IN THE WARDEN'S COURT AT SYDNEY
HELD AT ST LEONARDS ON THE
5TH NOVEMBER 1993 BEFORE
MR J L McMAHON
CHIEF MINING WARDEN

APPLICATION NO 12 OF 1993
(LIGHTNING RIDGE)

JUDGMENT

Noel Thomas RYAN and Rodney James PARKER (Complainants)
v
Stephen John PRATT and Thomas DOBIE (Defendants)

in the matter of the Mining Act 1992

BENCH:

On the 27th May 1993 the complainants, through Noel Thomas Ryan, had sought relief from the Warden's Court, Mr Ryan having sworn an affidavit dated that day. The relief sought was, immediately, the issue of an Injunction restraining the defendants from operating Claims 26386, 26389, 26387 and 26388, which are in the Lightning Ridge Mining Division and by way of final relief, sought specific performance of the contract entered into on or about 2nd December 1991 between Stephen John Pratt and Noel Thomas Ryan. A further final relief sought was damages, but in Court on the 19th October 1993, when this matter was heard, Mr Browne, Solicitor, acting for the complainants, abandoned the claim for damages.

In the light of the affidavit an Injunction under Section 313 was granted on an ex parte basis with certain safeguards incorporated to preserve the status quo until a hearing of the matter. There has been no working on the four subject claims since the grant of the Injunction on the 1st June 1993.

The matter was heard at the Warden's Court, Gilgandra, on the 19th October 1993. The Court heard evidence from Mr Ryan, Mr Joseph Der and Miss Loretta Blake for the complainants, while the evidence for the defence was given by Mr Stephen Pratt, Mr Thomas Dobie and Mr Pratt's wife, Mrs Lynette Pratt. Mr Parker did not give evidence, but there was no dispute that he had been taken in as a partner by Mr Ryan.

Both sets of parties were represented, Mr Browne appearing for the complainants, and Mr Sligar, Solicitor, for the defendants.

Part 9 to the Mining Act provides for the granting of mineral claims setting out the conditions under which they are to be granted and the general restrictions in respect of those titles to mine, which are the smallest type of areas that one can get to mine under the New South Wales legislation. Conditions relative to a mineral claims district are that no person, in effect, can hold more than two claims in the one Mining Division. Whilst this restriction is understandable it has led to a practice in Lightning Ridge, and indeed, in some other areas of the State, where mineral claims are granted, for a nomination to be obtained in the name of another person, that is to say, if Person A has two claims of his own and is interested in a third mineral claim, he may arrange for another person to hold that mineral claim in that other person's name, with a percentage arrangement to allow for the use of the name.

Such a situation developed in this matter, and there is no dispute as to this, but unfortunately nothing was put in writing by the parties - a common and irritating practice leading almost inevitably to expensive litigation if claims prove to be valuable.

The complainant, Mr Ryan, already had two claims registered in his name. He had known the defendant, Mr Pratt, for many years having been schoolboys together, and when Mr Ryan developed an interest in other areas he arranged for Mr Pratt to hold two mineral claims in the name of Stephen John Pratt. These were Claims 26386 and

26389 and two other claims initially in the name of Mr Pratt's wife, Lynette Anne Pratt, these being Claims 26387 and 26388. According to Mr Ryan he was to receive 90 per cent of the proceeds of the claims and the Pratts were to receive 10 per cent, primarily for the use of their names. Registration of those claims took place in 1990, not as the complainant, Mr Ryan, has sworn in December 1991. There is no doubt that the claims were then held by the Pratts, and later those that were held by Mrs Pratt, were transferred to Mr Thomas Dobie, the other defendant, on behalf of Mr Ryan. Certain monies necessarily payable to the Registrar by the registered holder of mineral claims were paid by the complainant, Mr Ryan, including bond money which the Registrar required to attempt to ensure compliance with Regulations by all claim holders. Fees for initial registration were also paid by Mr Ryan.

Registration of the claims had been renewed the following year, with Mr Ryan supplying the renewal fees, but on the next renewal which occurred in June 1992, Mr Pratt paid the renewal fees for the four claims.

