

**NOTICE OF APPLICATION FOR LEAVE TO APPLY FOR  
ORDERS OF CERTIORARI, DECLARATION, INJUNCTION  
AND DAMAGES**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE MATTER of an application for quarry  
licence.

A N D

IN THE MATTER of the Ant-Pollution Act.

A N D

IN THE MATTER of the order and decision of  
the Commissioner of Quarries dated November  
5, 1998.

TAKE NOTICE that the applicant herein seeks an order of a Judge of the Supreme Court granting it leave to apply for judicial review pursuant to Title 44A of the Judicature (Civil Procedure Code) Law [and request that the Applicant be granted a hearing at the determination of the said application for leave.]

1. The name and description of the Applicant is Evertrying Mineral Co. Ltd. with address and registered office at 725 Moonlight Street, Ocho Rios, St. Ann. The Applicant carries on the business of mining, marketing and exporting skalites and other minerals and for that purpose has held a quarry licence for its property at Never-Say-Never in Trelawny.

2. The reliefs sought are as follows:

- (i) An Order of mandamus directed to the Commissioner of Quarries to compel her to issue a quarry licence to the Applicant for the year 1999.
- (ii) An order of certiorari to remove into this Honourable Court and quash an Order and Decision of the Commissioner of Quarries to -
  - (a) cancel the Applicant's quarry licence for the year 1998;

- (b) refuse the Applicant's application for a quarry licence for the year 1999; and
  - (c) seize and impound the Applicant's front-end loader, serial no. A59716 and stone crusher serial no. B265013.
- (iii) An injunction to compel the said Commissioner of Quarries to return to the Applicant's property at Never-Say-Never the said front-end loader and stone crusher; and
- (iv) Damages for -
- (a) detinue and the unlawful detention of the said front-end loader and stone crusher by the said Commissioner of Quarries;
  - (b) loss of profit at U.S.\$25,000 per week resulting from the termination of the Applicant's said business operations by reason of the said unlawful actions of the said Commissioner of Quarries.
- (v) Such further orders or directions as to the Court may seem just.

3. The grounds upon which the reliefs are sought are as follows:

- (i) The Applicant during the last 10 years has held a quarry licence in respect of its said property and that licence has been renewed from year to year without any objection;
- (ii) The Applicant has conformed with all regulations relating to the operation of the said quarry and the Anti-Pollution Commission's Inspector has each year including the year 1998 issued a Certificate under the Anti-Pollution Act certifying that the Applicant's said operations conform with the standards prescribed under the Act.

- (iii) The said Commissioner of Quarries cancelled the Applicant's quarry licence for 1998 without any prior notice to the Applicant and has refused the Applicant's application for a quarry licence for 1999 without giving any reasons to the Applicant for her decisions or any opportunity to the Applicant to make any objections or make any representations with respect to the matters on which the said Commissioner has relied for her decisions.
- (iv) In the circumstances the Applicant had a legitimate expectation that its licence would not be cancelled and its application for its renewal would be granted and accordingly the Commissioner acted unfairly and in breach of the rules of natural justice.
- (v) The Quarries Act and the Anti-Pollution Act only give the Commissioner the power to order the detention of equipment if the owner or operator is given five (5) days prior notice to terminate operations and fails to comply with the notice and no such notice was served on the Applicant. Accordingly the said Commissioner acted *ultra vires* and in excess or abuse of jurisdiction.
- (vi) The Commissioner in acting as aforesaid was activated by irrelevant considerations, namely that the Applicant was supplying the skalite to the market at a price which made a rival business in the Minister's constituency non-competitive and threatened the closure of that business thereby causing unemployment in that constituency.
- (vii) By reason of the Commissioner's said unlawful acts the Applicant's operation of the said quarry had to be closed down and it has suffered loss and damages as a consequence.

PARTICULARS

Net profit on the sale in North America of 50,000 tons of skalite  
per month as from November 23, 1998 - U.S.\$125,000 per month  
and continuing.

DATED THIS            DAY OF SEPTEMBER 1998

SETTLED

.....  
HOPEFUL BOXER

TO: THE REGISTRAR,  
SUPREME COURT,  
KING STREET;  
KINGSTON