

**IN THE MINING WARDEN'S COURT  
AT ST LEONARDS**

**J A BAILEY, CHIEF MINING WARDEN**

**THURSDAY 6 APRIL 2000**

**CASE NO. 1999/132**

**BRUCE ROBERT BROWN**

**v.**

**DALE LANE ADAM and LYN ANN ADAM**

**APPEARANCES AT HEARING:**

Complainant: Mr L Wilson, Solicitor of Doyle Wilson, Goondiwindi

Defendants: Mr W Browne, Solicitor of Browne Jeppesen & Sligar

**HEARING DATES:** 15 & 16 February and 21 March 2000 at Lightning Ridge

**INTERIM JUDGMENT**

**HANDED DOWN IN ABSENCE OF PARTIES**

On 21<sup>st</sup> October, 1999, Bruce Robert Brown made application for an urgent ex-parte injunction under the provisions of S.313 Mining Act, 1992, in respect of Mineral claims 42714, 42715, 42504 and 42505. The defendants were Dale Lane Adam and Lyn Ann Adam.

In that same application, final relief was sought as follows:-

- a. A declaration as to the complainants equity in the claims*
- b. A taking of accounts in relation to all transactions to the claims and partnership dealings*
- c. An order that the Defendants do all such things and sign all such documents to give full effect to the orders of the Court and in the event of any party failing to do any act or sign any document then the Registrar or the Chief Warden's Court at Lightning Ridge be empowered to do such acts or sign such documents.*
- d. Any other order this Honourable Court deems meet*
- e. Costs.*

After granting an urgent injunction, the matter was set down for hearing. Evidence was received on 15<sup>th</sup> and 16<sup>th</sup> February and 21<sup>st</sup> March 2000 at the Lightning Ridge Court House.

From the evidence received from three of the witnesses, that is, Bruce Brown, Richard Hudson and Dale Adam, it is apparent the following facts are not in dispute.

- Richard Hudson and Dale Adam were in a mining partnership, at a point of time Bruce Brown joined the partnership.
- Richard Hudson left the partnership, leaving Bruce Brown and Dale Adam with a 50/50 partnership.
- When Bruce Brown entered the partnership, there was some mining equipment owned by the partnership
- Dale Adam was not in a position to put any money into the partnership
- It was agreed that Dale Adam could take money out of the partnership, on a week to week basis, through, mainly, the sale of opals.

- Bruce Brown was in a position to, and in fact did, financially support the partnership.

The defendant Dale Adam is involved with this case insofar as he is a mining partner of the complainant Bruce Brown. The defendant Lynn Ann Adam has become involved in so far as she is the claimholder of mineral claims 42714 and 42715. I have been asked to declare that those two claims belong to the partnership of Bruce Brown and Dale Adam.

The dispute in this case involves:

1. The contributions made by each of the mining partners, both in money and equipment.
2. The value of the proceeds received from the partnership
3. The distribution of the current assets of the partnership.

The first matter that I wish to deal with is the allegation made by Mr. Brown in his Affidavit, wherein he stated that he observed a Mr. Graham Horneybrook mining mineral claim 42714 on 20<sup>th</sup> October, 1999. The inference to be drawn from that statement is that a third person was taking profits from the partnership of Mr. Brown and Mr. Adam, without the knowledge or consent of Mr. Brown. From the evidence produced to me in court, I accept that Mr. Horneybrook was not mining that particular mineral claim but was merely using a drive within the claim to transport his mining equipment to his adjoining claim and was doing so with the consent of Dale Adam.

Mr. Brown indicated to the court that upon entering the partnership, he contributed the sum of \$1,000 in cash initially, then he contributed to the partnership, by way of the purchase of machinery, the sum of \$46,989.63. That sum is itemised in a list which has been tendered to the court and marked exhibit 1. In addition to that, he tendered a list of contributions he has made to the partnership. That document was marked exhibit 2 and totals the sum of \$98,738.71, this latter amount including the sum previously mentioned for the machinery.

From these sums must be taken the government diesel rebate, amounting to \$4,585,04; concluding that Mr. Brown has contributed a total of \$95,153.67.

Mr. Brown gave evidence that he was mining a claim, then numbered 41064 which he subsequently transferred into the name of Lyn Adam, as mineral claim 42714. Under cross examination he denied that his claim had lapsed; exhibit 4 clearly indicated that the mining registrar notified Mr. Bruce Brown, by letter dated 3<sup>rd</sup> September, 1998, that his claim, 41064 had expired in August of that year. This evidence is significant in that it establishes that Mr. Bruce Brown's recollection of all events is not entirely accurate. However, notwithstanding that, I accept that mineral claim 42714 is an asset of the partnership between Dale Adam and Bruce Brown.

