

IN THE PRIVY COUNCIL

No. 18 of 1973

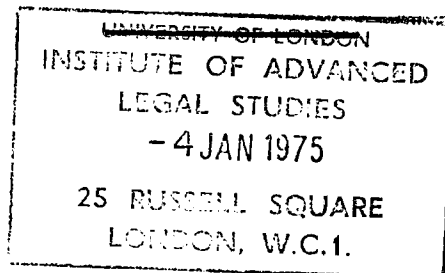
O N A P P E A L
FROM THE FULL COURT OF THE
SUPREME COURT OF QUEENSLAND

B E T W E E N :

CUDGEN RUTILE (NO.2) PTY LTD. (Plaintiff)
Appellant

- and -

GORDON WILLIAM WESLEY
CHALK (Defendant)
Respondent



RECORD OF PROCEEDINGS

LOVELL, WHITE & KING,
1 Serjeant's Inn,
Fleet Street,
London, EC4Y 1LP
Solicitors for the Appellant

FRESHFIELDS,
Grindall House,
25 Newgate Street,
London, EC1A 7LB
Solicitors for the Respondent

(i)

IN THE PRIVY COUNCIL

No. 18 of 1973

O N A P P E A L

FROM THE FULL COURT OF THE SUPREME COURT OF QUEENSLAND

B E T W E E N :

CUDGEN RUTILE (NO.2) PTY. LTD. (Plaintiff) Appellant

- and -

GORDON WILLIAM WESLEY CHALK (Defendant) Respondent

R E C O R D O F P R O C E E D I N G S

I N D E X O F R E F E R E N C E

No.	Document	Date	Page
1	Writ of Summons (endorsement of claim only)	26th June 1972	3/1.
2	Statement of Claim (Part of Demurrer Record)	30th August 1972	3/2.
3	Request for Further Particulars	6th October 1972	3/14.
4	Further Particulars	18th October 1972	3/15.
5	Demurrer and Schedules thereto:- Schedule A - Application for Authority to Prospect	12th December 1972 2nd November 1966	3/16. 3/21.

(ii)

No.	Document	Date	Page
	Amended application for Authority to Prospect and	8th November 1966	3/22.
	Schedule B - Draft Authority to Prospect No. 409M		3/24.
	Schedule C - Letter, Plaintiff to Under Secretary, Department of Mines	11th January 1967	3/33.
	Schedule D - Authority to Prospect No. 409M, with amendments	26th June 1967	3/34.
	Schedule E - Letter, Plaintiff to Under Secretary, Department of Mines	17th January 1968	3/45.
	Schedule F - Letter, Under Secretary, Department of Mines to Plaintiff	30th April 1968	3/47.
	Schedule G - Letter, Plaintiff to Under Secretary, Department of Mines	8th May 1968	3/48.
6	Judgment of the Full Court	18th May 1973	3/49.
7	Judgment of The Chief Justice Sir Mostyn Hanger	4th May 1973	2/60
8	Judgment of Stable J.	4th May 1973	2/90
9	Judgment of Hart J.	4th May 1973	2/91
10	Order of Full Court granting Leave to Appeal to the Privy Council	18th May 1973	3/50.
11	Certificate of The Registrar of the Supreme Court of Queensland at Brisbane certifying transcript record of proceedings		3/52

(iii)

List of Documents on the File omitted from Record

No.	Document	Date
1	Writ of Summons (other than endorsement of claim)	26th June 1972
2	Entry of Appearance by Defendant	27th June 1972
3	Notice of Entry of Demurrer	14th December 1972
4	Entry of Demurrer for Argument	14th December 1972
5	Notice of Motion for conditional Leave to Appeal to the Privy Council	18th May 1973
6	Affidavit of Graeme Oriel Morris	18th May 1973
7	Order of Full Court granting conditional Leave to Appeal to the Privy Council	18th May 1973
8	Notice of Payment into Court of security for prosecution of Appeal	18th May 1973
9	Notice of Motion	18th May 1973
10	Affidavit of Graeme Oriel Morris	18th May 1973
11	Draft Index to Record of Proceedings, filed	15th June 1973

3/1.

IN THE PRIVY COUNCIL

No.18 of 1973

ON APPEAL FROM THE FULL COURT OF THE
SUPREME COURT OF QUEENSLAND

B E T W E E N :

CUDGEN RUTILE (NO.2) PTY. LTD.
(Plaintiff) Appellant

- and -

GORDON WILLIAM WESLEY CHALK
(Defendant) Respondent

10

RECORD OF PROCEEDINGS

NO. 1

No. 1

WRIT OF SUMMONS

Writ of
Summons

WRIT OF SUMMONS (ENDORSEMENT OF CLAIM)

IN THE SUPREME COURT OF QUEENSLAND No.929 of 1972

26th June
1972

B E T W E E N : CUDGEN RUTILE (NO.2)
PTY. LTD. Plaintiff

- and -

GORDON WILLIAM WESLEY
CHALK Defendant

20

THE PLAINTIFF'S CLAIM IS:-

- (A) 1. Specific performance of a contract made in or about the month of February 1967, between the Plaintiff and the Government of Queensland, whereby it was agreed that the Government of Queensland would grant to the Plaintiff over any part of an area of approximately $6\frac{1}{2}$ square miles in the Parishes of Womalah and Laguna, such mining leases as the Plaintiff might apply for during a period of 3 years commencing on the 1st day of February 1967.
2. If the Court declines to grant specific performance, damages for breach of contract.

30

3/2.

No. 1

Writ of
Summons

26th June
1972

(contd.)

3. Further or alternatively, a declaration that the Plaintiff is entitled to the grant to it of Special Mineral Lease Application No.322 Gympie District. L.S.

(B) In the alternative to (A) damages for breach of warranty.

(C) An injunction restraining the Defendant and all other officers, servants and agents of the Government of Queensland, including the Conservator of Forests, from presenting or taking any steps to present to His Excellency the Governor in Council any proposal or recommendation that the area the subject of the said Special Mineral Lease Application be declared a National Park.

10

(D) An order that the Defendant repay to the Plaintiff the sum of \$444.00 paid by the Plaintiff as a deposit pursuant to the terms of the said contract.

(E) Such further or other relief by way of declarations or otherwise, as to the Court may seem meet.

20

Place of Trial: Brisbane

FEEZ RUTHINING & CO.
L.S.

No. 2

Statement
of Claim

30th August
1972

NO. 2

STATEMENT OF CLAIM

IN THE SUPREME COURT OF QUEENSLAND. No.929 of 1972

Writ issued the 29th day of June, 1972

B E T W E E N : CUDGEN RUTILE (NO.2)
PTY. LTD. Plaintiff

30

- and -

GORDON WILLIAM WESLEY
CHALK Defendant

STATEMENT OF CLAIM

Delivered the 30th day of August 1972

1. The Plaintiff is a company duly incorporated in the State of Queensland and having its registered office at care of Feez Ruthning & Co., Solicitors, Bank of New South Wales Building, 260 Queen Street, Brisbane.

No. 2

Statement
of Claim

2. The Defendant is a Nominal Defendant appointed herein by His Excellency the Governor in Council under the provisions of The Claims Against Government Act of 1866.

30th August
1972

(contd.)

10 3. By a letter dated the 6th day of January 1967 the Government of Queensland by its servant the Under-Secretary for Mines made an offer to the Plaintiff in the words and figures following that is to say:

20 "With reference to your application of 2nd and 8th November, 1966 for an Authority to Prospect, I have been authorised to offer you an Authority to Prospect, as indicated in the attached draft, over the Crown land and private land and reserves (excluding National Parks) in the areas shown on the attached plan, exclusive of the land held in accordance with the Acts, at the date of publication of the proclamation of the lands, by any person under any claim, Permit to Enter, mining lease or application therefor or Authority to Prospect for any of the minerals specified in Clause 5 of the attached draft. For the purpose of this offer, Crown land and private land shall be deemed to be held under an Authority to Prospect from the date of publication of the proclamation over the land. For land comprised in a reserve, this offer is subject to ratification by the Governor in Council and the availability of the land at such time.

30 It is to be noted that the areas offered will be described in relation to the origins as shown on the attached plan. There is no warranty that the areas are correctly shown in relation to other features of the map.

40 In Clause 7 of this Authority to Prospect, "Standard Rental" shall mean one hundred dollars (\$100) per year or lesser period, plus six dollars (\$6) per year for each square mile or portion thereof of the area of this Authority to Prospect.

This offer lapses twenty-one (21) days from the date of this letter unless I receive by then acceptance

No. 2

of the offer and the sum of \$1,172 (being the deposit and rental for the first year)."

Statement
of Claim

30th August
1972

(contd.)

4. The area the subject of such offer was an area of about eight square miles in the Parishes of Cooloolah and Womolah and about three and one-half square miles in the Parish of Laguna as shown on Plan AM70 held at the Department of Mines, Brisbane.

5. Such offer was duly accepted by the Plaintiff by letter dated the 11th day of January 1967 and the Plaintiff duly paid the said sum of \$1172 (being comprised of \$1000 deposit and \$172 rental for the first year).

10

6. On the 26th day of June 1967 and consequent upon the acceptance by the Plaintiff of such offer, the Honourable the Acting Minister for Mines and Main Roads in and for the State of Queensland granted to the Plaintiff an Authority to Prospect under The Mining Acts, 1895 to 1955 (therein and hereinafter called "the Acts") numbered 409M over so much of the said area as was Crown land within the meaning of the Acts and as was private land within the meaning of The Mining on Private Land Acts, 1909 as amended.

20

7. The said Authority to Prospect:-

(a) was granted to the Plaintiff for a period of 2 years commencing on the 1st day of February, 1967; and

(b) granted to the Plaintiff the right during such term to prospect the said land including the right to conduct such geological and geophysical examinations, aerial and contour surveys, drilling and shaft sinking as might from time to time in the opinion of the Plaintiff be appropriate for determining the existence or otherwise of minerals (including gold but excluding coal, mineral oil and petroleum) and their extent and nature in the said land.

30

8. Certain of the terms of the said Authority to Prospect were:-

40

(a) that the Plaintiff should pay to the Government of Queensland a rental of \$172

for the first year and \$100 plus \$6 per per square mile for the second year

No. 2

Statement of Claim

(b) that the area comprised therein should be reduced to not more than 6 square miles by the 1st day of February 1968

30th August 1972

(c) that the Plaintiff should during the said period, continuously prospect the said land or carry out such other investigations in respect thereof as the Honourable the Minister for Mines & Main Roads might approve, and should bona fide expend or cause to be expended the sums of money set out hereunder in respect of such prospecting and investigations:-

(contd.)

