

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

STEVEN MORNINGTHUNDER,

Plaintiff,

vs

Case No. C-20075129

AUGUSTA RESOURCES, INC.; FREEPORT-
McMORAN COPPER & GOLD, INC.; and
PHELPS DODGE MINING COMPANY,

Defendants.

CERTIFIED COPY

MOTION TO DISMISS

BEFORE THE HONORABLE JAVIER CHON-LOPEZ

NOVEMBER 5, 2007

Eileen P. Livingston, RPR CCR
Certified Court Reporter 50038

APPEARANCES

MR. STEVEN MORNINGTHUNDER
In Pro Per

ALI J. FARHANG, ESQ.
Attorney for Defendant Augusta Resources, Inc

WITNESSES

(None)

EXHIBITS

(None)

P R O C E E D I N G S

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3 THE COURT: Let's call the case at this time. This is
4 the time set for a Motion to Dismiss in the matter of
5 Morningthunder versus Augusta Resources, Case Number
6 C-20075129.

7 Would the parties please announce their appearance
8 at this time.

9 MR. MORNINGTHUNDER: Morning. Steve Morningthunder
10 here.

11 THE COURT: Thank you.

12 MR. FARHANG: Your Honor, Ali Farhang representing
13 Augusta Resources, defendant.

14 THE COURT: Mr. Farhang, this is your motion. Do you
15 want to be heard in support at this time?

16 MR. FARHANG: I'll be very brief, Your Honor.

17 As you can probably tell from reading the
18 plaintiff's complaint, it's totally indecipherable. And we
19 are unable to -- really talking about three issues. Number
20 one, there's no way for us to decipher what legal claims are
21 being asserted against Augusta. Number two, we don't know
22 what factual claims are being supported for whatever unknown
23 legal claims that are being asserted. And Number three,
24 we're not even sure, again not knowing the legal basis or
25 the legal claims against Augusta, why Mr. Morningthunder has

1 standing to bring suit in the first instance.

2 Ultimately, Your Honor, even looking through the
3 complaint with the most liberal eye possible, there's not
4 even an allegation of wrongdoing against Augusta that we can
5 tell.

6 For those reasons we ask for the complaint to be
7 dismissed with prejudice due to the lack of basis asserted
8 in the complaint. We'd like -- although the Court is -- it
9 is acknowledged the Court normally gives pro se plaintiffs
10 another opportunity to amend their pleadings, but in this
11 case there's such a dearth of information for us to go on,
12 we would like the Court to respectfully consider dismissing
13 it at this time.

14 THE COURT: Okay, thank you.

15 Mr. Morningthunder, do you want to be heard in
16 opposition?

17 MR. MORNINGTHUNDER: Do I have to speak in English or
18 can I speak in Spanish?

19 THE COURT: You have to speak in English.

20 MR. MORNINGTHUNDER: All right.

21 First of all, the fact he can't understand it is
22 not my fault. I gave him plenty of access to information on
23 how to understand the --my notes. I gave him access to the
24 Internet. I gave him the review of my crib sheet, which is
25 my information, my notes. I gave him review of that two

1 weeks ahead of here. If he didn't want to take the time to
2 try to understand it, that is not my problem. I gave him
3 fair opportunity.

4 As to the claims, I'm making no claims for money
5 against Augusta Resources, not one cent. What I am doing is
6 I'm saying, You're looking at a bear trap, buddy. And you
7 better watch out, because that's a bear trap if you go on in
8 and tear up that land. You destroy the environment, you
9 destroy the ecosystem, with not a quid of concern for what
10 you do. That's a bear trap. I'm worried. I'm saying
11 that's a bear trap and you better watch out. And I'm asking
12 you to prevent them from going into that bear trap.

13 Now, as to factual claims -- factual claims. What
14 I have as factual claims is what they have let to be known
15 through public hearings. Now, what their intentions of what
16 they publicly state to be, I do not know. I only have what
17 the public information is. And I know that is an ecological
18 disaster waiting to happen.

19 And I think the Court has the right and the need
20 to determine an ecological disaster before it's committed
21 and to prevent it, because we do not have the time to be
22 foolish and make mistakes on top of mistakes.

23 THE COURT: Anything else?

24 MR. FARHANG: Just really briefly, Your Honor.

25 This is the first time I've ever spoken with or I

1 must have spoken with him, but met Mr. Morningthunder. I
2 don't know what he's talking about, crib sheet.

3 MR. MORNINGTHUNDER: It's at the bottom of the motion.

4 MR. FARHANG: Secondly, I don't know of any rule of law
5 that would allow Mr. Morningthunder's complaint to proceed
6 against Augusta for conduct that may occur but hasn't
7 occurred at this point. And again I'd ask for this Court to
8 dismiss his complaint.

9 • THE COURT: Thank you.

10 MR. MORNINGTHUNDER: What about the Environmental
11 Protection Act?

12 THE COURT: Then at this time, after reviewing the
13 Motion to Dismiss, the opposition, and considering the
14 arguments of counsel, at this time the Court finds that the
15 Motion to Dismiss the complaint is well taken as it fails to
16 state a legal claim from which relief can be granted.

17 And it is the Order of the Court at this time that
18 the Motion to Dismiss is granted.

19 I know that counsel asks that it be dismissed at
20 this time with prejudice, but at this time --

21 MR. MORNINGTHUNDER: Question, Your Honor: Do you know what
22 the word "carrying capacity" means?

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THE COURT: No

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MR. MORNINGTHUNDER: Carrying capacity is the

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possibility of the earth to sustain humankind upon it. It

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has two different phenomena. It has a phenomena of

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appearance and a phenomena of reality. You can have a

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carrying capacity that appears to be at this level when

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really it is at this level (indicating). Now, that is the

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situation we are confronting on this planet. We have a

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carrying capacity that looks like we are here, we're fine,

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we're driving around in our cars and nothing is wrong.

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But in reality we have extended ourselves far, far

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beyond the capacity of the planet to sustain us in this

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manner because we are running out of oil. See, it's all

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about (speaking Spanish). And I think it is imperative that

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you consider this, because this is what it's all about.

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Do we do something about this ignorance, which is

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profound, or are we going to confront it with intelligence

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before it is even more too late?

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THE COURT: Then at this time, as I was saying, the

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request was that the dismissal be with prejudice and in view

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of what I heard, that request is also granted.

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MR. MORNINGTHUNDER: I'm just saying you don't

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understand. (Speaking Spanish)

1 THE COURT: Okay. We're at recess. Thank you.

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