

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

J A BAILEY, CHIEF MINING WARDEN

THURSDAY 16 JULY 1998

CASE

NUMBER

PARTIES

1998/7	Australasian Mining Title Services Pty Ltd v. Dudley Gordon
1998/8	Rangott Mineral Exploration Pty Ltd v. Dudley Gordon
1998/9	Rutherford Mineral Resource Consultants v. Dudley Gordon
1998/13	Surtec Geosurveys Pty Ltd v. Dudley Gordon
1998/14	Geological and Management Services Pty Ltd v. Dudley Gordon

APPEARANCES:

Complainants: L. Moore, Solicitor

Defendant: D. Staihli of Counsel instructed by Casual & Kelso

HEARING DATES: 28, 29 May 1998

JUDGMENT

These matters involve claims against Dudley Gordon by five entities, for work performed by those entities in respect of EL 5184 and EL 5231 - being explorations licences held by Dudley Gordon.

Due to a common thread throughout the matters, they were all heard together. A brief outline of individual claims will be attended to later in this judgment. A directions hearing was held on 17th April, 1998, wherein directions were given concerning, inter alia, supply of particulars and the lodging of a defence. On 27th May, 1998, a defence was lodged in each matter, principally on the ground that any agreements entered were not by the defendant on his own account but as agent for and on behalf of Rockvale Resources (Australia) Pty. Limited. The hearing of the evidence commenced on the following day, 28th May and was finalised on 29th May, 1998.

Before looking at the merits of this case, having regard to the defence lodged, a brief look at the law of contracts involving agency and principal should be considered.

Privity of Contract:

The question of privity of contract was considered by the High Court of Australia in *Trident General Insurance Co Ltd v. McNiece Bros. Pty Ltd* (1988)165CLR107. Privity was defined by Deane J. as “the general rule that only the parties to a contract are bound by, and entitled to enforce its terms”.

An exception to this rule is the involvement of an agent. In some instances, the fact that a person is an agent is not within the knowledge of the third party entering the contract. This doctrine of undisclosed principal is explained in p649 of the 6th Aust. Edition of Cheshire & Fifoot's *Law of Contract*:

Where an agent, having authority to contract on behalf of another, makes the contract in his own name, concealing the fact that he is a mere representative, the doctrine of undisclosed principal comes into play. By this doctrine either the agent, or the principal when discovered, may be sued, and either the agent or the principal may sue the other party to the contract...

Whether or not an undisclosed principal exists, depends upon the facts and circumstances of each case.

To consider whether or not the principal or agent can be sued, three possible cases exist:

- *the agent may not only disclose to the third party the fact that he is a mere agent, but may also name his principal*
- *he may disclose the fact of the agency but withhold the name of the principal*
- *he may conceal both facts, in which case the third party will believe, contrary to the truth, that the agent is himself the principal and that nobody else is interested in the contract.*

If the first case exists, the general rule is that the principal alone may be sued. There is, however an exception. In *Montgomerie v. United Kingdom Steamship Association* [1891] 1QB370 at 372 Wright J. said:

“..in all cases the parties can by their express contract provide that the agent shall be the person liable either concurrently with or to the exclusion of the principal.”

The second case depends upon often the intention of the parties. Mere non disclosure of the principal's name is not, in itself, sufficient to make the agent personally liable. It can depend upon the nature of the agreement, the form of the contract, the nature of the agent's business, whether it is intended that the agent should possess rights and liabilities.

In the third case, if it exists, the doctrine of undisclosed principal comes into effect. By this doctrine, either the agent, or the principal when discovered, may be sued.