The circumstances which led to that payment by Mr Pratt are in dispute. Mr Ryan has sworn that Mr Pratt had previously undertaken to do some work on the claims which he did not do and he has sworn that he challenged Mr Pratt about that inactivity saying, "Because you haven't effectively worked the claims and we have paid the registration fees on them for two years we are out of pocket. When are you going to come up and work the claims?" To which he has sworn Mr Pratt replied, "I'm sorry about the delay. I'll pay the registration costs of the claims this year." There was also some suggestion in the evidence of Mr Ryan that when Mr Pratt had undertaken to attend Lightning Ridge and work the claims he intended to take Long Service Leave from his work as a Sergeant of Police to do that. Mr Pratt, on the other hand, says that because the claims were registered in his name and Mr Dobie's name, making them responsible for the working conditions on the claims, he had become concerned about his own failure to fulfil those conditions and along with Mr Ryan had gone to see the witness,

Mr Der, when Mr Ryan had asked Mr Der if Mr Der was willing to work the claims. He said that Mr Der had said that his jackhammer was broken and he could not get parts for it. There does not seem to be any dispute about this conversation having taken place; indeed Mr Der has given evidence that it did take place and this is confirmed by the evidence of Mr Ryan but Mr Pratt says that the conversation with Mr Der took place in late 1991 or early 1992 and that as Mr Der could not work the claims he had maintained his concern about his responsibilities to do so and had again raised the matter with Mr Ryan asking when Mr Der was going to start. In June 1992 there was a further conversation between Mr Pratt and Mr Ryan, according to Mr Pratt, in which again the question of working conditions on the claims had been raised, and in which Mr Pratt says that Mr Ryan told him that he, Mr Ryan, had had troubles with his wife and with a divorce, which had been expensive and that he could not afford to pay for the renewal of the claims and added, "I'll have to let them go." Mr Pratt has sworn that he said to Mr Ryan, "Don't let them go, Don and I will take them and work them ourselves." Accordingly, Mr Pratt has sworn that he and Mr Dobie attended Lightning Ridge in June of 1992 and paid renewal fees of the registration of the four claims. He said that at that time Mr Ryan had even offered to lend equipment to both defendants so that they could work the claims. Mr Dobie has given evidence of a conversation at Mr Ryan's home about the marriage break-up and that Mr Ryan "intended to give the claims away." He believed thereafter the two claims in his name to be his.

There is therefore a direct conflict in the evidence between the complainant, Mr Ryan, and both defendants, Mr Pratt and Mr Dobie, as to how it came about as at June 1992, and indeed June 1993, when the registration of each of the four claims came up for renewal that the renewal fees were paid for the four claims by Mr Pratt and not as they should have been by Mr Ryan.

In regard to this conflict I am inclined to accept the evidence of Mr Pratt. He impressed me as a witness of truth and his general recall of the circumstances seemed to

me to be better than Mr Ryan, bearing in mind also, that Mr Ryan made an error of twelve months in respect of the sequence of events. Furthermore, Mr Pratt's evidence that he had sought to raise the matter and give advice to Mr Ryan about the lack of wisdom in not renewing four other claims, not associated with the four subject claims, but in the same area, previously held by a person called Dowton for Mr Ryan, to the effect that Mr Ryan should not also let them go because there was a possibility that they would be valuable, has the ring of truth about it. The effect of the evidence of Miss Blake was to confirm the existence of an arrangement whereby if Mr & Mrs Pratt and later Mr Pratt and Mr Dobie were to allow Mr Ryan to use their names they would receive 10 per cent of the proceeds from the claims.

I do not think even on the evidence of Mr Pratt that there is any real doubt about this arrangement up until the time that Mr Pratt and Mr Dobie paid the renewal fees in June 1992. There is, however, an interesting conflict in the evidence, Ms Blake saying that she had never been to a motel in Wee Waa with the Pratt family and both Mr & Mrs Pratt saying that a conversation had taken place at a motel at Wee Waa which was conducted by friends of Miss Blake, that conversation had taken place in the kitchen of the motel, when Mr Ryan and Miss Blake were also present. It was there that the original 90/10 per cent arrangement was made. In this regard again I am inclined to accept the evidence of Mr & Mrs Pratt.