10

<u>Period</u>	<u>Commencing</u>	<u>Not less than</u>
1 year	1st February 1967	\$20,000.00
1 year	1st February 1968	\$30,000.00

20

9. By letter dated the 17th day of January 1968 the Plaintiff surrendered an area of about 5½ square miles of the said land which surrender was accepted by the said Honourable Minister on the 7th day of March 1968.

10. By a letter dated the 30th day of April 1968 the Government of Queensland by its servant the acting Under Secretary for Mines made an offer to the Plaintiff in the words and figures following, that is to say:-

30

"Re: Authority to Prospect No. 409M.

With reference to your letter dated 1st instant and previous correspondence concerning the above Authority to Prospect, I have to inform you that it has been approved to offer to vary the Authority to Prospect by adding the following:-

"The Authority to Prospect is varied as follows:-

PERIOD: This Authority to Prospect is extended for a period of one (1) year from 1st February, 1969.

RENTAL: In the tabulation is clause 7 of this

3/6.

No. 2

Authority to Prospect, the following is inserted:-

Statement
of Claim

Date

Rental

1st February
1969

£100 plus £6 per square
mile

30th August
1972

(contd.)

WORK AND EXPENDITURE: In the tabulation is
clause 9 of this Authority to Prospect, the following
is deleted:-

<u>Period</u>	<u>Commencing</u>	<u>Not less than</u>
One (1) year	1st February 1968	£30,000

and the following is inserted:-

10

<u>Period</u>	<u>Commencing</u>	<u>Not less than</u>
Two (2) years	1st February 1968	£40,000"

This offer lapses 21 days from the date of this
letter unless I receive by then acceptance of the
offer."

11. Such offer was duly accepted by the Plaintiff by
letter dated the 8th day of May, 1968.

12. On the 28th day of May 1968 and consequent upon
the acceptance by the Plaintiff of the offer set out
in Paragraph 10 hereof the Under Secretary for Mines
notified the Plaintiff that the Honourable the
Minister for Mines had granted to the Plaintiff the
said Authority to Prospect amended as set out in the
offer referred to in Paragraph 10 hereof.

20

13. The said Authority to Prospect as so amended was
for a further term of one year from the 1st day of
February 1969 and provided, amongst other things,
that

(a) the Plaintiff should pay to the Government
of Queensland a rental of £100 plus £6 per
square mile for the said further period of
one year

30

(b) the Plaintiff should, during the said
further period expend or cause to be
expended in prospecting and investigation
as set out in Paragraph 8 (c) hereof an
amount of not less than £40,000 during the

period of 2 years commencing on the 1st day of February 1968, in lieu of the amount of \$30,000 in the period of one year commencing on the 1st day of February 1968 as set out in the said Paragraph 8 (c).

No. 2
Statement
of Claim
—

14. The Plaintiff duly complied with all the terms of the said Authority to Prospect as so amended and in particular:-

30th August
1972
(contd.)

- 10
- (a) duly paid to the Minister the said annual rental as and when it fell due; and
 - (b) expended in prospecting and investigations in respect of the said area annual sums well in excess of the minimum expenditure required by the terms of the said Authority to Prospect.

20

15. In the course of such prospecting operations and investigations, the Plaintiff discovered and proved that the said area contained large deposits of rutile and zircon and deposits of ilmenite, monazite and other minerals of commercial value.

16. The deposits of minerals referred to in Paragraph 15 hereof were such that they could be economically worked at a very great profit to the Plaintiff.

17. At the time of the acceptances by the Plaintiff of the offers referred to in Paragraphs 3 and 10 hereof and at all material times, the Government of Queensland knew:-

- 30
- (a) that the said area contained large deposits of the minerals referred to in Paragraph 15 hereof;
 - (b) that such deposits were capable of being economically worked at a very great profit to the Plaintiff;
 - (c) that the Plaintiff intended, during the term of the said Authority to Prospect, to carry out prospecting and investigations in order to determine the extent and location of such deposits;
- 40
- (d) that the Plaintiff intended, during the term of the said Authority to Prospect, to

No. 2Statement
of Claim

apply to the Government of Queensland, for the grant to it of a mineral lease in respect of the lands containing such deposits.

30th August
1972
(contd.)

18. At all material times, it was a term of the said Authority to Prospect that subject to the performance and observance of the provisions of the said Acts and of the terms, conditions, provisions and stipulations of such Authority to be performed or observed by the Plaintiff, the Plaintiff should be entitled at any time and from time to time during the term of such Authority to apply for and have granted to it in priority to any other person or company a mining lease for inter alia the minerals hereinbefore referred to, over any part of the area subject to the said Authority.

10

19. On the 29th day of January 1970 the Plaintiff duly applied for the grant to it of a Special Mineral Lease Number 322 Gympie District in respect of the said proven Minerals by lodging an application therefor in the office of the Mining Warden at Gympie.

20

20. The area applied for by the Plaintiff in the said application was within the area subject to the said Authority to Prospect, and amounted to an area of approximately 1150 acres in the Parish of Laguna.

21. In accordance with the Acts and Regulations thereunder the said application was duly heard and considered by the Mining Warden at Gympie on the following days:-

30

20th March, 1970	15th May, 1970
20th April, 1970	18th May, 1970
11th May, 1970	19th May, 1970
12th May, 1970	20th May, 1970
13th May, 1970	21st May, 1970
14th May, 1970	

22. At the hearing of the said application numerous persons and bodies appeared as objectors to the said application contending that the Plaintiff should not be permitted to conduct mining operations in the area the subject of the said application.

40

23. After the conclusion of the said hearing and in

accordance with the Acts and Regulations thereunder the Mining Warden, on or about the 27th day of July, 1970, reported to the Minister that the lease applied for by the Plaintiff should be granted.

No. 2

Statement
of Claim

24. The Plaintiff has complied in all respects with the terms of the said Authority to Prospect and all acts have been done and all conditions have been fulfilled under the said Acts and otherwise and under the terms of the said Authority to Prospect necessary to entitle it to have the grant to it of the said lease, and the Plaintiff has required the said Government to grant or procure the grant to it of the same.

30th August
1972

(contd.)

25. The Government of Queensland has refused and neglected to grant the said lease to the Plaintiff and has declared and continues to declare and maintain that the Plaintiff is not entitled to the grant to it of the said Lease and has repudiated any obligation to grant or cause to be granted to the Plaintiff the said lease.

26. As a result of such refusal the moneys expended by the Plaintiff in carrying out such prospecting and investigations and in making preparations for mining the said deposits of minerals and the costs incurred by the Plaintiff in applying for the said Lease have been wasted, the Plaintiff has lost the profits which it would have obtained from the sale of the said minerals when extracted, and the Plaintiff has suffered other loss and damage.

27. (a) (Alternatively to the matters referred to in Paragraphs 4 to 9 inclusive and 12 to 26 inclusive aforesaid) by an agreement made in the month of January 1967 (as varied by an agreement made in the month of May 1968) between the Government of Queensland of the one part and the Plaintiff of the other part the Government of Queensland for the consideration appearing in and by the said letters dated the 6th day of January 1967 and the 30th day of April 1968 warranted to the Plaintiff:

(i) that the Government of Queensland was empowered to grant or cause to be granted and would grant or cause to be granted to the Plaintiff an Authority to Prospect in accordance with the draft document referred to in the said letter dated the

3/10.

No. 2

Statement
of Claim

30th August
1972

(contd.)

6th day of January 1967 and in accordance with the variation proposed in the said letter dated the 30th day of April 1968.

(ii) that the Government of Queensland was empowered to grant or cause to be granted and would grant or cause to be granted to the Plaintiff the right (subject to due performance and observance of the provisions of the Acts and the terms conditions provisions and stipulations of the said draft document (and the terms of the variation proposed in the said letter dated the 30th day of April 1968) on the part of the Plaintiff to be performed and observed) to have granted to it a mining lease for the minerals referred to in the said draft document under the Acts over any part of the lands referred to in the said draft document.

10

(b) At the time of the making of the agreement referred to in Paragraph 27 (a) hereof and at all material times thereafter, the Government of Queensland knew:-

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(i) that the lands referred to in the draft document referred to in Paragraph 27(a) hereof contained large deposits of the minerals referred to in Paragraph 15 hereof;

(ii) that such deposits were capable of being economically worked at a very great profit to the Plaintiff;

30

(iii) that the Plaintiff intended, during the term of the said Authority to Prospect, to carry out prospecting and investigations in order to determine the extent and location of such deposits;

(iv) that the Plaintiff intended, during the term of the said Authority to Prospect, to apply to the Government of Queensland, for the grant to it of a mineral lease in respect of the lands containing such deposits.

40

28. All things happened and all times elapsed and all conditions were fulfilled necessary to entitle the Plaintiff to the fulfilment of the said warranties by the Government of Queensland and to the grant to

3/11.

the Plaintiff of the Authority to Prospect referred to in paragraph 27 (a)(i) hereof and to the grant to the Plaintiff of a mining lease referred to in paragraph 27 (a)(ii) hereof.

No. 2

Statement
of Claim

29. If it be held that the Government of Queensland was not empowered as set forth in Paragraph 27(a)(i) hereof the Plaintiff claims damages for the breach of the warranty referred to in Paragraph 27(a)(i) hereof.

30th August
1972

(contd.)

10 30. If it be held that the Government of Queensland was not empowered as set forth in Paragraph 27(a)(ii) hereof the Plaintiff claims damages for breach of the warranty referred to in Paragraph 27(a)(ii) hereof.

20 31. (Alternatively to the matters referred to in Paragraphs 4 to 9 inclusive and 12 to 26 inclusive) on the 26th day of June 1967 the Honourable the Acting Minister for Mines and Main Roads purported to grant to the Plaintiff an Authority to Prospect (numbered 409M) over so much of the said area as was Crown Land within the meaning of the said Acts and as was private land within the meaning of the Mining on Private Land Acts 1909 (as amended), and in or about the month of May 1968 the Honourable the Minister for Mines purported to extend the term of the said Authority to Prospect for a period of one year.

30 32. (a) The Authority to Prospect referred to in Paragraph 31 hereof contained the terms referred to in Paragraphs 7, 8 and 13 hereof.

(b) At the time of the granting of the Authority to Prospect referred to in Paragraph 31 hereof and at all material times, the Government of Queensland knew:-

(i) that the area the subject of the said Authority to Prospect contained large deposits of the minerals referred to in Paragraph 15 hereof;

40 (ii) that such deposits were capable of being economically worked at a very great profit to the Plaintiff;

(iii) that the Plaintiff intended, during the term of the said Authority to Prospect,

No. 2

Statement
of Claim

30th August
1972

(contd.)

to carry out prospecting and investigations in order to determine the extent and location of such deposits;

(iv) that the Plaintiff intended, during the term of the said Authority to Prospect, to apply to the Government of Queensland, for the grant to it of a mineral lease in respect of the lands containing such deposits.

