also included are several photos of claim lines and flagging. The photographs clearly show an erection date for the #1 and #4 tags of November 27<sup>th</sup> at 11:00 a.m. The #2 and #3 posts have no inscriptions.

In response to the evidence provided by the disputants, Mr. Presseault, indicated that he was on the property during the staking of these claims. He was coordinating 6 stakers, showing each of the assistants where to make lines and to erect posts. He would follow up and inspect the work of the staker at a later time. If there was a deficiency, he would either correct it himself or have the assistant go back to correct it. Unfortunately, due to the significant workload, not all posts were inspected at the time of staking. Mr. Presseault indicated that in some cases he did not get back to inspecting the staking of his crew until a month or two after the staking. Even at this time he would direct the staker to go back to correct the deficiency in the staking. Mr. Presseault further indicated that if he couldn't find the person that originally erected the post, he would correct the deficiency himself. Mr. Presseault admitted that there were, in his mind, deficiencies in the Contact claims. There were posts but no claim lines, in some cases the staker was just walking to the G.P.S. co-ordinate and placing the post, and not blazing the claim line itself. He indicated that he could always find the posts using GPS, but could never find the claim lines. In response to the discrepancy with times and dates on posts, Mr. Presseault indicated that the dates on the posts most likely reflected the date that the deficiency was rectified and not the original staking date. An example of this was the #4 post for claim 3005971. The application to record indicated that the mining claim was completed on **November 7<sup>th</sup>, 2005**. Yet the inscription on the claim post (based on a photograph from the Disputant), reads, **November 27<sup>th</sup>, 2005**.

The Respondent also provided the Tribunal with a digital copy of a map showing the post locations and way points for these locations.

In summary the respondent indicated that he was faced with a significant amount of work, and a large crew to coordinate. Because of the significant amount of staking going on it is very difficult to put an experienced crew together. The quality of work in this case was dependent on the individual assistant. Some workers were better than others. Mr. Presseault, being way over his head, did his best to ensure the staking was of good quality and to correct deficiencies where they existed.

## **Findings:**

Based on the evidence provided by both parties it is quite clear to the Tribunal what transpired in the staking of the Contact claims.

Mr. Presseault accepted a large staking contract from Contact Diamond Corporation. The contract required an experienced staking crew which was impossible to find, based on the peak of the industry. He was forced to hire stakers that were of a less quality. The end result was that there were many deficiencies in the staking. Although he indicated that all claim posts were erected (this being disputed by Mr. Nosé), many claim lines were missing and many posts were undersized. It took many weeks for Mr. Presseault to document the deficiencies and try to track down the original stakers to correct the deficiencies. When corrected, it appeared that in some cases the staker put the date that the deficiency was corrected on the post and not the original date of staking (as shown in the photographic evidence presented by the disputant). In cases where Mr. Presseault could not find the original staker, he took on the task of correcting the deficiency.

On November 27<sup>th</sup>, 2005 when Mr. Nosé and Mr. Vincent were staking mining claim 4209550, they met one of Presseault's stakers correcting deficiencies.

The Tribunal must address a number of questions in this matter;

1. Could the Presseault staking be considered to meet the test of substantial compliance as defined by section 43 of the Mining Act?
2. What affect, if any, does the correction of deficiencies by Mr. Presseault and his staking crew have on the validity of the mining claims, the work being carried out some time after the mining claims were on record?
3. If the Presseault claims are found to be non-compliant, can the Vincent claim be recorded?

### **1. Substantial Compliance:**

Section 43 of the Mining Act states:

43(1) Substantial Compliance as nearly as circumstances will reasonably permit with the requirements of this Act and the regulations as to 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 this Act and the 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; and

- (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.

The evidence presented by the disputant is certainly minimal. Photographs show a number of deficiencies (no or incorrect inscriptions) on one claim post only (that being the common corner of the #3 of 3005895, #2 of 3005907, #1 of 3005970, and the #4 of 3005971). Further evidence presented on the disputants map indicates the missing corner post for #3 of 3005907 and the #4 of 3005970, one missing line post, and a portion of a missing claim line.

Considering the extent of the Presseault staking, these are fairly minor deficiencies.

The most damning evidence of deficiencies comes from Mr. Presseault himself. In his own testimony he indicates that posts were erected by his stakers using GPS units, without claim lines being cut between them. He further admitted that this was very confusing to him, and difficult for him to follow lines.

However, the Tribunal is not convinced based on the small amount of evidence provided by the disputant or in the respondent's testimony that the deficiencies in the Contact claims, was likely to mislead any licensee (including the disputants), trying to stake in the vicinity, and therefore, concludes that the staking did meet Section 43(2)(a).

Based on Mr. Presseault's testimony, he took on a very large project and was over his head, with trying to manage the staking. Where he found deficiencies, he made the original staker correct the deficiency or fixed it himself. It is clearly evident that Mr. Presseault was attempting to comply with the requirements of the Act however the massive scope of the project, and the fact that Mr. Presseault, although on the ground could not possibly supervise every employee erect every post at every location. It is for this reason that the tribunal concludes that Mr. Presseault, did in fact comply with section 43(2) (b) of the Mining Act.

