

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

J A BAILEY, CHIEF MINING WARDEN

FRIDAY 27 OCTOBER 2000

CASE NO. 2000/29

JOHN STURMER MAIDENS

v.

**GEOFFREY NEIL KEITH SHIELDS
LYNETTE ANN FORDHAM
NORMA SHIELDS
KEITH SHIELDS**

APPEARANCES AT HEARING:

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

Defendants: Mr T Boyd of Counsel instructed by Mr D Williams, Solicitor
of Matthews Williams

HEARING DATES: 17 and 18 October 2000 at Lightning Ridge

INTERIM JUDGMENT

HANDED DOWN IN ABSENCE OF PARTIES

This matter comes before the court, seeking, inter alia, a declaration as to the complainant's interest in three mineral claims within the Lightning Ridge mining district, that is, claims 44494, 44495 and 44496.

Some important issues are not in dispute, and they are:

- An oral agreement was entered into between Geoff Shields and John Maidens to mine Mineral Claims Nos. 44494, 44495 and 44496.
- Under the oral agreement, Maidens was to receive one third of the income from opals which were extracted from the claims, with Geoff Shields receiving two thirds of the income.
- Geoff Shields was to supply mining equipment and fuel.

What is in dispute and the critical issue to be determined by the court, is the duration of the agreement and whether or not the agreement was terminated in writing on 19 July 2000.

The agreement had its genesis in the Club at Grawin opal fields. John Maidens was discussing with Geoff Shields how he would work for one third of the opal finds. After the discussions both went their own way. The evidence is that either the next morning or the day after, Geoff Shields arrived at the camp site of John Maidens and said words to the effect of "get your boots on, we are going to work on 33 1/3"

There is no dispute that Geoff Shields did little in respect of the actual mining. He did supply the equipment and the fuel and visited the site either daily, or every other day, but would not remain in the mine for any length of time.

John Maidens worked the mine, with Carol Samuels as his "spotter", for about 3 weeks without finding any opal. At that point of time Geoff Shields informed him that there was fuel for one more week's work. Maidens gave evidence that he said to Geoff Shields,

"I'm going to back up 20 metres and go deeper". Upon doing that he came across opal, in his opinion worth *"close to half a million dollars"*.

John Maidens said that it was mentioned in passing that both he and Geoff Shields were to sell the opal together. However, he said that Geoff Shields just took the opal and sold it. Maidens would ask Shields whether he had sold anything that day and the reply would be *"no"*. However, he said that he found out from Geoff Shields' wife that they had sold a few thousand dollars worth.

An issue arose during the hearing as to where John Maidens obtained a specific opal. Mr Maidens took an opal to Jim Baxter for the purpose of having it cut and possibly sold. Some time after delivering that uncut opal to Mr Baxter, Mr Baxter formed an opinion that the opal given to him by John Maidens, came from the claim which is held by Geoff Shields. Mr Baxter informed Shields of this and subsequently the subject opal has been taken into the custody of the local police and is now the subject of a police Inquiry.

A possible inference to be drawn from this evidence is that Mr Maidens mined this opal from one of the claims of which he was in partnership with Mr Shields and has failed to account to Mr Shields for this opal. It has been submitted on behalf of the defence that the evidence surrounding this opal must bring some doubt as to the honesty of Mr Maidens.

Jim Baxter when polishing another opal handed to him by Geoff Shields, told the court that he formed an opinion that it was once a part of the opal that was handed to him by John Maidens. This is the evidence which raises the doubt concerning the manner in which Mr Maidens came across the opal. There were no other experts before the court who could support or dispute the opinion offered by Mr Baxter. Although I was not impressed with Jim Baxter as a witness, even if his opinion was correct, that is not to say that Mr Maidens came across the opal dishonestly.

Mr Maidens tells the court that he purchased the opal from Ernest Dunn, who found it whilst fossicking. Mr Dunn gave evidence before the court as to where he located the opal and of selling it for \$8000 to Mr Maidens.

It is known from other evidence given before the court that Geoff Shields' son, Keith Shields, was mining the claim before Mr Maidens entered the site and that Keith Shields had in fact dumped some opal clay from the site. Although I have reservations concerning the evidence of Mr Baxter, even if this opal came from Geoff Shields' claim, it is possible that Mr Dunn found it when he was fossicking, and subsequently sold it to Mr Maidens.

Whatever the origins of this opal which was given by John Maidens to Jim Baxter, I am not satisfied on the evidence before me that John Maidens was dealing with this opal dishonestly. Consequently I cannot use the evidence concerning this matter to discredit Mr Maidens or to infer that he has dealt dishonestly with Mr Shields.