33. By the grant of the Authority to Prospect referred to in Paragraphs 31 and 32 hereof and by the extension of the term thereof the Government of Queensland warranted to the Plaintiff that the Government of Queensland was empowered to grant or cause to be granted and would grant or cause to be granted to the Plaintiff the right (subject to due performance and observance of the provisions of the Acts and the terms conditions provisions and stipulations in the said Authority to Prospect on the part of the Plaintiff to be performed and observed) to have granted to it a mining lease for the minerals referred to in the said Authority to Prospect under the Acts over any part of the lands referred to in the said Authority to Prospect. 10 20

34. All things happened and all times elapsed and all conditions were fulfilled necessary to entitle the Plaintiff to the fulfilment of the said warranties by the Government of Queensland and to the grant to the Plaintiff of the Mining Lease referred to in Paragraph 33 hereof. 30

35. If it be held that the Government of Queensland was not empowered as set forth in Paragraph 33 hereof the Plaintiff claims damages for breach of the warranty referred to in Paragraph 33 hereof.

36. The Government of Queensland threatens and intends to take all such steps as may be necessary to have the area the subject of the said application for lease declared to be a National Park.

AND the Plaintiff claims:-

(A) By virtue of the allegations of fact contained in Paragraphs 1 to 26 hereof inclusive:- 40

(a) specific performance of the promises

3/13.

referred to in Paragraph 18 hereof;

No. 2

(b) if the Court declines to grant specific performance, NINE HUNDRED AND FORTY EIGHT THOUSAND THREE HUNDRED AND NINETY DOLLARS (\$948,390.00) damages for breach of contract;

Statement
of Claim

30th August
1972

(c) further or alternatively, a declaration that the Plaintiff is entitled to the grant to it of the said lease.

(contd.)

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(B) In the alternative to (A) damages for breach of the warranty referred to in Paragraph 27 (a)(i) hereof.

(C) In the alternative to (A) damages for breach of the warranty referred to in Paragraph 27 (a)(ii) hereof;

(D) In the alternative to (A), (B) and (C) damages for breach of the warranty referred to in Paragraph 33 hereof.

20

(E) An injunction restraining the Defendant, and all other officers, servants and agents of the Government of Queensland, including the Conservator of Forests, from presenting or taking any steps to present to His Excellency the Governor in Council any proposal or recommendation that the area the subject of the said application for lease be declared a National Park.

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(F) Such further or other relief, by way of declarations or otherwise, as to the Court may seem meet.

Place of Trial - Brisbane.

FEEZ RUTHNING & CO.

FREEZ RUTHNING & CO.
260 Queen Street, Brisbane.
Solicitors for the Plaintiff.

The Defendant is required to Plead to the within Statement of Claim within twenty-eight (28) days from the time limited for appearance or from the delivery of the Statement of Claim whichever is the later

3/14.

No. 2

otherwise the Plaintiff may obtain judgment against it.

Statement
of Claim

Feez Ruthning & Co.

30th August
1972

FEEZ RUTHNING & CO.
260 Queen Street, Brisbane.
Solicitors for the Plaintiff

(contd.)

This pleading was settled by Messrs. C.E.K. Hampson of Queen's Counsel and D.F. Jackson of Counsel.

No. 3

NO. 3

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Request for
Further
Particulars

REQUEST FOR FURTHER PARTICULARS

Telephone 24 6446X

Crown Solicitor,
Treasury Building,
Queen Street,
Brisbane, Queensland

6th October
1972

When telephoning or
calling please ask for
Mr. Campbell Ref.MJC.MOD

6th October, 1972

Gentlemen,

Re: Cudgen Rutile (No.2) Pty. Ltd.
v. Sir Gordon Chalk - Action No.929
of 1972.

20

I refer to the Statement of Claim in this action and request that you advise in relation to the agreement alleged in paragraph 27(a) thereof whether it is alleged that it is contained solely in the letters dated 6th day of January, 1967 and the 30th day of April, 1968, if not, is it alleged that the agreement is in writing or partly in writing (in which case identify documents) or that it is oral or partly oral in which case give particulars of the person or persons, occasion or occasions, place or places where made and substance of agreement.

30

Yours faithfully,

(H.E. CARR-BOYD)

Crown Solicitor.

Messrs. Feez, Ruthning & Co., Solicitors,
Bank of New South Wales, 260 Queen Street,
BRISBANE. Q. 4000.

3/15.

NO. 4

No. 4

FURTHER PARTICULARS

Further
Particulars

FEEZ RUTHNING & CO.
Solicitors
Bank of New South Wales Building
260 Queen Street
Brisbane, Queensland, 4000

18th October
1972

Your ref. MJC.MOD
Our Ref. GOM

10

October 18, 1972

The Crown Solicitor,
Treasury Building,
Queen Street,
BRISBANE. Q. 4000

Dear Sir,

Cudgen Rutile (No.2) Pty.Ltd.
v. Sir Gordon Chalk - Action No.929 of 1972

We refer to your letter of October 6 and now advise as follows:-

20

The agreement referred to in paragraph 27(a) of the Statement of Claim was made solely by writing, the writings being:-

- (a) the Government's letter dated 6th January, 1967 (referred to in paragraph 3 of the Statement of Claim);
- (b) the Plaintiff's letter dated 11th January, 1967 (referred to in paragraph 5 of the Statement of Claim);
- 30 (c) the Government's letter dated 30th April, 1968 (referred to in paragraph 10 of the Statement of Claim);
- (d) the Plaintiff's letter dated 8th May, 1968 (referred to in paragraph 11 of the Statement of Claim).

Yours faithfully,

FEEZ RUTHNING & CO.

3/16.

No. 5

NO. 5

Demurrer

DEMURRER

12th December
1972

IN THE SUPREME COURT OF QUEENSLAND

No.929 of 1972

B E T W E E N : CUDGEN RUTILE (NO.2)
PTY. LTD.

Plaintiff

- and -

GORDON WILLIAM WESLEY
CHALK

Defendant

D E M U R R E R

Delivered the 12th day of December 1972

10

The Defendant demurs to the Plaintiff's Statement of Claim and says that the same is bad in law on the following grounds:-

1. No relief can be given in this action against the Defendant except in respect of obligations binding upon the Crown or liabilities incurred by the Crown and the Statement of Claim does not, by reason of the grounds hereinafter set out, allege the existence of any material obligation binding upon the Crown or any material liability incurred by the Crown;

20

2. Neither the Mining Acts nor any other Act of the legislature of Queensland permit the creation of a contractual obligation binding upon the Crown in terms of the letters referred to in paragraphs 3 and 5 of the Statement of Claim;

3. No offer such as might, by acceptance, become binding in contract upon the Crown was made by the letter referred to in paragraph 3 of the Statement of Claim;

4. Neither the letter nor the payment referred to in paragraph 5 of the Statement of Claim created or gave rise to any contractual obligation binding upon the Crown;

30

5. The acts of the Under Secretary for Mines alleged in the Statement of Claim cannot in law give rise to a contract binding upon the Crown in terms of the said letters;

6. Neither the Mining Acts nor any other Act of the

3/17.

Legislature of Queensland permit the creation of a contractual obligation binding upon the Crown in terms of the letters referred to in paragraphs 10 and 11 of the Statement of Claim;

No. 5

Demurrer

12th December
1972

(contd.)

7. No offer such as might, by acceptance, become binding in contract upon the Crown was made by the letter referred to in paragraph 10 of the Statement of Claim;

10 8. The letter referred to in paragraph 11 did not create or give rise to any contractual obligation binding upon the Crown;

9. The acts of the Under Secretary for Mines alleged in the Statement of Claim cannot in law give rise to a contract binding upon the Crown in terms of the letters referred to in paragraphs 10 and 11 of the Statement of Claim;

20 10. Upon a true construction of the Authority to Prospect numbered 409M and in particular of that term alleged in paragraph 18 of the Statement of Claim, the Plaintiff is not, in the events alleged in the Statement of Claim, entitled to the grant to it of a mining lease as applied for by it, nor is the Governor in Council or the Crown acting otherwise through some officer, servant or agent obliged to grant or to cause to be granted to the Plaintiff such a lease;

30 11. If, upon a true construction of the said Authority to Prospect it purports to entitle the Plaintiff to the grant of a mining lease or to oblige the Governor in Council or the Crown acting otherwise through some officer, servant or agent to grant or to cause to be granted to the Plaintiff any such lease, the said term is void and of no effect for that neither the Mining Acts nor any other Act of the Legislature of Queensland authorise or permit the inclusion in an Authority to Prospect of a term which would oblige the Governor in Council or the Crown acting otherwise through some officer, servant or agent, in the events pleaded, to grant or to cause to be granted a mining lease over the area comprised in the Authority to Prospect or any part thereof;

40

12. The letters therein referred to in paragraph 27 of the Statement of Claim do not constitute and are not capable of constituting an agreement between the Plaintiff and the Crown and, upon the true construction of the said letters, no warranty was

No. 5

Demurrer

12th December
1972
(contd.)

given by the Crown to the Plaintiff either in the terms alleged in sub-paragraph (a) of paragraph 27 of the Statement of Claim or at all;

13. (a) The acts of the Under Secretary for Mines alleged in the Statement of Claim cannot in law give rise to a warranty in terms of the letter dated the 6th day of January 1967 referred to in paragraph 27 of the Statement of Claim;
- (b) The acts of the Acting Under Secretary for Mines alleged in the Statement of Claim cannot in law give rise to a warranty in terms of the letter dated the 30th day of April 1968 referred to in paragraph 27 of the Statement of Claim; 10
14. (a) The Crown has no power to warrant the nature or the extent of the power vested by law in it or in an officer servant or agent of the Crown;
- (b) No officer, servant or agent of the Crown has the Crown's authority to warrant the nature or the extent of the power vested by law in it or in an officer servant or agent of the Crown; 20
15. (a) The Crown has no power to warrant the manner in which it will exercise any power vested by law in it or in any officer servant or agent of the Crown to grant or to cause to be granted an Authority to Prospect; 30
- (b) No officer, servant or agent of the Crown has the Crown's authority to warrant the manner in which it or any officer servant or agent of the Crown will exercise any power vested by law in it or in any officer servant or agent of the Crown to grant or to cause to be granted an Authority to Prospect;
16. (a) The Crown has no power to warrant the manner in which it or any officer servant or agent of the Crown will exercise any power vested by law in it to grant or to cause to be granted any such right as is referred to either in paragraph 27(a)(ii) 40

3/19.

or paragraph 33 of the Statement of Claim;

No. 5

Demurrer

12th December
1972

(contd.)