It is a necessary requirment of the Registrar on granting a registration of a mineral claim and the renewal of that title for fees to be paid, and, for an amount of money to be deposited on initial registration either by means of an interest bearing deposit at a bank in favour of the Mining Registrar, or in cash with the Mining Registrar by way of bond, to ensure the compliance with conditions of the claim. In this regard it is clear that Mr Ryan paid the initial fees on the grant of the registration of the four subject claims in December 1990 and the bond money in connection with those four claims, and also paid the fees for the renewal of the four claims in June 1991, leaving the bond

money with the Registrar. It is then a matter of record that Mr Pratt and Mr Dobie paid the renewal fees for June 1992, and indeed for June 1993, but the bond money lodged by Mr Ryan still remained with the Registrar even though the claims were in the names then of Mr Pratt and Mr Dobie, and renewal fees were paid by Mr Pratt.

Furthermore, (and this is significant) it is apparent that when Mr Pratt had paid those renewal fees in June of 1992 he had handed the receipt back to Mr Ryan.

It is part of the complainants' contention that the claims were intended by him to be held by Mr Pratt and Mr Dobie on his, Mr Ryan's, behalf at all times on a 10 per cent/90 per cent basis, and that the reason why the renewal fees were paid by Mr Pratt in June of 1992 was because of the apparent inactivity by Mr Pratt in not working the claims, that is, not pulling his weight as far as the claims were concerned. On the other hand, Mr Pratt and Mr Dobie have said that it was Mr Ryan's lack of funds that caused Mr Ryan to say to them that Mr Pratt and Mr Dobie should take over, or could take over the claims, and work them and thereby gain possession of them and the full benefit of them.

Notwithstanding the fact that in respect of this particular matter I am inclined very much to believe the evidence of Mr Pratt and Mr Dobie and that of Mrs Pratt, I regret to say that the fact that the bond money was left with the Registrar having been originally lodged by Mr Ryan, must induce me to conclude that Mr Pratt and Mr Dobie still hold, and still held after June 1992, those claims for and on behalf of Mr Ryan in accordance with their original agreement whereby they would receive 10 per cent of the proceeds and Mr Ryan and by implication Mr Parker 90 per cent. The fact that the receipt for the 1992 renewals paid by Mr Pratt was handed by him back to Mr Ryan also tends to show Mr Ryan's continuing legal interest in the claims.

A problem however has arisen that in the light of the mistaken belief that after June 1992 they had the full right title and interest to the claims, Mr Pratt and Mr Dobie have now caused to be sunk on the claims some additional one metre diameter holes for mining purposes. How should then they be compensated if the original contract is confirmed? It seems to me that the compensation should take the form of re-imbursement to the defendants of the cost of the sinking of the holes and in this regard receipts should be furnished or in the absence of receipts, statutory declarations supplied by the independent party who sunk the holes, as to the cost of that activity. However as this matter was not pleaded by the defendants I make no order in this regard. In the circumstances I grant the final relief sought and make the following order:

I declare that the defendants are bound by the original agreement entered into between Mr Pratt and Mr Ryan in December 1990, that is to say that the complainants shall receive 90 per cent of the proceeds of the Mineral Claims 26386, 26389, 26387 and 26388 and the defendants the remaining 10 per cent. The expenses incurred in mining these claims are to be met in the same proportions by the parties.

On the question of costs I see no reason why they do not follow the event in this matter and I propose to order that the defendants pay the costs of the complainants which I assess in this matter as one thousand and fifty dollars ($1050.00). I direct that that amount be also paid within three months from today. However I see no reason why the expenses proved by receipts or statutory declaration in relation to the sinking by the defendants of the holes since June 1992 cannot be offset against the award for costs in favour of the complainants.