John Maidens told the court about having an accident and injuring his leg. At this time Geoff Shields' brother, Isaac, came from Dubbo to work in the mine with Maidens. Isaac worked for one day only and, according to the evidence of Isaac, was then not allowed into the mine by John Maidens. According to the evidence of John Maidens, Geoff Shields told Maidens that he (Maidens) had to pay Isaac 15% of the opal proceeds. Maidens told the court that he informed Geoff Shields that he would not pay Isaac and if Isaac was to be paid Geoff Shields should pay him. At this point of time, John Maidens told the court that Geoff Shields said to him:

"Pack your f'en bags and get out of the claim".

It was shortly after this on 19th July 2000, that John Maidens signed a document. That document is marked exhibit 2 in the proceedings. The purpose of it, according to Geoff Shields, is to confirm that John Maidens had accepted some opal in full satisfaction of the

agreement entered into. Mr. Shields indicated that upon acceptance of the opal, the agreement between him and Mr. Maidens was over.

Exhibit 2 is a handwritten document, the wording of which is not clear. Isaac Shields wrote the document, as both Geoff and Kevin Shields could not write. The principal wording on the document states:

“4 stones about 300C.

Being full and final payment for shear in mining & opal”

I can only assume from the evidence that the word “shear” in exhibit 2 should be “share”.

According to John Maidens, four people turned up at his campsite on 19th July 2000 in a ute, Geoff, Kevin and Ike Shields and another person. The four of them jumped out of the vehicle. Mr. Maidens was at the front of the bonnet. He told the court Keith said to him, “*F-off*” and then placed 3 opals on the bonnet and said, “*you take them and sign this and get off*”. Maidens told the court that he took them and signed the document because he knew he “*would get nothing else out of him*”. Maidens said to the court that they were all big men standing around him and he felt very small. He said he did not want to sign the document. He told the court that although the document he signed indicated 4 stones, he did not have his glasses on at the time and only three stones were handed to him.

Before concluding evidence in chief, John Maidens was asked about the agreement he entered into with Geoff Shields. Maidens replied, “*He said at the beginning we could stay there forever*”. He then attributed these words to Geoff Shields: “*I’ve got 20 claims, you can stay and work the lot*”.

When cross examined about signing the document exhibit 2, the following exchange took place:

Q. Why were you frightened? A. They all came around me. . . . standing in the middle of an opal field.

Q. What were you frightened of? A. I could have been beaten.

Q. Why did you sign? **A.** If I didn't, I'd get no opal whatsoever...

(Carol Samuels informed the court that she was at the campsite on 19th July and heard the conversation between Geoff Shields and John Maidens. She said: "*Shields said 'do you want to take the stones - if you don't take them you will not get anything'.*")

Further along into cross examination, John Maidens was agreeing with questions put to him concerning the agreement between himself and Geoff Shields. He was then asked:

Q. That arrangement was to continue until either party said you wanted to end it? To which John Maidens answered: "Correct".

The defence wants the court to place a great deal upon that question and answer. Certainly the answer given by Mr. Maidens flies in the face of the evidence he gave in chief about the arrangement as to how long Maidens could work the claims belonging to Shields. Traditionally, courts will place more weight upon evidence elicited in cross examination than in evidence in chief. However, there is some doubt in my mind as to whether Mr. Maidens understood the question he was answering in the affirmative. I place this doubt upon the fact that after that question and answer, Mr. Maidens was still adamant that he did not sign exhibit 2 under his own free will. If it was Mr. Maidens' belief that either party could terminate the agreement at any time, why would he be concerned about signing exhibit 2?

My doubts as to the accuracy of that question and answer are increased by the evidence of the defence. If the agreement could be terminated by either party at will, one would expect that notice in writing to Mr. Maidens would be more than sufficient notice of termination of the agreement. There was no suggestion from the defence that the termination of this agreement was so simple. The defence evidence is that it was necessary for three to attend Maidens' campsite for the purposes of obtaining witnesses to Mr. Maidens' consent to terminate the agreement. Keith Shields, the son of Geoff Shields, told the court that the purpose of him attending the campsite on 19th July with his

father and uncle was “*to sort out a deal for him to leave*”. If it was an agreement to be terminated at will, there was no need for any deal to be made.

Geoff Shields wants the court to accept that he received a phone call from John Maidens about a week before the 19th July 2000. Geoff Shields said that during the phone call, “*John wanted the 4 opals in question and we keep The Fish. I said that I will think about it*”. I can infer that Geoff Shields wants the court to accept that the purpose of the phone call from Maidens was to negotiate a settlement of the agreement. This phone call has been strenuously denied by Mr. Maidens. If the phone call took place, it was terminated with Geoff Shields saying: “I will think about it”. In other words, Geoff Shields was thinking about the offer made to him by Maidens. However, of the three defence witnesses who attended the campsite on 19th July, not one of them made reference to Geoff Shields saying words along the lines of “I have accepted the offer you made on the phone”. Instead, Geoff Shields appears to be making the offer (curiously the same offer allegedly made by Maidens over the phone) with words such as: “will you accept this

.....” and “how about I give you 4 stones

I cannot accept that John Maidens made a telephone call as suggested by Geoff Shields.