A simple outline of the chronology of events concerning the complaints is:

22.09.95	Exploration Licences granted to Dudley Gordon
1995/6/7	Dr Ian Blayden performs some work on Licences for Mr Gordon and assists in the acquisition and initial evaluation of EL 5184, 5231
14.01.97	EL granted to Dudley Gordon
18.02.97	EL granted to Dudley Gordon
02.09.97	Rockvale Resources (Australia) Pty Limited registered with A.S.C.
October 1997	Dr Blayden invites Neil Rutherford to meet Mr Gordon to discuss Rutherford's possible involvement if project proceeds
Mid Nov 97	Dr Blayden requested by Mr Gordon to initiate a program of sampling on EL's 5148, 5231.
Late Nov 97	Dr Blayden requestes Mr Rutherford to commence work. Rutherford contacts Maxwell Rangott and requests he works on project.
02.12.97	Reginald Court commences work on project at the request of Dr Blayden.
03.12.97	Robert Harrison commences work on the project at the request of Dr Blayden.
09-26.03.97	Complaints and summons issued by 5 entities against Dudley Gordon

I shall now outline the evidence presented before the court in respect of each claim. The first witness was Dr. Ian Blayden, who presented evidence on behalf of the complainant **Geological and Management Services Pty. Ltd.** That company claimed the sum of \$17,590.06 for work done between 24 November, 1997 and 21 January, 1998.

Dr. Blayden was introduced to Mr. Gordon through a colleague and was requested to assist Mr. Gordon in respect of some exploration licences which were in existence. This was about 1995 or 1996. Dr. Blayden rendered assistance with the preparation of documents which were to be utilised for seeking overseas investors.

Dr. Blayden visited sites with Mr. Gordon and people from Korea in 1996 and also with people from Canada, on occasions in 1996 and 1997.

Dr. Blayden prepared the annual reports and assisted Mr. Gordon on the half yearly reports for both EL 5231 and EL 5184. Those reports have been admitted into evidence as exhibits 6, 7, 8,9 and 10. Dr. Blayden did not seek payment for those reports, having regard to an arrangement existing between himself and Mr. Gordon.

It is the evidence of Dr. Blayden that when working in September, 1997, he became aware of a company, Rockvale Pty. Limited. He was aware, due to continuing discussions with Mr. Gordon, that an attempt was being made to float a company in Canada. Dr. Blayden became aware that funding was available through Canadian investors and there was to be an Australian company formed for the purpose of passing money through that company.

All instructions given to Blayden were given by the defendant, Dudley Gordon. Dr. Blayden was aware that the exploration licences were in the name of Dudley Gordon and recalls being aware that Dudley Gordon was a director of Rockvale; although he is unaware of how he received this information. He gives evidence that he was never told that there was any change with Mr. Gordon as a person, the only change he was aware was the method in which invoicing was to take place. Under cross examination he was asked whether he told other contractors to send accounts to Rockvale, his reply was "I think they were told to bill Mr. Gordon c/- Rockvale Resources".

Dr. Blayden has assisted in respect of access arrangements with landholders and those agreements were always in the name of Dudley Gordon, being the licence holder; there was never any mention on the agreements drawn up or in any verbal agreement, of a company Rockvale Resources. Exhibit 13 is testament however to the fact that

the name Rockvale Resources was used in one instance in February, 1998 when seeking permission for access.

Under cross examination Dr. Blayden indicated as far as he was concerned the advice in respect of the Australian company being setup was given to him for the purpose of rendering invoices. He was advised to send invoices to the company. A perusal of invoices attached to exhibit 5 show invoices addressed to Mr. Dudley Gordon, c/- Rockvale Resources Limited. Also in that exhibit is the project expense sheet in which the project is referred to as "Rockvale Resources (Australia) Pty. Limited."

Reference was made to a fax which is attached to exhibit 12, Dr. Blayden was asked whether, as at 30 November, 1997, he believed that work was to be carried out on behalf of Rockvale Resources (Australia) Pty. Limited and he replied in the affirmative.

In summary, Dr. Blayden performed work for Dudley Gordon before any company had been formed. He was aware the exploration licences were in the name of Dudley Gordon. He was aware money was being sought through a Canadian company and was going to be utilised to explore in Australia. He was aware on 30th November, 1997 that work was being carried out on behalf of Rockvale Resources (Australia) Pty. Limited. Invoices were not sent until mid December, 1997 and they were not directed to Rockvale Resources (Australia) Pty. Limited but to Dudley Gordon, c/- Rockvale Resources Pty. Limited.