Mr. Brown acknowledged that upon entering the partnership, there was equipment already being used on the claim, which was not supplied by him but was part of the partnership. From Mr. Brown's evidence, Mr. Adam contributed the use of a Toyota 4 wheel drive vehicle. A value of \$12,500 was put on that vehicle. In addition, Mr. Adam contributed "small amounts of fuel and small running repairs"; although he indicated he had no idea of the value of this, it would not be in excess of \$5,000.

Dale Adam was in partnership with Richard Hudson prior to Mr. Bruce Brown entering the partnership. Mr. Adam told the court that a record was kept of equipment purchased when he and Mr. Hudson were mining. A book, marked exhibit 9 was tendered, noting "mining gear" purchased. At the time of Mr. Brown entering the partnership, equipment to the value of \$38,823 belonged to the partnership of Adam and Brown. However, a perusal of that exhibit clearly shows that the sum as written by Mr. Adam was not entirely for equipment, but was for other items, including fuel, food, repairs and other matter which were not of a capital nature. Under cross examination he agreed that the \$38,823 was the amount which he contributed to the partnership before Mr. Brown was a partner.

Mr. Brown's evidence, as per his affidavit, as to the equipment that was on hand upon his entering the partnership was: one hoist - one bogger - one Diamond t tip truck. He does not put a value on those items. However, Mr. Adam has a different version

of the equipment that was on hand at the commencement of their partnership. He cites a bogger, a hoist, a Diamond T tip truck, a generator, 3 jack hammers, 2 caravans and camp equipment, leads and cement mixer. He places a value of \$34,400 on those items. With the assistance of the written notes in exhibit 9, I accept Mr. Adams version of the equipment on hand when the partnership of Brown and Adam was formed.

It is common knowledge that in another case heard prior to this matter, orders were made that both Mr. Brown and Mr. Adam pay Mr. Richard Hudson money which was owed to him from the partnership when he left. Consequently, the equipment purchased by Hudson and Adam now become assets of the partnership between Brown and Adam.

It would appear Mr. Adam left the recording of equipment and expenses to Mr. Brown when Mr. Brown entered the partnership. Although Mr. Adam can't agree as to the sum contributed by Mr. Brown, as outlined in exhibit 2, no evidence has been produced to suggest that those figures are wrong. Many of the items outlined in exhibit 2 are cash payments and cannot be substantiated by Mr. Brown by any other means, other than his evidence on oath. Mr. Adam does concede the cash payment of 4-9-98 for \$4,000, but no other cash payments.

Mr. Adam agrees under cross examination that since Mr. Brown has been in the partnership, Mr. Adam has contributed \$5,000 at the most to the partnership, in addition to the Toyota 4 wheel drive vehicle. From the questioning of Mr. Adam about that vehicle, it is clear that the use of the vehicle was a loan to the partnership. Although it is agreed that the vehicle is valued at \$12,500, when it was not being used for mining purposes, Mr. Adam had it at his disposal for private use.

Other than this amount, Mr. Adam has not contributed to the partnership, but has merely taken money from it, by agreement, from the sale of opals. Mr. Adam indicated to the court that Mr. Brown agreed for him to take his living expenses from the opal sales. Mr. Brown gave evidence of saying to Mr. Adam, "how far in front are you with the money" to which Mr. Adam replied, "\$16,000". Mr. Brown said he was

owed a further \$1500 being his share of opal sold by Adam at that time, as well as \$600 being his share from the sale of the jackhammer.

At one point during the proceedings, when the complainant was requested to itemise what was being sought, Mr. Wilson suggested the Toyota 4 wheel drive brought into the partnership by Mr. Adam and the machinery brought into the partnership by Mr. Brown be given back to the individuals. Having regard to the evidence, that would appear to be a very just and equitable solution to part of the distribution of the assets. The partnership has had the use of this equipment, the partnership has paid for the maintenance and repairs of the equipment. Certainly so far as Mr. Adam is concerned, he used his subject vehicle for private use when it was not being used in the partnership.