Therefore it is concluded by this Tribunal that the Presseault claims did meet the substantial compliance provisions of Section 43 of the Mining Act.

## **2. Affect of replacing posts and inscriptions to correct deficiencies:**

Section 72(1) of the Mining Act States:

(1) Except as provided by section 73, all interest of the holder of a mining claim before a lease has issued ceases without any declaration, entry or act on the part of the Crown or by any officer, and the claim is open for prospecting and staking out,

(a) if, without the consent in writing of the recorder or Commissioner, or for any purpose of fraud, or deception or other improper purpose the holder removes or

causes or procures to be removed any stake or post forming part of the staking out of such mining claim, or for any such purpose changes or effaces or causes to be changed any writing or marking upon any such stake or post;

In his testimony, Mr. Presseault indicated that he did indeed make the stakers go back and correct deficiencies by erecting new posts where undersized posts were located and blazing claim lines where they did not exist. By virtue of section 72(1) (a), any post replacement or re-inscription of an original post, without written consent of the Provincial Recorder, is deemed an automatic forfeiture, and the land is open for staking. However there was no comprehensive evidence presented by either party to clarify which posts were replaced or re-inscribed. The Tribunal will not speculate that every post or inscription was changed and can only rely on evidence presented at this hearing.

The only clear evidence that a post was replaced, retagged and re-inscribed is the 4 corners of common post for the #1 of 3005970, #2 of 3005907, #3 of 3005895, and the #4 of 3005971. This evidence is clear in Exhibit #4 presented by the disputant which are photos of all sides of this claim post. This post includes inscriptions on two faces with the date November 27<sup>th</sup>, 2005 and all claim tags appear to have been re-affixed to the post in the photo.

The evidence of this post being replaced and re-inscribed on November 27<sup>th</sup>, 2005 (21 days after it was originally staked), deems these four mining claims automatically forfeit and the land open for staking.

#### **4. Can the Vincent claim be recorded?**

With the above finding that the Contact claims are deemed forfeit because of subsection 72(1) of the Act, the land covered by 4209550, would have been open for staking at the time that Vincent and Nosé staked the claim. The Tribunal cannot consider this a competitive situation as the Contact claims were actually originally completed on November 7<sup>th</sup> and that it was corrections being carried out on November 27<sup>th</sup>, 2005 when the Vincent claim was staked.

The Tribunal is also of the opinion that Vincent knew that the Contact staking existed, and that it encompassed the area which was staked on November 26<sup>th</sup> and 27<sup>th</sup> as 4209550. In this case Vincent and Nosé must have known that the end result of their staking would be a dispute and hearing. There is a long line of Commissioner's cases represented by "Whiting v. Mather 2 M.C.C. 318" wherein it was held that the staking of one who attempts to take over a priority staking by re-staking must have his staking judged strictly (*He who seeks equity must do equity*). However Commissioner Ferguson tempers this in "Clark v. Lacasse M.C.C. 5, 392", where he states "*In my opinion the substantial compliance doctrine found in Section 59 of the Mining Act is not superseded by the principle of the Whitney case and the minor undersize of one-quarter of an inch in the on post of the respondent is cured by the doctrine*".

Since that time the principles of substantial compliance have changed dramatically and the test for meeting substantial compliance as outlined in section 43 of the Mining Act is reduced to two tests:

- (a) the failure to comply is not likely to mislead any licensee desiring to stake a claim in the vicinity; and
- (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.

The disputant in his submission for this hearing provided photographs of all corner posts for claim 4209550, and also a number of line posts. On review of this staking it is can be determined that there are significant deficiencies in the Vincent staking, which must be considered in making a determination if the claim can be recorded. Based on the Tribunal's review of these photos, the following deficiencies are visible;

- The number 1 post is significantly undersized
- The number 2 post appears to be slightly undersized
- There is no commencement time on the number 3 post
- There is no completion time on the number 1 post
- There are no times of erection on any of the four corner posts
- All five line posts shown in the photographs are significantly undersized
- All five line tags do not have inscribed the location of the line post in relation to the nearest corner post
- There is no licence # of the staker inscribed on any of the 5 line posts

A total of 9 of 16 claim posts are shown for mining claim 4209550 in the photographs provided by the disputant. In these photos a total of 23 deficiencies are apparent.

Based on this evidence, and the fact that the disputants knew that they were over-staking the "Contact claims", and would be seeking priority, this Tribunal cannot conclude that there was an attempt in good faith made by the disputants to comply with the requirements of the Act and the regulations.

Therefore mining claim 4209550 does not meet the substantial compliance test and therefore cannot be recorded.

*Original signed by Roy Denomme*

Roy Denomme  
Provincial Mining Recorder