The next witness, Neil Frederick Rutherford, presented evidence on behalf of the complainant **Rutherford Mineral Resource Consultants**. The claim in this instance is for the sum of \$7,391.42 for work performed between 20 November, 1997 and 17th December, 1997.

Neil Frederick Rutherford, who operates under the business name of the complainant, gave evidence of being invited by Ian Blayden to lunch with him and the defendant in October, 1997. At that meeting, discussions took place concerning Mr. Rutherford

undertaking exploration activities at two locations, concerning the subject exploration licences. It would appear at that point of time discussions revolved around how Mr. Rutherford could be involved in the project if finances were to be made available.

The next contact was with Dr. Blayden about one month later asking about availability. Although no discussions took place about payment, it was Mr. Rutherford's understanding that "Rockvale" was a term that was used. He understood that Rockvale was an entity in which the exploration licences would ultimately reside and which also would be the source of finance for the operation.

Mr. Rutherford told the court that at the first meeting he was informed that the defendant was going to finance prior to money coming from Rockvale. It was later that Mr. Gordon told him to invoice Rockvale. On two separate occasions under cross examination, Mr. Rutherford indicated that Mr. Gordon was to supply the funds personally until funds were forthcoming from Rockvale. When he was asked as to why he sued Dudley Gordon instead of Rockvale Resources (Australia) Pty. Limited, he replied that the work was done on behalf of the licence holder (who is Dudley Gordon).

He was then referred to Exhibit 3, wherein he, Mr. Rutherford, refers to Rockvale Resources (Australia) Pty. Limited as being the licence holder. Mr. Rutherford replied that he assumed at that point of time that Rockvale was the licence holder.

A perusal of exhibit 3 shows that Invoices from Rutherford Mineral Resource Consultants were addressed to the company and not to Mr. Gordon. A Fax of 18th December, 1997 was addressed to Ian Blayden of Rockvale Resources (Australia) Pty. Ltd. A letter of 17th March, 1998 states in part: "I was commissioned by Rockvale Resources through Ian Blayden to organise and commence a program....."

It appears on the evidence of Mr. Rutherford, that his understanding was, payment for performing the subject work would be forthcoming from Rockvale Resources (Australia) Pty. Limited.

Evidence was given on behalf of the claim by **Rangott Mineral Exploration Pty. Ltd.** by Mr. Maxwell Rangott. The claim by that company is for the sum of \$15,988.00, for work carried out between 8th December, 1997 and 31st January, 1998.

This complainant company became involved in performing work under exploration licence 5231 after Mr. Maxwell Rangott was contacted by Mr. Neil Rutherford in late November, 1997. Maxwell Rangott gave evidence of being informed by Mr. Rutherford that the work was to be performed for a Double Bay entrepreneur, who was going to float a company for a Canadian company. Mr. Rangott had been informed that Mr. Gordon had applied for and held an exploration licence, although he - Mr. Rangott - did not check this independently. He gives evidence that he asked Neil (Mr. Rutherford) who to bill, the reply was:

“Dudley Gordon, no, make it to Rockvale, c/- Dudley Gordon.”

Under cross examination, Mr. Rangott agreed that Ian Blayden sent him a copy of registration of Rockvale Resources (Australia) Pty. Limited because:

“I needed some confirmation that it existed .. I was not sure who I was working for at that point..”

Exhibit two includes copies of various documents prepared by Mr. Rangott. One document is a facsimile from Mr. Rangott to Mr. Gordon dated 12th December, 1997. That document refers to various costings and part of the first sentence is:

“...I have prepared estimates of our likely charges, on a week-by-week basis, from the period covered by our first invoice to Rockvale.”

On page 2 of that document, the following appears:

“We probably won't receive the itemised phone bills.....until at least January, so they will have to be billed on to Rockvale in 1998.”