### **CONTRIBUTION TO PARTNERSHIP**

I find, on a balance of probabilities, the contribution, of a non capital nature, to the partnership is as follows:

Bruce Brown:	The initial \$1,000 cash, plus the amount in exhibit 2, \$98,738.71, less the cost of the equipment, \$46,989.63, less the diesel rebate of \$4,585.04 - a total of \$48,164 (to the nearest dollar).
Dale Adam:	The sum agreed upon by both Mr. Brown and Mr. Adam - \$5.000

### **DISTRIBUTION OF PROCEEDS**

As to a distribution to the partners, it is shown from exhibit 9, the record kept by Mr. Adam at the page indicating "opal split up", that Mr. Brown received \$25,845 from the sale of opals and Mr. Adam received \$33,840

### **OPALS ON HAND**

Accepting the evidence of Mr. Trood as to the value of the opals held by Mr. Adam, the value is \$9,715.00. No official valuation was placed upon all the opals held by Mr. Brown, two only were valued by Mr. Trood. However, Mr. Brown gave evidence that he estimated the opals he had on hand to be \$23,500, and he said that Mr. Adam

had estimated them to be worth \$25,000. As Mr. Adam estimated in court that the value of opals held by him would be \$9,000 and this was prior to Mr. Trood putting a value of \$9,715 on them, I must place some weight upon the opinion expressed by Mr. Adam to Mr. Brown. Consequently, I propose to put a value of \$25,000 upon the opals held by Mr. Brown.

### **CALCULATIONS OF CONTRIBUTION TO AND DISTRIBUTION FROM PARTNERSHIP**

In making calculations below, it is assumed both Mr. Brown and Mr. Adam will retain the opals each has in his possession and the value placed upon each parcel will be used in the calculations.

In calculating contributions to the partnership and income received from the partnership, I propose to exclude those matters which I have referred to as items of a “capital nature”, that is:

- the equipment on hand when Mr. Brown entered the partnership
- the equipment purchased by Mr. Brown after he entered the partnership and
- the Toyota 4 wheel drive vehicle, owned by Mr. Adam and used by the partnership.
- mineral claim numbers 42714, 42715, 42504, 42505 and 43010 (the last numbered claim being one that Mr. Brown conceded was registered in his name and ought to form part of the partnership claims).

	Bruce Brown	Dale Adam
Contributions made:	(a) \$48,164	(b) \$ 5,000
Money from opal sales	(c) \$25,845	(d) \$33,840
Value of opal on hand	(e) \$25,000	(f) \$ 9,715

Total expenses put into the partnership (a + b) is \$53,164, which according to the partnership agreement, should be contributed on a 50/50 basis, that is, Mr. Brown and Mr. Adam ought to have contributed (g) \$26,582 each.

The Gross income from the partnership (c + d + e + f) is \$94,400. If this amount is distributed on a 50/50 basis, Mr. Brown and Mr. Adam would be entitled to (h) \$47,200 each.

In reconciling the accounts of the partnership, Mr. Brown has contributed (a - g) a sum of \$21,582 (i) greater than required under the partnership; Mr. Adam has contributed (b - g), which is \$21,582 (j) less than required.

Income by Mr. Brown is (c + e) \$50,845 (k), which amounts to (k - h) \$3,645 greater than his entitlement under the partnership; Mr. Adam's income (d + f) of \$43,555 (l) amounts to (h - l) \$3645 (m) less than his entitlement.

CONSEQUENTLY, Mr. Brown is owed the sum of \$17,937 by the partnership and Mr. Adam owes the partnership the sum of \$17,937.

After considering all of the evidence, which included the documentation supplied by both Mr. Brown and Mr. Adam, it appears there is reasonable accuracy in the documentation and in the estimations given orally by the parties. The uncontested evidence of Mr. Brown, which is outlined at page 5 of this judgment, has Mr. Adam indicating he was \$16,000 "in front with the money".

As I indicated earlier, the calculations above were based upon the premise that it would be just and equitable for the distribution of assets to involve the return to Mr. Brown of equipment he purchased for the partnership and the return to Mr. Adam of the Toyota 4 wheel drive he was utilising in the partnership. In addition to the sum of \$17,937 which is owed to the partnership by Mr. Adam and which amount the partnership owes Mr. Brown, the following assets are to be distributed on a 50/50 basis:

1. Equipment on hand when Mr. Brown entered the partnership (outlined on page 4)
2. Mineral Claims 42714, 42715, 42504, 42505 and 43010



As I indicated at the conclusion of the evidence in this case, I do not propose at this point of time to proceed in this judgment as to how the assets of the partnership ought to be split. I shall give the parties an opportunity, after considering the above matters, to either settle on a final order, or alternatively to make submissions to me, either in writing or orally in court, as to the final orders to be made by the court.