I cannot accept that the attendance at the campsite on the date exhibit 2 was signed was for any other reason than to coerce Maidens to end the agreement.

On the evidence before the court, I cannot accept that it was the intention of the parties to enter an agreement that could be terminated by either party at will. It is clear that the agreement was to mine, at the very least, mineral claims 44494, 44495 and 44496. The mining of these three claims has not been finalised to date. This agreement could only be dissolved by the completion of the mining of the three claims, or by mutual agreement of the parties. I do not accept that the document which constitutes exhibit 2 terminated the agreement.

ACCORDINGLY, I find that the agreement is still on foot and the complainant, John Maidens, is entitled to one third of the proceeds of opal extracted from mineral claims 44494, 44495 and 44496.

In the final relief sought by the complainant, there is a request for “a taking of accounts in relation to all transactions in relation to the claim numbers 44494, 44495 and 44496.”

The defence submits that the complainant has received one third of the proceeds to date. The complainant challenges this.

John Maidens gives an estimate of opal to the value of about \$500,000 being extracted from the claims upon which he worked. Mr. Maidens has no documentation or other evidence to support this. A witness, Richard John Davis, gives evidence of being down the mine and observing the richness of the opals in the clay dirt. He described a seam of opal 6 to 7 feet wide and in layers one and a half inches thick to the roof. He said, “the opal was everywhere....my mate couldn't speak”.

This value placed upon the opal by John Maidens is denied by Geoff Shields; he told the court “about \$300,000” of opal was extracted. Mr. Shields also had no evidence to support his estimate. He kept no documentation or records of opal extracted or sold.

There is no other evidence than the estimates of Mr. Maidens and Mr Shields. One may say there could be a tendency for each to colour their estimate to suit their own needs. However, as there is no other evidence to assist the court and as Mr. Shields was involved in the sale of the opal, I must place greater weight upon his estimate of \$300,000. That being so, the amount required to be accounted to John Maidens is \$100,000.

There is a dispute as to the exact amount of money given to Maidens. Mr. Maidens stated in his originating affidavit and in court, that he had received the sum of \$74,000. That was made up of a payment of \$11,000 in cash, of opals given to and sold by John

Maidens, with a net return of \$24,000 and the opals given to John Maidens on 19th July 2000. Although the defence values them at \$60,000, the Complainant informed the court he had them valued by Shermans. Although the valuation was not put before the court, the complainant was adamant that the total he received was \$74,000 - I can infer the valuation placed upon the opal received on 19th July was \$39,000.

I am satisfied, on the balance of probabilities, that the total amount of opal received by John Maidens was \$74,000. Consequently, the defendants owe an outstanding sum of \$26,000 to the complainant, being his remaining share of opal that was extracted in accordance with the agreement between Geoff Shields and John Maidens.

It is clear after hearing the evidence of this case that the parties no longer have the trust in each other which is required to allow them to continue working an opal mine together. Part "C" of the Final Relief sought by the Complainant is:

"An order that the Defendants do all such things and sign all such documents to give full effect to the orders of the Court". No appropriate evidence has been placed before the court to allow me, at this point of time, to make a final order as to the splitting of the proceeds/assets. I propose at present to make a preliminary judgment in the following terms:

- 1. The Defendants are indebted to the Complainant in the sum of \$26,000, being the balance owing from the proceeds of opals extracted under an agreement entered into between John Maidens and Geoffrey Shields.**
- 2. John Maidens is entitled to one-third of the proceeds of remaining opals extracted from Mineral Claims 44494, 44495 and 44496.**

I will allow the parties to negotiate with each other in an attempt to come to an agreement as to how the above orders may be put into place. If there is no agreement within 28 days, the matter may be relisted before the court for submissions as to final orders.

Insofar as costs are concerned, there is nothing extraordinary in this matter and I see no reason why cost should not follow. I propose to make an order that the Defendants pay the Complainant's costs in an amount to be agreed upon by the parties. If agreement is not reached within 28 days, the costs may be assessed under the provisions of the Legal Profession Act 1987.

It is envisaged that the parties, when settling the final issues among themselves, will settle the issue of costs. However, if it is necessary for the court to determine the final issues, the court will also make a determination as to quantum costs, if the parties so desire.