Other documents in that exhibit are invoices addressed to:

“Dudley Gordon
Rockvale Resources (Australia) Pty. Ltd.
P.O. Box 1275,
Double Bay. N.S.W. 2028”

or correspondence addressed to the company and marked to the attention of Dudley Gordon.

Time sheets indicate the client to be Rockvale Resources Pty. Ltd., under cross examination Mr. Rangott was asked: "I presume you said to those who fill out that form that the client was Rockvale?" to which he replied: "Yes." And some short time later in response to a question Mr. Rangott stated: "...it was very clear though during the course of these negotiations we were working for Dudley Gordon".

Mr. Rangott conceded that payments that had been received from invoices were drawn on Rockvale Resources and not personal cheques of the defendant. He further indicated that the only contact he had with Mr. Gordon was a telephone call to "speed things up".

Surtec Geosurveys Pty. Ltd. claims the amount of \$27,046.98 for work carried out between 5th January, 1998 and 10th February, 1998.

Reginald James Court gave evidence on behalf of the complainant. Mr. Court became involved with the project after being contacted by Dr. Ian Blayden on 2 December, 1997. He had subsequent conversations with Mr. Rutherford and Mr. Gordon. Exh. 4 has a quotation prepared by Surtec Geosurveys Pty. Ltd. and addressed to "Rockvale Resources (Aust) Ltd. An acceptance of that quote was received by the complainant company - the acceptance was on the letterhead of Rockvale Resources (Australia) Pty. Limited and signed by Dudley Gordon, as Director of that company.

Mr. Court gave evidence that he became aware that the Exploration Licences was granted in the name of Dudley Gordon. It was his understanding that Rockvale Resources were involved but the bulk of instructions came verbally from Ian Blayden or the defendant.

All documentation in exhibit 4, prepared by the complainant company, refers to the client as being Rockvale Resources and any correspondence is addressed to either the

company or to individuals at the company (such as Dudley Gordon, Ian Blayden, Jerry Rainer) - no correspondence is directed to the defendant in his personal or individual capacity.

Robert George Harrison gave evidence on behalf of **Australasian Mining Title Services Pty. Ltd.** That company claims \$7,637.18 for work carried out between 5th December, 1997 and 27th January, 1998.

Mr. Harrison, an employee of that company, told the court of receiving a telephone call from Ian Blayden on a Wednesday night, requesting urgent searches to determine the names of landowners for the purposes of access agreements.

The following Friday he received a call from the defendant, wanting a field officer to attend the area urgently to assist with access agreements. Mr. Harrison indicated he could have a field officer there on Monday. He conducted a search of the Department of Mineral Resources records and ascertained that Mr. Dudley Gordon was the holder of two exploration licences.

He received another call wanting someone to be in the area on Sunday. Mr. Harrison thought it was too rushed; but Mr. Dudley Gordon arranged for the plane tickets to the site. The field officer left Sydney with a pre-prepared access agreement form - with the name of Dudley Gordon appearing on it as the licensee and one party to the agreement.

On the Tuesday, he had a telephone call with Mr. Gordon, to discuss the field officers daily rate. There was an agreement struck at the rate of \$750 per day. On Thursday Mr. Harrison once again spoke to Mr. Gordon by telephone, seeking to have his field officer return to Sydney; however, Mr. Harrison said: "He (Mr. Gordon) stated he was going to keep Rodney (the field officer) until he had finished with him." Of Mr. Gordon, Harrison said: "...he was directing the show - he was directing me".

Mr. Harrison tendered into evidence a certificate under Section 172 of the Mining Act 1992. That certificate states that exploration licences 5184 and 5231 were granted in the name of Dudley Gordon. Further, there has been no application lodged to transfer

title of those licences to any other party and no legal or equitable interest of the kind referred to in Section 161 of the Act has been registered or requested to be registered.