10 (b) No officer, servant or agent of the Crown has the Crown's authority to warrant the manner in which it or any officer servant or agent of the Crown will exercise any power vested by law in it or in any officer servant or agent of the Crown to grant or to cause to be granted any such right as is referred to either in paragraph 27(a)(ii) or paragraph 33 of the Statement of Claim;

17. Upon a true construction of the Authority to Prospect (numbered 409M) referred to in paragraph 31 of the Statement of Claim, no warranty was given by the Crown, the Minister or by the Crown acting through some other officer, servant or agent to the Plaintiff in the terms alleged in paragraph 33 of the Statement of Claim;

20 18. The Governor in Council and the officers, servants and agents of the Crown in taking any step which is necessary to have the area referred to in paragraph 36 of the Statement of Claim declared to be a National Park thereby act in accordance with the powers conferred and discretions reposed in them by statute in that behalf and the Defendant and the officers, servants and agents of the Crown including the Conservator of Forests or any of them cannot be
30 restrained from exercising their respective discretions and powers as aforesaid in accordance with the statute law of Queensland;

19. The Defendant is not liable to be sued in this action except in respect of an act done by an officer, servant or agent of the Crown who is authorised by law to do acts of the class in question and the Statement of Claim does not allege any act done by such an authorised officer servant or agent as aforesaid which was not done lawfully and without infringing any rights vested in the Plaintiff;

40 And on other grounds sufficient in law.

The Defendant says that the documents set up and relied upon by the Plaintiff are in the words and figures contained in the respective schedules to this Demurrer as hereinafter set out;

No. 5

Demurrer

12th December
1972
(contd.)

Letter of 6th January 1967 and
the Applications therein referred
to (omitting maps) Schedule A

Draft document referred to in
letter of 6th January 1967 Schedule B

Letter of 11th January 1967 Schedule C

Authority to Prospect No.409M
Schedule D
Pages 1 to 7

Authority to Prospect No.409M
amendments Schedule D 10
Pages 8 to 9

Letter of 17th January 1968
(omitting maps) Schedule E

Letter of 30th April 1968 Schedule F

Letter of 8th May 1968 Schedule G

(Sigd.)

Crown Solicitor

Solicitor for the Defendant

This pleading was settled by Mr. Brennan of
Queen's Counsel, Mr. Dunn of Queen's Counsel and 20
Mr. Shepherdson of Counsel.

The Plaintiff is required to set this Demurrer
down for argument within ten days otherwise judgment
will be given against it on the matters demurred to.

(Sigd.)

Crown Solicitor

Solicitor for the Defendant

3/21.

SCHEDULE A TO DEMURRER

No. 5

APPLICATION FOR AUTHORITY TO PROSPECT

Schedule A
to Demurrer

Registered Office: P.O. Box 8
c/- F.K. Budd Son & Attwood, Kingscliff, N.S.W.
Griffith Street,
Coolangatta. Phone:
Kingscliff 681

Application for
Authority to
Prospect

CUDGEN RUTILE (NO.2) PTY. LTD.
Incorporated in Queensland
Please reply to Kingscliff Office

2nd November
1966

10 DCW:JP 2nd November, 1966

The Under Secretary,
Department of Mines,
Mineral House, 2 Edward Street,
BRISBANE. QUEENSLAND.

Dear Sir,

20 We hereby make application under the
provisions of The Mining Acts, 1898 to 1965 and The
Mining on Private Land Acts, 1909 to 1965, for
Authority to Prospect for all minerals except coal
and petroleum in and upon an area of about 13,875
acres in the Parishes of Womalah, Como and Laguna,
County of March, as shown on the attached sketch,
for a term of four (4) years

30 Prospecting will be carried out on a
surveyed grid similar to that being employed on the
area of Authority to Prospect No. 348M, i.e. Bore
Lines from 1,600 ft. to 2,400 ft. apart running at
right angles to the general direction of the
transgressive dunes, with bore holes spaced at 100 ft.
intervals on the Lines.

It is anticipated that the area contains
low grade deposits of rutile, zircon, ilmenite, etc.
which can only be worked economically on a large
scale.

40 Also, because of the nature of the
topography and the extensive drilling which will be
required to prove the low grades of mineral
anticipated, we request that no condition requiring
relinquishment of area during the term of the
Authority be imposed.

3/22.

No. 5

We are prepared to expend on investigation of the area a minimum of \$20,000 per annum.

Schedule A
to Demurrer

Should there be any aspect of this Application which your officers may desire to discuss further we would be pleased to attend at your office on any mutually convenient date.

Application for
Authority to
Prospect

Yours faithfully,

2nd November
1966
(contd.)

For: CUDGEN RUTILE (NO.2) PTY. LTD.

(Sgd.) D.C. Wright

D.C. WRIGHT

10

Schedule A
to Demurrer

SCHEDULE A TO DEMURRER

AMENDED APPLICATION
FOR AUTHORITY TO PROSPECT

Amended
Application for
Authority to
Prospect

Registered Office:
c/- F.K. Budd Son & Attwood,
Griffith Street,
Coolangatta

P.O. Box 8,
Kingscliff, N.S.W.
Phone:
Kingscliff 681

8th November
1966

CUDGEN RUTILE (NO.2) PTY. LTD.

Incorporated in Queensland
Please reply to Kingscliff Office

20

R.McM:JP

8th November, 1966

The Under Secretary,
Department of Mines, Mineral House,
2 Edward Street,
BRISBANE. QUEENSLAND.

Dear Sir,

We wish to amend our application of 2nd November 1966, for an Authority to Prospect to include an additional area of about 1,225 acres. This now makes the area of the Application a total of 15,100 acres and includes the whole of the area as shown by red edging on the attached sketch.

30

Yours faithfully,

For: CUDGEN RUTILE (NO.2) PTY.LTD.

(Sgd.) D.C. Wright

D.C. WRIGHT

3/23.

SCHEDULE A TO DEMURRER

No. 5

LETTER, UNDER SECRETARY, DEPARTMENT
OF MINES TO PLAINTIFF

Schedule A
to Demurrer

CHS:ja 66/3809

6th January, 1967

Letter, Under
Secretary,
Department of
Mines to
Plaintiff

Dear Sir,

10 With reference to your applications of
2nd and 8th November, 1966 for an Authority to
Prospect, I have been authorised to offer you an
Authority to Prospect, as indicated in the attached
draft, over the Crown land and private land and
reserves (excluding National Parks) in the areas
shown on the attached plan, exclusive of the land
held in accordance with the Acts, at the date of
publication of the proclamation of the lands, by
any person under any claim, Permit to Enter,
20 mining lease or application therefor or Authority
to Prospect for any of the minerals specified in
Clause 5 of the attached draft. For the purpose
of this offer, Crown land and private land shall be
deemed to be held under an Authority to Prospect
from the date of publication of the proclamation
over the land. For land comprised in a reserve,
this offer is subject to ratification by the
Governor in Council and the availability of the
land at such time.

6th January
1967

30 It is to be noted that the areas offered will
be described in relation to the origins as shown
on the attached plan. There is no warranty that
the areas are correctly shown in relation to other
features of the map.

In Clause 7 of this Authority to Prospect,
"Standard Rental" shall mean one hundred dollars
(\$100) per year or lesser period, plus six dollars
(\$6) per year for each square mile or portion
thereof of the area of this Authority to Prospect.

This offer lapses twenty-one (21) days from
the date of this letter unless I receive by then
acceptance of the offer and the sum of \$1,172
(being the deposit and rental for the first year).

40 Regarding the land for which you applied in
the Fauna Park Reserve, this is being discussed with
Department of Primary Industries, and I will write
to you later about it.

3/24.

No. 5

Schedule A
to Demurrer

Letter, Under
Secretary,
Department of
Mines to
Plaintiff

Regarding the coastal strip of the area for which you applied, this is thought to contain coloured sands of considerable tourist potential. This strip could be added to your Authority to Prospect under conditions to ensure that the coloured sands are not damaged.

Yours faithfully,

(E.K. HEALY)

Under Secretary

6th January
1967

(contd.)

The Secretary,
Cudgen Rutile (No.2) Pty. Ltd.,
P.O. Box 8,
Kingscliff, N.S.W.

10

Schedule B
to Demurrer

Draft
Authority
to Prospect
No.409M.

SCHEDULE B TO DEMURRER

DRAFT AUTHORITY TO PROSPECT NO.409M.

No. 409 M.

"THE MINING ACTS, 1898 TO 1965"

"THE MINING ON PRIVATE LAND ACTS, 1909 TO 1965"

AUTHORITY TO PROSPECT

WHEREAS application has been made for an Authority to Prospect for the minerals and on the lands hereinafter described AND WHEREAS by Proclamation issued under the provisions of "The Mining Acts, 1898 to 1965" and "The Mining on Private Land Acts, 1909 to 1965" (hereinafter referred to as "the Acts") the said lands were declared to be exempt from occupation by the holder of a miner's right or business license and not subject to a grant or registration under "The Mining on Private Land Acts, 1909 to 1965" of a mining tenement or a Permit to Enter:

20

30

NOW, THEREFORE, I,
for the STATE OF QUEENSLAND (hereinafter with his successors in office referred to as "the Minister") by virtue of the powers and authority in me vested under the Acts HEREBY GRANT to Cudgen Rutile (No.2) Pty. Ltd. (hereinafter referred to as "the Holder") an Authority to Prospect on the lands more particularly described in the Schedule

3/25.

hereto, exclusive of all areas of surface containing stacked tailings, sands, mullock, slag and similar materials, for the period hereinafter specified upon and subject to the provisions of the Acts and in particular Section 23A of "The Mining Acts, 1898 to 1965" and Section 12A of "The Mining on Private Land Acts, 1909 to 1965" and to the following terms, conditions, provisions and stipulations:-

No. 5

Schedule B
to Demurrer

Draft
Authority
to Prospect
No.409M

10 1. PERIOD: This Authority to Prospect is granted for a period of two years commencing on 1st February 1967.

(contd.)

2. AREA: Approximately 11.5 square miles as described in the Schedule hereto.

Notwithstanding anything herein contained the area of the lands comprised in this Authority to Prospect shall be reduced by each of the following dates in this clause to not more than the area shown against that date:-

	Date	Area
20	1st February 1968	6 square miles

The Holder shall before each of the above dates in this clause by notice in writing to the Minister specify the lands to be excluded by that date in accordance with this clause. In default of the Holder so specifying then the Minister shall specify such lands.