Exhibit 1 contains copies of correspondence between Australasian Mining Title Services Pty. Ltd. and the defendant concerning the work performed by the complainant company. All correspondence, including invoices, from the complainant is addressed to Mr. Gordon personally - there is no reference to the company Rockvale Resources (Australia) Pty. Limited. Correspondence to the complainant company are either on Rockvale letterhead or no letterhead and signed by Dudley Gordon above the words "Rockvale Resources (Australia) Pty. Ltd" or alternatively, on a letterhead consisting of an address and phone number etc. and simply signed "Dudley Gordon".

The field officer, Rodney James George gave evidence on behalf of the complainant. He indicated to the court that he presented a pro-forma agreement to Mr. Gordon on the Sunday night at Kempsey. Mr. Gordon questioned as to why it was in his name. Mr. George replied that it was in his name as he was the titleholder of the licence.

The Defendant Dudley Gordon gave evidence of obtaining Exploration Licences 5184 and 5321 - those licences still being current. He went to Canada to seek finance to explore under the licences. A representative from a Canadian Company (Jerry Rainer) came to Australia to conduct a survey. Mr. Gordon was unable to agree on a joint venture with a Canadian company. Subsequently, a public company was formed in Canada, Rockvale Resources Pty. Ltd. Preliminary work was required to list it on the Alberta Exchange. Mr. Gordon approached Dr. Ian Blayden, indicated he needed to get financing and asked Dr. Blayden what should be done first. They met in October, 1997 - Mr. Gordon said he made it clear that the company was being listed in Canada and work was required for that purpose. He said that "it" was always discussed as "Rockvale". Rockvale Resources (Australia) Pty. Limited was a shelf company formed in September, 1997. Mr. Gordon is a sole director of that company.

In November 1997 Mr. Gordon went again to Canada concerning the listing of Rockvale Resources on the Alberta Exchange. He returned to Australia and told Dr. Blayden that he had the financing and Blayden should proceed with the sampling. He

said to Dr. Blayden, "Now this work is for Rockvale Resources Australia, which has been registered."

It appears from the evidence of all the witnesses that Dr. Ian Blayden was the catalyst in bringing other companies into performing exploration work on EL 5184 and 5231.

Mr. Gordon recalls sending a copy of the certificate of registration of Rockvale Resources (Australia) Pty. Limited to one of the parties who was performing work under the licences. He said he did not ask anyone to do work on his behalf, it was always on behalf of Rockvale

Mr. Gordon states that any money paid to any of the complainants was paid out of the bank account of Rockvale Resources (Australia) Pty. Limited. Exhibit 21 is a copy of a bank Statement for the account of that company. 8 December, 1997 saw a credit of \$51,834.96 into the account, and a credit of \$211,282.48 was deposited on 23 December, 1997. Mr. Gordon indicated those two credits came from the Canadian company Rockvale Resources. Mr. Gordon noted three entries appearing on exhibit 21 as being payments to Rangott Mineral Exploration Pty. Ltd; to Surtec Geosurveys Pty. Ltd and to Geological and Management Service Pty. Ltd.

Under cross examination, it is ascertained that three companies by the name of Rockvale Resources exist, one in Canada, one in Australia and one in Barbados. Mr. Gordon is a shareholder and director of the Canadian company, he is a director and not a shareholder in the Australian company and he has no interest in the Barbados company. The Canadian company is the shareholder of the Barbados company; the Barbados company is a shareholder in the Australian company and the Barbados company, by declaration of Trust (exhibit 22), signed by Dudley Gordon, holds the beneficial interests in Exploration Licences 5184 and 5231.

Mr. Gordon indicated the Barbados company was created and received the beneficial interest in the exploration licences because it was a taxation advantage to the Canadian investors. He agreed under cross examination that the Barbados company had an equitable interest in the exploration licences as at the date of the certificate

under S.172 of the Mining Act, 1992, but he had not advised the Department of Mineral Resources of this interest. He agreed that someone would be misled if they relied upon that certificate as to other parties having no interest in the exploration licences.