30 3. MARKING OF BOUNDARY: If any doubt or dispute should arise as to the position of all or any portion or portions of the boundary or boundaries of the lands comprised within this Authority to Prospect (hereinafter called "the boundary") or if it appears to the Minister to be desirable in the public interest then the Minister may require the Holder to survey and mark the boundary and thereupon the Holder shall do so at his own expense.

Should he so desire the Holder may at any time during the period of this Authority to Prospect survey and mark the boundary.

40 When the boundary has been surveyed and marked and the boundary as so marked has been accepted as correct by all holders of Authorities to Prospect whose interests are affected by such marking of the

No. 5

Schedule B
to Demurrer

Draft
Authority
to Prospect
No.409M

—
(contd.)

boundary and by the Minister then the boundary as so marked shall be deemed to be the boundary of the lands comprised within this Authority to Prospect.

Failing acceptance as aforesaid then the Minister may determine the location of the boundary in relation to the marks and thereupon the boundary as so determined shall be deemed to be the boundary of the lands comprised within this Authority to Prospect.

10

4. SURVEY OF BOUNDARY: The survey of the boundary shall be made by a surveyor registered under "The Land Surveyors Acts, 1908 to 1916".

The survey and the marking of the boundary shall be made in accordance with "The Land Surveyors Acts, 1908 to 1916" and "The Mining Acts, 1898 to 1965". Where the Minister considers that no appropriate or clear directions are given under the above Acts then the survey and marking shall be as the Minister may direct.

20

The Holder shall lodge with the Minister a plan, field notes and computations of the survey all certified as correct by the surveyor who made the survey.

5. RIGHT TO PROSPECT: The Holder shall during such period have the right to prospect the said lands, including geological and geophysical examinations, aerial and contour surveys, drilling and shaft sinking as may from time to time in the opinion of the Holder be appropriate for the purpose of determining the existence or otherwise of minerals (including gold but excluding coal, mineral oil and petroleum) and their extent and nature in the said lands.

30

This Authority to Prospect shall not confer any right of ownership to the said minerals upon the Holder and all such minerals shall remain the property of the Crown.

6. DEPOSIT: The Holder before the date hereof shall deposit with the Minister a sum of one thousand dollars (\$1,000) (the receipt of which sum is hereby acknowledged) to be held by the Minister as a guarantee that the provisions of the Acts and the terms, conditions, provisions and stipulations of

40

3/27.

this Authority to Prospect on the part of the Holder to be performed or observed will be performed or observed by the Holder.

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Schedule B
to Demurrer

Draft
Authority
to Prospect
No.409M

10

Subject to the performance and observance by the Holder of the provisions of the Acts and the terms, conditions, provisions and stipulations of this Authority to Prospect on the part of the Holder to be performed or observed, such deposit shall be refunded to the Holder upon the expiration or prior determination (other than by cancellation as hereinafter provided) of this Authority to Prospect.

—
(contd.)

7. RENTAL: The Holder shall pay to the Minister before each of the dates tabulated below in this clause the sum in Australian currency set opposite such date as rental for the lands subject to this Authority to Prospect. Receipt of the rental for the first date tabulated below is hereby acknowledged by the Minister.

	Date	Rental
20	1st February 1967	Ø172
	1st February 1968	Standard Rental

8. EXISTING RIGHTS: Subject to the provisions of the Acts this Authority to Prospect shall be subject and without prejudice to all rights, powers, privileges and property of all and every person and corporation under or in respect of any Crown grant (including any franchise incorporated in an agreement ratified by Act of Parliament), Certificate of Title, lease, license, permit, claim or mining tenement or of any Authority to Prospect granted to any person under the provisions of "The Petroleum Acts, 1923 to 1962" and "The Coal Mining Acts, 1925 to 1964" now or at any time during the period of this Authority to Prospect existing in respect of any part of the said lands.

30

9. WORK AND EXPENDITURE: During the said period the Holder shall continuously prospect the said lands in accordance with the provisions of clause 5 hereof, provided however that the Minister may, on the application of the Holder, approve, in writing, of the Holder conducting such other investigations for such period and subject to such terms and conditions as are set out in such approval, and the Holder shall during each period tabulated below so long as this Authority to Prospect shall

40

No. 5
Schedule B
to Demurrer

remain in operation bona fide expend or cause to be expended in such prospecting and investigations not less than the sum of money set opposite such period, all such sums of money to be measured in Australian currency:-

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Period	Commencing	Not less than
One year	1st February, 1967	£20,000
One year	1st February, 1968	£30,000

(contd.)

Upon the surrender of this Authority to Prospect in accordance with clause 25 hereof the minimum expenditure for the period in which such surrender is made shall be reduced in the ratio that the portion of the period remaining after the date of such surrender bears to the entire period.

10

10. GUARANTEE: When required by the Minister, the Holder shall, in respect of the period referred to in clause 9 hereof, lodge with the Minister a security or provide a surety acceptable to the Minister for the amount to be expended during the period under the terms of this Authority to Prospect. If at the end of such period the Minister is of the opinion that the Holder has not fulfilled the terms and conditions of the Authority to Prospect in respect of work and expenditure on the Authority to Prospect during such period, the Minister may at his sole discretion forfeit the security or such amount of the security as shall be required by the Minister to satisfy the obligations of the Holder hereunder or may require the surety to pay to the Minister a sum not exceeding the amount to be expended during that period. Any moneys so forfeited shall be paid to Consolidated Revenue.

20

30

11. REPORTS: The Holder shall furnish to the Minister a written report giving full particulars of the prospecting and investigations described in clauses 5 and 9 hereof and of the expenditure thereon during each three monthly period ending 31st March, 30th June, 30th September and 31st December of the currency of this Authority to Prospect and shall deliver such report to the Minister within one month of the end of such three-monthly period.

40

The Holder shall furnish to the Minister a written report accompanied by relevant maps,

3/29.

sections, charts and other data giving full particulars of the information obtained from all operations in connection with such prospecting and investigations during each year ending 31st December of the currency of this Authority to Prospect and shall deliver such report to the Minister not later than six months after the expiration of such year or the prior determination of this Authority to Prospect whichever shall be the sooner.

No. 5

Schedule B
to Demurrer

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Authority
to Prospect
No.409M

10 In respect of every area excluded from the lands the subject of this Authority to Prospect in accordance with clause 2 hereof, the Holder shall furnish to the Minister a written report accompanied by relevant maps, sections, charts and other data giving full particulars of the information obtained from all operations in connection with such prospecting and investigations of the excluded area during the currency of this Authority to Prospect up to the time of such exclusion and shall deliver
20 such report to the Minister before the expiration of six months from the time of such exclusion. Such report may be used as the Minister sees fit.

(contd.)

Unless otherwise approved by the Minister, all reports required under this clause shall be in the English language, shall give the information required in a clear manner, and shall be suitable for permanent record.

30 12. PROTECTION OF ROADS, RAILWAYS, TELEPHONE AND POWER TRANSMISSION LINES AND CABLES, RADIO AND TELEVISION MASTS AND PIPELINES: This Authority to Prospect shall not be taken to authorise interference with any road, railway, telephone or power transmission line or cable or radio or television mast or pipeline, which shall not be affected in any way by operations performed by virtue of this Authority to Prospect.

40 13. PROTECTION OF NAVIGATION, HARBOUR OR OTHER WORKS AND FISHING GROUNDS: The Holder shall not interfere with any navigation, harbour or other works or damage fishing grounds, in the exercise of his rights under this Authority to Prospect.

14. PRIVATE LAND: The Holder before entering on any private land pursuant to this Authority to Prospect shall obtain a Permit to Enter in accordance with paragraph (b) of subsection (4) of section 12A of "The Mining on Private Land Acts, 1909

No. 5 to 1965".

Schedule B
to Demurrer

Draft
Authority
to Prospect
No.409M

15. FORESTS AND NATIONAL PARKS: The Holder shall not enter on any State Forest or Timber Reserve or National Park or Scenic Area set apart under "The Forestry Acts, 1959 to 1964" for any of the purposes of this Authority to Prospect without the prior written consent of the Conservator of Forests and then only under the conditions fixed by the Conservator of Forests.

(contd.)

16. ABORIGINAL RESERVES: The Holder shall not enter on any Aboriginal Reserve set apart under "The Aborigines' and Torres Strait Islanders' Affairs Act of 1965" for any of the purposes of this Authority to Prospect without the prior written consent of the Director of Native Affairs and then only under the conditions fixed by the Director of Native Affairs.

10

17. ENTRY ON LAND: The Holder before entering on any land pursuant to this Authority to Prospect shall give to the owner, holder, trustee or occupier of such land notice either personally or in such form and in such manner as the Minister shall approve either generally or in a particular case.

20

18. AUTHORITY TO BE PRODUCED: Any agent, servant or employee of the Holder entering upon any land pursuant to this Authority to Prospect shall carry upon his person a written authorisation issued by the Holder in a form approved by the Minister and shall produce such authorisation when required by the owner, holder, trustee or occupier of the said land.

30

19. ABORIGINAL ARTIFACTS AND HISTORICAL SITES: The Holder shall not damage or interfere with aboriginal artifacts or historical sites without the written permission of the Minister and shall notify the Minister of any such artifacts or sites that the Holder may discover so that they may be properly preserved.

20. RIGHT TO ACQUIRE MINING LEASES: Subject to due performance and observance of the provisions of the Acts and the terms, conditions, provisions and stipulations of this Authority to Prospect on the part of the Holder to be performed or observed, the Holder shall be entitled at any time and from time to time during the said period to apply for and have

40

granted to him in priority to any other person or company, a mining lease for the minerals specified in clause 5 hereof under the Acts over any part of the lands comprised within this Authority to Prospect.

No. 5

Schedule B
to Demurrer

21. TRANSFER: The Holder shall not, except with the written approval of the Minister first had and obtained, assign, transfer, mortgage or charge this Authority to Prospect, or create an interest of any description whatsoever over or with respect to the said Authority to Prospect.

Draft
Authority
to Prospect
No.409M

(contd.)

22. APPLICATION OF MINES REGULATION ACT: If and so far as "The Mines Regulation Act of 1964" or any future amendments or modifications thereof shall not extend or apply to the works or operations of the Holder on the lands comprised within this Authority to Prospect the Holder shall perform and observe all and every the provisions of the said Act or any future amendments or modifications thereof in and about all works and operations of the Holder hereunder in the same manner and to the same extent as if such works and operations of the Holder were mines and mining within the meaning of the said Act.

23. CONTINUANCE OF EXISTING PROCLAMATION. The lands described in the Schedule hereto and proclaimed as aforesaid as to be exempt from occupation by the holder of a miner's right or business license and not subject to a grant or registration under "The Mining on Private Land Acts, 1909 to 1965" of a mining tenement or a Permit to Enter (except such portion or portions thereof as shall be excluded from the operations of this Authority to Prospect in manner herein provided) shall continue during the period of this Authority to Prospect to be so proclaimed.

24. CANCELLATION ON DEFAULT: If at any time the Holder shall make default in the performance or observance of any of the provisions of the Acts or of any term, condition, provision or stipulation herein contained and on the part of the Holder to be performed or observed and shall fail to remedy such breach or default within three (3) months after written notice by the Minister has been delivered or sent by post to the Holder at his registered office or principal place of business in Queensland calling upon the Holder to remedy such breach or default or if the Holder (being a company) shall be wound up or if an effective resolution is passed for

No. 5Schedule B
to DemurrerDraft
Authority
to Prospect
No. 409M—
(contd.)

its winding up (not being in any case a winding up for the purpose of reconstruction or amalgamation) or if the Holder shall assign transfer mortgage charge or create an interest in this Authority to Prospect or attempt to do so without the written consent of the Minister first had and obtained, the Minister may immediately thereupon cancel and determine this Authority to Prospect whereupon any balance of deposit then held by the Minister shall be absolutely forfeited to the Crown. Notice of such cancellation shall be sent by post to the Holder at his registered office or principal place of business in Queensland and shall be deemed to have been received by the Holder at the time when such notice would in the ordinary course of post have been received by the Holder and the fact that any such notice shall not have been received by the Holder shall not invalidate or affect such cancellation.

10

25. SURRENDER: If the Holder shall have performed and observed all of the provisions of the Acts and all of the terms, conditions, provisions and stipulations herein contained and on the part of the Holder to be performed or observed, the Holder may at any time by notice in writing to the Minister of his intention so to do surrender forthwith this Authority to Prospect and thereupon all of the Holder's obligations under this Authority to Prospect shall cease and be at an end except that the obligations of the Holder under clauses 7, 9 and 11 hereof and the rights of the Minister under clause 10 hereof for the period referred to in clause 9 hereof during which such notice is given shall not be affected in whole or in part thereby. Any balance of deposit then held pursuant to clause 6 hereof shall be refunded by the Minister to the Holder when the Holder has complied with clauses 7, 9 and 11 hereof.

20

30

3/33.

SCHEDULE C TO DEMURRER

No. 5

LETTER, PLAINTIFF TO UNDER-
SECRETARY, DEPARTMENT OF MINES

Schedule C
to Demurrer

Registered Office:
C/- F.K. Budd Son & Attwood,
Griffith Street,
Coolangatta.

P.O. Box 8
Kingscliff, N.S.W.
Phone:
Kingscliff 681

Letter,
Plaintiff to
Under
Secretary,
Department
of Mines

CUDGEN RUTILE (NO.2) PTY. LTD.

Incorporated in Queensland
Please reply to Kingscliff Office

11th January
1967

10

Department of Mines
13 JAN 1967

No.

QUEENSLAND

Your Ref: 66/3809

11th January, 1967

The Under Secretary,
Department of Mines,
Mineral House, 2 Edward Street,
BRISBANE B15 QUEENSLAND

20

Dear Sir,

RE: AUTHORITY TO PROSPECT
Area No.1 - About 8 sq. miles,
Parishes of Womalah and Cooloola
Area No.2 - About 3.5 sq. miles,
Parish of Laguna.

We refer to your letter and attached draft of the 6th
inst., regarding our applications of 2nd and 8th
November, 1966, and have to advise that we are
prepared to accept an Authority to Prospect over the
subject Areas 1 and 2 on the terms and conditions
set out therein.

30

Enclosed herewith is our cheque for \$1,172-00 being
payment of the guarantee deposit of \$1,000-00 and
first year's rental of \$172-00.

We would be pleased to receive advice of the outcome
of your negotiations with the Department of Primary
Industries in respect of the land applied for by us

3/34.

No. 5

in the Fauna Park Reserve.

Schedule C
to Demurrer

Yours faithfully,

For: CUDGEN RUTILE (NO.2) PTY.LTD.

Letter,
Plaintiff to
Under
Secretary,
Department
of Mines

(Sgd.) D.C. Wright

D.C. WRIGHT

Received at MINES DEPT.

Receipt No. 52006

Fwd. 13 JAN 1967

Amount \$1172-00

Initials JH

ENCL.

11th January
1967

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(contd.)

Schedule D
to Demurrer

SCHEDULE D TO DEMURRER

AUTHORITY TO PROSPECT NO.409M

Authority
to Prospect
No.409M

"THE MINING ACTS, 1898 TO 1965"

"THE MINING ON PRIVATE LAND ACTS, 1909 TO 1965"

26th June
1967

AUTHORITY TO PROSPECT

WHEREAS application has been made for an Authority to Prospect for the minerals and on the lands hereinafter described AND WHEREAS by Proclamation issued under the provisions of "The Mining Acts, 1898 to 1965" and "The Mining on Private Land Acts, 1909 to 1965" (hereinafter referred to as "the Acts") the said lands were declared to be exempt from occupation by the holder of a miner's right or business license and not subject to a grant or registration under "The Mining on Private Land Acts, 1909 to 1965" of a mining tenement or a Permit to Enter:

20

NOW, THEREFORE, I, THE HONOURABLE HAROLD RICHTER, the ACTING MINISTER FOR MINES AND MAIN ROADS for the STATE OF QUEENSLAND (hereinafter with his successors in office referred to as "the Minister") by virtue of the powers and authority in me vested under the Acts HEREBY GRANT to CUDGEN RUTILE (NO.2) PTY. LTD. (hereinafter referred to as "The Holder") an Authority to Prospect on the lands more particularly described in the Schedule hereto, exclusive of all areas of surface containing

30

stacked tailings, sands, mullock, slag and similar materials, for the period hereinafter specified upon and subject to the provisions of the Acts and in particular Section 23A of "The Mining Acts, 1898 to 1965" and Section 12A of "The Mining on Private Land Acts, 1909 to 1965" and to the following terms, conditions, provisions and stipulations:-

No. 5

Schedule D
to Demurrer

Authority
to Prospect
No.409M

10 1. PERIOD: This Authority to Prospect is granted for a period of Two (2) years commencing on 1st February, 1967.

26th June
1967

2. AREA: Approximately 11-5/10 square miles as described in the Schedule hereto.

(contd.)

Notwithstanding anything herein contained the area of the lands comprised in this Authority to Prospect shall be reduced by each of the following dates in this clause to not more than the area shown against that date:-

Date	Area
1st February, 1968	6 square miles

20 The Holder shall before each of the above dates in this clause by notice in writing to the Minister specify the lands to be excluded by that date in accordance with this clause. In default of the Holder so specifying then the Minister shall specify such lands.

30 3. MARKING OF BOUNDARY: If any doubt or dispute should arise as to the position of all or any portion or portions of the boundary or boundaries of the lands comprised within this Authority to Prospect (hereinafter called "the boundary") or if it appears to the Minister to be desirable in the public interest then the Minister may require the Holder to survey and mark the boundary and thereupon the Holder shall do so at his own expense.

Should he so desire the Holder may at any time during the period of this Authority to Prospect survey and mark the boundary.

40 When the boundary has been surveyed and marked and the boundary as so marked has been accepted as correct by all holders of Authorities to Prospect whose interests are affected by such marking of the

No. 5
Schedule D
to Demurrer

boundary and by the Minister then the boundary as so marked shall be deemed to be the boundary of the lands comprised within this Authority to Prospect.

Authority
to Prospect
No.409M

Failing acceptance as aforesaid then the Minister may determine the location of the boundary in relation to the marks and thereupon the boundary as so determined shall be deemed to be the boundary of the lands comprised within this Authority to Prospect.

26th June
1967
(contd.)

4. SURVEY OF BOUNDARY: The survey of the boundary shall be made by a surveyor registered under "The Land Surveyors Acts, 1908 to 1916". 10

The survey and the marking of the boundary shall be made in accordance with "The Land Surveyors Acts 1908 to 1916" and "The Mining Acts, 1898 to 1965". Where the Minister considers that no appropriate or clear directions are given under the above Acts then the survey and marking shall be as the Minister may direct.

The Holder shall lodge with the Minister a plan, field notes and computations of the survey all certified as correct by the surveyor who made the survey. 20

5. RIGHT TO PROSPECT: The Holder shall during such period have the right to prospect the said lands, including geological and geophysical examinations, aerial and contour surveys, drilling and shaft sinking as may from time to time in the opinion of the Holder be appropriate for the purpose of determining the existence or otherwise of minerals (including gold but excluding coal, mineral oil and petroleum) and their extent and nature in the said lands. 30

This Authority to Prospect shall not confer any right of ownership to the said minerals upon the Holder and all such minerals shall remain the property of the Crown.

6. DEPOSIT: The Holder before the date hereof shall deposit with the Minister a sum of One thousand dollars (\$1,000) (the receipt of which sum is hereby acknowledged) to be held by the Minister as a guarantee that the provisions of the Acts and the terms, conditions, provisions and stipulations of this Authority to Prospect on the part of the 40

Holder to be performed or observed will be performed or observed by the Holder.

No. 5

Schedule D
to Demurrer

Authority
to Prospect
No. 409M

26th June
1967

(contd.)

10 Subject to the performance and observance by the Holder of the provisions of the Acts and the terms, conditions, provisions and stipulations of this Authority to Prospect on the part of the Holder to be performed or observed, such deposit shall be refunded to the Holder upon the expiration or prior determination (other than by cancellation as hereinafter provided) of this Authority to Prospect.

7. RENTAL: The Holder shall pay to the Minister before each of the dates tabulated below in this clause the sum in Australian currency set opposite such date as rental for the lands subject to this Authority to Prospect. Receipt of the rental for the first date tabulated below is hereby acknowledged by the Minister.

	Date	Rental
20	1st February, 1967	\$172
	1st February, 1968	\$100 plus \$6 per square mile

30 8. EXISTING RIGHTS: Subject to the provisions of the Acts this Authority to Prospect shall be subject and without prejudice to all rights, powers, privileges and property of all and every person and corporation under or in respect of any Crown grant (including any franchise incorporated in an agreement ratified by Act of Parliament), Certificate of Title, lease, license, permit, claim or mining tenement or of any Authority to Prospect granted to any person under the provisions of "The Petroleum Acts, 1923 to 1962" and "The Coal Mining Acts, 1925 to 1964" now or at any time during the period of this Authority to Prospect existing in respect of any part of the said lands.