He further agrees that he had engaged a number of workers on exploration of the areas subject to the leases, prior to the 3rd December, 1997, before any funds were available to the company Rockvale Resources (Australia) Pty. Limited.

Mr. Gordon denied that he would be putting his own money into the project and stated that although the Australian company had no money, money was available in the Canadian company to meet the costs of exploration under the two licences. He agreed money was transferred from Canada for the purposes of exploration. As at 2nd January, 1998, according to exhibit 21, the account for the Australian company was in credit \$216,153.66. He stated that all funds in the Australian company have now been expended, on exploration and "for other administrative work". He agreed that the complainants are the only companies that have performed exploration work under the licences.

Other than a company which will be attending the invoices, Mr. Gordon does not give evidence, nor is there any evidence from any of the complainants, as to any explanation by Mr. Gordon as to the exact role played by Rockvale Resources (Australia) Pty. Limited in respect of the exploration taking place.

SUBMISSIONS

In opening his submissions on behalf of the defendant, Mr. Staihli stated:

"The defendant's submission in each of these cases is that they are completely without hope and should be dismissed."

Mr. Staihli isolates the matter involving Mr. Harrison - as clearly from the facts before the court - the position of that witness so far as knowledge of Rockvale Resources (Australia) Pty. Limited is quite different from the other witnesses. However, Mr. Staihli submits, inter alia, "...none of the circumstances which surround what Mr.

Harrison says would enable Your Worship to conclude that his position was any different.”

The defence urged the court to find that, with the exception of AMTS, all invoices deal with Rockvale Resources Australia Pty. Ltd. and coupled with other documentation, “everyone was under no misapprehension that the job was Rockvale’s job.” Mr. Staihli submitted that the evidence goes beyond a circumstantial case by the fact that on 28th November, 1997, Mr. Gordon faxed Dr. Blayden the Certificate of Incorporation of Rockvale Resources (Australia) Pty. Limited.

Submissions by Mr. Moore on behalf of the Complainants is that Rockvale Resources (Australia) Pty. Limited is only a vehicle or conduit to the true principal Dudley Gordon.

Mr. Moore submits that Rockvale Resources is simply the agent to Dudley Gordon. He cites the fact that the licences are held in the name of Dudley Gordon, there is no other interest noted on the title. From the evidence it is very obvious that Dudley Gordon is in control of operations, his involvement was such that the complainants did not know who the principal was. As the company did not exist until 2nd September, 1997, the exploration licences could not have been applied for on behalf of the company.

Mr. Moore makes reference to a letter which is attached to exhibit 19, from P. A. Somerset & Co., Solicitors, dated 19th November, 1997, to the Department of Mineral Resources. That letter is expressly written on behalf of Dudley Gordon, no mention is made of Rockvale Resources (Australia) Pty. Limited. “Why was it necessary for Dudley Gordon’s Solicitors to obtain the information from the Department of Mineral Resources? It was to indicate to his Canadian associates that he holds the exploration licence without encumbrance, but why is it necessary for Canada to be possessed of this information in order to enter into an agreement with Dudley Gordon and to float the public company? Dudley Gordon is in fact the true principal, the Australian company is only a repository of funds to do the preliminary exploration work in order to establish the Canadian float.”

In further submissions, Mr. Moore makes reference to various sections of the Mining Act, 1992, in particular section 5, which prohibits mining without an authority. As no other interest is registered under S.161 of the Act, the only person who can authorise work to be performed under these exploration licences is Dudley Gordon. Mr. Gordon gave the authority for his agents to enter the area subject to the licences to perform the work. He was the only one legally able to do that. Dudley Gordon, it is submitted, is the true principal.

Mr. Staihli, in reply, submitted that clearly every piece of documentary evidence, let alone every other piece of oral evidence, Mr. Gordon was the agent for Rockvale and not the other way.

He submitted that the various sections of the Mining Act, 1992, referred to by Mr. Moore had no relevance whatsoever in this matter and furthermore, if they were relevant, it is my understanding of his submission, they should be interpreted extremely widely, otherwise a licence holder may be liable for contractual relationships "which happens downstream of him".

The final submission on behalf of the defendant was that the role of the court in this instance is to explore what objectively, not by virtue of statute, is the contractual relationship between the party.

The pivotal question at this point of time is who or what is the principal in these contractual relationships. The Shorter Oxford Dictionary, defines "principal" as:

First in rank or importance; prominent, leading - and also - A head man or woman; the person for whom and by whose authority another acts.

The common principal/agent scenario which exists in everyday workings of our society is the salesperson taking an order from a customer of a department store. Generally, there is no misunderstanding by anyone that the customer is contracting with the department store and not the salesperson personally. There is no difficulty in

ascertaining principal and agent in this example. The distinction is not as clear in the matters before the Court.

Some complainants were well aware of the existence of Rockvale Resources when they performed the work. Others, such as Mr. Harrison, was only aware of the name Dudley Gordon, when his company performed the work. Questions were asked of witnesses as to why they sued Mr. Gordon when they were of the opinion they were performing work on behalf of Rockvale Resources. The reply was that Dudley Gordon was the licence holder.

If the principal must be determined on the basis of the belief and understanding of the contracting parties as to who the work was being performed for and whether that person or entity was intending to enter contractual relationships with the parties, then there would be individual consideration of the evidence of each of the complainants and decisions made accordingly.

If the principal must be determined having regard not only the facts arising in each instance but also having regard to the role a registered licence holder plays in the facts, together with the provisions of the Mining Act, 1992, then perhaps a more wholistic approach may be adopted to determine who or what is the principal in these cases.

Under the Mining Act, Rockvale could not authorise work to be performed under the exploration licences - it had no legal or equitable standing to do so. From that point of view the Company is subordinate to Dudley Gordon, the only person who could legally authorise work to be performed on his behalf under the exploration licences.

Witnesses have given evidence that it was their understanding that Rockvale Resources (Australia) Pty Limited was an entity in which the exploration licences would ultimately be held. This has never eventuated. It would appear from the evidence that the Defendant has deliberately, and not merely by an oversight, not involved any other person or Australian entity in the exploration licences. This is gleaned from exhibit 22 (dated 26th September 1997) which shows Mr Gordon by Deed of Trust gave a beneficial interest in the exploration licences to the Barbados

company; and further the letter in exhibit 19 from his solicitors, dated 19th November 1997, seeking confirmation from the Department of Mineral Resources as to whether there were any agreements recorded against the exploration licences held by Dudley Gordon. These two matters clearly indicate there was no oversight and that the lack of any person or entity recorded as having an interest must have been deliberate. Mr Gordon wanted to be solely in control.

If it was the intention of Mr Gordon that he was to be subordinate and the company to be the principal, he could have made an application under Section 120 of the Mining Act 1992 to transfer the licences to the Australian company.

Any prudent complainant after dealing with entities or persons, when finding it necessary to sue always make appropriate searches to ensure the correct person or entity is sued. It is clear from the evidence of the Complainants that they sued Mr Dudley Gordon "because he is the registered leaseholder".

In the complaints before the Court, the circumstances of the contracts are such that the provisions of the Mining Act 1992 must be taken into account.

In the circumstances surrounding the contracts it is clear that it is Dudley Gordon for whom and by whose authority the Complainants acted upon the exploration licences. Dudley Gordon is the principal and the company Rockvale Resources (Australia) Pty Limited is not. Consequently the Complainants are entitled to succeed in their claims against the Defendant.

Case 1998/7	-	Verdict for the Complainant in the sum of \$7,613.18
Case 1998/8	-	Verdict for the Complainant in the sum of \$15,988.11
Case 1998/9	-	Verdict for the Complainant in the sum of \$7,391.42
Case 1998/13	-	Verdict for the Complainant in the sum of \$27,046.98
Case 1998/14	-	Verdict for the Complainant in the sum of \$17,590.06