40 9. WORK AND EXPENDITURE: During the said period the Holder shall continuously prospect the said lands in accordance with the provisions of clause 5 hereof, provided however that the Minister may, on the application of the Holder, approve, in writing, of the Holder conducting such other investigations for such period and subject to such terms and conditions as are set out in such approval, and the Holder shall during each period tabulated below so long as this Authority to Prospect shall remain in operation bona

No. 5
Schedule D
to Demurrer

vide expend or cause to be expended in such prospecting and investigations not less than the sum of money set opposite such period, all such sums of money to be measured in Australian currency:-

Authority to Prospect No.409M	Period	Commencing	Not less than
—	One (1) year	1st February, 1967	£20,000
26th June 1967	One (1) year	1st February, 1968	£30,000

(contd.)

Upon the surrender of this Authority to Prospect 10
in accordance with clause 25 hereof the minimum
expenditure for the period in which such surrender
is made shall be reduced in the ratio that the
portion of the period remaining after the date of
such surrender bears to the entire period.

10. GUARANTEE: When required by the Minister,
the Holder shall, in respect of the period referred
to in clause 9 hereof, lodge with the Minister a
security or provide a surety acceptable to the
Minister for the amount to be expended during the 20
period under the terms of this Authority to
Prospect. If at the end of such period the
Minister is of the opinion that the Holder has not
fulfilled the terms and conditions of the Authority
to Prospect in respect of work and expenditure on
the Authority to Prospect during such period, the
Minister may at his sole discretion forfeit the
security or such amount of the security as shall be
required by the Minister to satisfy the obligations
of the Holder hereunder or may require the surety to 30
pay to the Minister a sum not exceeding the amount
to be expended during that period. Any moneys so
forfeited shall be paid to Consolidated Revenue.

11. REPORTS: The Holder shall furnish to the
Minister a written report giving full particulars
of the prospecting and investigations described in
clauses 5 and 9 hereof and of the expenditure
thereon during each three-monthly period ending
31st March, 30th June, 30th September and 31st
December of the currency of this Authority to 40
Prospect and shall deliver such report to the
Minister within one month of the end of such three-
monthly period.

The Holder shall furnish to the Minister a
written report accompanied by relevant maps,

sections, charts and other data giving full particulars of the information obtained from all operations in connection with such prospecting and investigations during each year ending 31st December of the currency of this Authority to Prospect and shall deliver such report to the Minister not later than six months after the expiration of such year or the prior determination of this Authority to Prospect whichever shall be the sooner.

10

In respect of every area excluded from the lands the subject of this Authority to Prospect in accordance with clause 2 hereof, the Holder shall furnish to the Minister a written report accompanied by relevant maps, sections, charts and other data giving full particulars of the information obtained from all operations in connection with such prospecting and investigations of the excluded area during the currency of this Authority to Prospect up to the time of such exclusion and shall deliver such report to the Minister before the expiration of six months from the time of such exclusion. Such report may be used as the Minister sees fit.

20

Unless otherwise approved by the Minister, all reports required under this Clause shall be in the English language, shall give the information required in a clear manner, and shall be suitable for permanent record.

30

12. PROTECTION OF ROADS, RAILWAYS, TELEPHONE AND POWER TRANSMISSION LINES AND CABLES, RADIO AND TELEVISION MASTS AND PIPELINES: This Authority to Prospect shall not be taken to authorise interference with any road, railway, telephone or power transmission line or cable or radio or television mast or pipeline, which shall not be affected in any way by operations performed by virtue of this Authority to Prospect.

40

13. PROTECTION OF NAVIGATION, HARBOUR OR OTHER WORKS AND FISHING GROUNDS: The Holder shall not interfere with any navigation, harbour or other works, or damage fishing grounds, in the exercise of his rights under this Authority to Prospect.

14. PRIVATE LAND: The Holder before entering on any private land pursuant to this Authority to Prospect shall obtain a Permit to Enter in accordance with paragraph (b) of subsection (4) of section 12A

No. 5Schedule D
to DemurrerAuthority
to Prospect
No.409M26th June
1967

(contd.)

No. 5
 Schedule D
 to Demurrer
 Authority
 to Prospect
 No.409M
 —
 26th June
 1967
 (contd.)

of "The Mining on Private Land Acts, 1909 to 1965".

15. FORESTS AND NATIONAL PARKS: The Holder shall not enter on any State Forest or Timber Reserve or National Park or Scenic Area set apart under "The Forestry Acts, 1959 to 1964" for any of the purposes of this Authority to Prospect without the prior written consent of the Conservator of Forests and then only under the conditions fixed by the Conservator Forests.

10

16. ABORIGINAL RESERVES: The Holder shall not enter on any Aboriginal Reserve set apart under "The Aborigines' and Torres Strait Islanders' Affairs Act of 1965" for any of the purposes of this Authority to Prospect without the prior written consent of the Director of Native Affairs and then only under the conditions fixed by the Director of Native Affairs.

17. ENTRY ON LAND: The Holder before entering on any land pursuant to this Authority to Prospect shall give to the owner, holder, trustee, or occupier of such land notice either personally or in such form and in such manner as the Minister shall approve either generally or in a particular case.

20

18. AUTHORITY TO BE PRODUCED: Any agent, servant or employee of the Holder entering upon any land pursuant to this Authority to Prospect shall carry upon his person a written authorisation issued by the Holder in a form approved by the Minister and shall produce such authorisation when required by the owner, holder, trustee or occupier of the said land.

30

19. ABORIGINAL ARTIFACTS AND HISTORICAL SITES: The Holder shall not damage or interfere with aboriginal artifacts or historical sites without the written permission of the Minister and shall notify the Minister of any such artifacts or sites that the Holder may discover so that they may be properly preserved.

40

20. RIGHT TO ACQUIRE MINING LEASES: Subject to due performance and observance of the provisions of the Acts and the terms, conditions, provisions and stipulations of this Authority to Prospect on the part of the Holder to be performed or observed, the

Holder shall be entitled at any time and from time to time during the said period to apply for and have granted to him in priority to any other person or company, a mining lease for the minerals specified in clause 5 hereof under the Acts over any part of the lands comprised within this Authority to Prospect.

No. 5

Schedule D
to Demurrer

Authority
to Prospect
No. 409M

10 21. TRANSFER: The Holder shall not, except with the written approval of the Minister first had and obtained, assign, transfer, mortgage or charge this Authority to Prospect, or create an interest of any description whatsoever over or with respect to the said Authority to Prospect.

26th June
1967
(contd.)

20 22. APPLICATION OF MINES REGULATION ACT: If and so far as "The Mines Regulation Act of 1964" or any future amendments or modifications thereof shall not extend or apply to the works or operations of the Holder on the lands comprised within this Authority to Prospect the Holder shall perform and observe all and every the provisions of the said Act or any future amendments or modifications thereof in and about all works and operations of the Holder hereunder in the same manner and to the same extent as if such works and operations of the Holder were mines and mining within the meaning of the said Act.

30 23. CONTINUANCE OF EXISTING PROCLAMATION: The lands described in the Schedule hereto and proclaimed as aforesaid as to be exempt from occupation by the holder of a miner's right or business license and not subject to a grant or registration under "The Mining on Private Land Acts, 1909 to 1965" of a mining tenement or a Permit to Enter (except such portion or portions thereof as shall be excluded from the operations of this Authority to Prospect in manner herein provided) shall continue during the period of this Authority to Prospect to be so proclaimed.

40 24. CANCELLATION ON DEFAULT: If at any time the Holder shall make default in the performance or observance of any of the provisions of the Acts or of any term, condition, provision or stipulation herein contained and on the part of the Holder to be performed or observed and shall fail to remedy such breach or default within three (3) months after written notice by the Minister has been delivered or sent by post to the Holder at his registered office or principal place of business in Queensland calling upon

No. 5
 Schedule D to Demurrer
 Authority to Prospect No.409M
 26th June 1967
 (contd.)

the Holder to remedy such breach or default or if the Holder (being a company) shall be wound up or if an effective resolution is passed for its winding up (not being in any case a winding up for the purpose of reconstruction or amalgamation) or if the Holder shall assign transfer mortgage charge or create an interest in this Authority to Prospect or attempt to do so without the written consent of the Minister first had and obtained, the Minister may immediately thereupon cancel and determine this Authority to Prospect whereupon any balance of deposit then held by the Minister shall be absolutely forfeited to the Crown. Notice of such cancellation shall be sent by post to the Holder at his registered office or principal place of business in Queensland and shall be deemed to have been received by the Holder at the time when such notice would in the ordinary course of post have been received by the Holder and the fact that any such notice shall not have been received by the Holder shall not invalidate or affect such cancellation.

10
20

25. SURRENDER: If the Holder shall have performed and observed all of the provisions of the Acts and all of the terms, conditions, provisions and stipulations herein contained and on the part of the Holder to be performed or observed, the Holder may at any time by notice in writing to the Minister of his intention so to do surrender forthwith this Authority to Prospect and thereupon all of the Holder's obligations under this Authority to Prospect shall cease and be at an end except that the obligations of the Holder under clauses 7, 9 and 11 hereof and the rights of the Minister under clause 10 hereof for the period referred to in clause 9 hereof during which such notice is given shall not be affected in whole or in part thereby. Any balance of deposit then held pursuant to clause 6 hereof shall be refunded by the Minister to the Holder when the Holder has complied with clauses 7, 9 and 11 hereof.

30
40

SCHEDULE

AREA NO. 1.

County of March, Parishes of Cooloolah and Womalah

Area, about 8 square miles

All the Crown lands and private lands (but not

3/43.

reserves) within the State of Queensland and within the boundaries shown on Plan No. AM 70 held at the Department of Mines, Brisbane (a copy of which is attached), but exclusive of the lands held on 4th February, 1967, under all mining tenements, holdings and permits to enter under the Acts.

No. 5
Schedule D
to Demurrer

Authority
to Prospect
No.409M

AREA NO. 2

County of March, Parish of Laguna

Area, about 3-5/10 square miles

26th June
1967
(contd.)

10 All the Crown lands and private lands (but not reserves) within the State of Queensland and within the boundaries shown on Plan No. AM 70 held at the Department of Mines, Brisbane (a copy of which is attached), but exclusive of the lands held on 4th February, 1967, under all mining tenements, holdings and permits to enter under the Acts.

20 (Note: The actual boundaries on the ground shall be those marked by an authorised surveyor in accordance with the attached plan and the requirements of the Authority to Prospect. The boundaries are shown in relation to the points (marked O). There is no warranty that the boundaries are correctly shown in relation to other features on the map).

DATED at BRISBANE this 26th day of June 1967.

(Sgd.) HAROLD RICHTER

Acting Minister for Mines and Main Roads

30 Consequent upon the surrender of an area of about 5-5/10 square miles as from 1st February, 1968, the area of the within Authority to Prospect is now about 6 square miles (Area, No.1, about 2-5/10 square miles, as described in Schedule hereunder and as shown on copy Plan No. AM 372 attached hereto, and Area No. 2, about 3-5/10 square miles, as shown in Schedule on page 6 and as shown on copy Plan No. AM 70 attached hereto).

Date of Minister's approval: 7th March, 1968.

DATED at BRISBANE this 22nd day of May 1968

40 DEPARTMENT OF MINES
QUEENSLAND BRISBANE

(Sgd.) E.K. HEALY
Under Secretary
Department of Mines

No. 5SCHEDULE

Schedule D
to Demurrer

County of March, Parish of Womalah

Area, about 2-5/10 square miles

Authority
to Prospect
No.409M

All the Crown lands and private lands, (but not reserves) within the State of Queensland and within the boundaries shown on Plan No. AM 372 held at the Department of Mines, Brisbane, but exclusive of the lands held on 23rd March, 1968, under all mining tenements, holdings and permits to enter under the Acts.

26th June
1967
(contd.)

10

(Note: The actual boundaries on the ground shall be those marked by an authorised surveyor in accordance with the attached plan and the requirements of the Authority to Prospect. The boundaries are shown in relation to the points (marked O). There is no warranty that the boundaries are correctly shown in relation to other features on the map.)

The within Authority to Prospect is extended for a further period of one (1) year from 1st February, 1969, subject to the following conditions:-

20

(i) RENTAL: In the tabulation in clause 7 of this Authority to Prospect, the following is inserted:-

<u>Date</u>	<u>Rental</u>
1st February, 1969	£100 plus £6 per square mile

(ii) WORK AND EXPENDITURE: In the tabulation in clause 9 of this Authority to Prospect, the following is deleted:-

30

<u>Period</u>	<u>Commencing</u>	<u>Not less than</u>
One (1) year	1st February, 1968	£30,000

and the following is inserted:-

<u>Period</u>	<u>Commencing</u>	<u>Not less than</u>
Two (2) years	1st February, 1968	£40,000

Date of Minister's approval: 30th April, 1968

3/45.

DATED at BRISBANE this 28th day of May, 1968

DEPARTMENT OF MINES,

BRISBANE

(Sgd.) E.K. HEALY

Under Secretary,
Department of Mines

No. 5

Schedule D
to Demurrer

Authority
to Prospect
—

26th June
1967

(contd.)

SCHEDULE E TO DEMURRER

Schedule E
to Demurrer

LETTER, PLAINTIFF TO UNDER SECRETARY,
DEPARTMENT OF MINES

Letter,
Plaintiff
to Under
Secretary,
Department
of Mines

10 Registered Office: P.O. Box 8,
F.S. Budd Son & Attwood, Kingscliff, N.S.W. 2413
Griffith Street, Phone: Kingscliff 41501
Coolangatta

CUDGEN RUTILE (NO.2) PTY. LTD.
Incorporated in Queensland

17th January
1968

R.G.McM:JP DEPARTMENT OF MINES Please reply to
No. 24 JAN 1968 Kingscliff Office
QUEENSLAND

20 17th January, 1968

The Under Secretary,
Department of Mines,
"Mineral House", 2 Edward Street,
BRISBANE. Q. 4000.

Dear Sir,

AUTHORITY TO PROSPECT No.409M

30 In accordance with the terms and conditions of
Authority to Prospect No.409M, the area remaining after
1st February, 1968, has been reduced by 5½ square miles
to the stipulated 6 square miles.

A description of the remaining ground in Area No.1
is as follows and is shown on a copy of Plan AM70
herewith:

Commencing at a point about 28 chains westerly
from the most south-westerly corner of A/P 348M

No. 5

Schedule E
to Demurrer

Letter,
Plaintiff to
Under
Secretary,
Department
of Mines

and along the northern boundary of Portion 29, R.1093, Fauna Park Reserve; thence about 140 chains westerly along that northern boundary of Portion 29, R.1093 Fauna Park Reserve; thence on a bearing of 5° true for about 276 chains; thence 98° true for about 49 chains; thence 191° 30' true for about 67 chains; thence about 188° true for about 112 chains; thence about 99° true for about 30 chains; thence 150°00 true for about 127 chains back to the point of commencement.

10

17th January
1968
(contd.)

At this point we would respectfully ask that consideration be given to an extension of twelve (12) months on the remaining 6 square miles, with a subsequent reduction in yearly expenditure to \$15,000.00.

The reasons for this request are as follows:

1. Evidence is being accumulated that, especially in Area No. 2, there is the likelihood of large deep deposits of mineral bearing sands in which case, more time will be needed to drill these zones out. Techniques and equipment are being developed by us to enable drilling to depths of 300 feet and more in moist sand. We have achieved considerable success in this field with portable, manually operated augers but further development is required to penetrate perched water tables. 20
2. With the deep drilling, high water tables, which in these areas seem to be controlled to a degree by the rainfall, do not allow projected depths to be attained. It becomes necessary then to return after dry spells to complete the drilling in these sections and, as the area has possibly the highest rainfall in the district, this can be most time consuming. 30
3. Areas Nos.1 and 2 are far enough apart to make their development separate operations, principally because of limited access. Expenditure at the rate of \$30,000-00 per annum would involve the engagement of a temporary crew which has been found to be quite unsatisfactory. 40

It is proposed to use the crew already engaged in the district on the southern area as well,

3/47.

with a consequent saving in vehicle and equipment costs and which are basically not developmental costs on the area.

We forward herewith a cheque for \$136.00 being rental calculated at \$100-00 plus \$6-00 per square mile.

Yours faithfully,

For: CUDGEN RUTILE (NO.2) PTY. LTD.

(Sgd.) D.C. WRIGHT

D.C. WRIGHT

Received at MINES DEPT.
Receipt No. 57815
Fwd. 24 JAN 1968
Amount \$136-00
Initials C.M.

No. 5

Schedule E
to Demurrer

Letter,
Plaintiff to
Under
Secretary,
Department
of Mines

17th January
1968

(contd.)

10

ENCL.

SCHEDULE F TO DEMURRER

LETTER, UNDER SECRETARY, DEPARTMENT
OF MINES TO PLAINTIFF

Schedule F
to Demurrer

Letter,
Under
Secretary,
Department
of Mines to
Plaintiff

20

CHS/mah

30th April, 1968

Dear Sir,

Re: Authority to Prospect No. 409M.

30th April
1968

With reference to your letter dated 1st instant and previous correspondence concerning the above Authority to Prospect, I have to inform you that it has been approved to offer to vary the Authority to Prospect by adding the following:-

"The Authority to Prospect is varied as follows:-

30

PERIOD: This Authority to Prospect is extended for a period of one (1) year from 1st February, 1969.

RENTAL: In the tabulation in clause 7 of this Authority to Prospect, the following is inserted:-

<u>Date</u>	<u>Rental</u>
1st February, 1969	\$100 plus \$6 per square mile

3/48.

No. 5

WORK AND EXPENDITURE: In the tabulation in clause 9 of this Authority to Prospect, the following is deleted:-

Schedule F
to Demurrer

Letter,
Under
Secretary,
Department
of Mines to
Plaintiff

<u>Period</u>	<u>Commencing</u>	<u>Not less than</u>
One (1) year	1st February, 1968	\$30,000

and the following is inserted:-

30th April
1968

(contd.)

<u>Period</u>	<u>Commencing</u>	<u>Not less than</u>
Two (2) years	1st February, 1968	\$40,000"

10

This offer lapses 21 days from the date of this letter unless I receive by then acceptance of the offer.

Yours faithfully,

(Sgd.) G.W. COOK

(G.W. COOK)

Acting Under Secretary

The Secretary,
Cudgen Rutile (No.2) Pty. Ltd.,
P.O. Box 8,
Kingscliff. N.S.W. 2413.

20

Schedule G
to Demurrer

SCHEDULE G TO DEMURRER

Letter,
Plaintiff to
Under
Secretary,
Department
of Mines

LETTER, PLAINTIFF TO UNDER SECRETARY,
DEPARTMENT OF MINES

General Office: South Beach Kingscliff 4C N.S.W. Australia	Phone Kingscliff 74 1501 (3 lines) Cables and Telegrams: "Foystores" Murwillumbah, Aust. Telex AA65922 Sydney
P.O.Box Kingscliff 2413	

30

8th May
1968

DEPARTMENT OF
MINES
No.13 May 1968
Queensland
CUDGEN RUTILE (NO.2) PTY. LTD.
Incorporated in Queensland

DCW.JM

May 8, 1968

3/49.

The Under Secretary,
Department of Mines,
Mineral House, 2 Edward Street,
BRISBANE. Q'LD. 4000

No. 5

Schedule G
to Demurrer

Dear Sir,

re: Authority to Prospect No. 409M.

Letter,
Plaintiff to
Under
Secretary,
Department
of Mines

8th May
1968

(contd.)

10 With reference to your letter of 30th April,
1968 we have to advise that we accept the offer made
therein in respect of the subject Authority to
Prospect regarding the period, rental, work and
expenditure.

Yours faithfully,

(Sgd.) D.C. WRIGHT

D.C. WRIGHT

NO. 6

No. 6

JUDGMENT OF THE FULL COURT

Judgment
of the
Full Court

IN THE SUPREME COURT OF QUEENSLAND No.929 of 1972

18th May
1973

B E T W E E N : CUDGEN RUTILE (NO.2)
PTY. LTD. Plaintiff

- and -

GORDON WILLIAM WESLEY
CHALK Defendant

FULL COURT:BEFORE THEIR HONOURS THE CHIEF JUSTICE
MR. JUSTICE STABLE and
MR. JUSTICE HART

The 18th day of May 1973

30 The Defendant having on the 12th day of December
1972 demurred to the whole of the Plaintiff's Statement
of Claim delivered on the 30th day of August 1972 and
the said Demurrer having been allowed by the Court
IT IS THIS DAY ADJUDGED that the Defendant do recover
against the Plaintiff his costs of the said Demurrer
to be taxed AND IT IS FURTHER ADJUDGED that judgment

UPON READING the affidavit of Graeme Oriel Morris filed herein by leave on the 18th day of May, 1973 and upon the applicant by its Counsel undertaking that it will on or before the 18th day of July, 1973 take all necessary steps for the purpose of procuring the despatch of the record to England

No.10

Order of the
Full Court
granting
Leave to
Appeal to
Her Majesty
in Council

10

THIS COURT DOTH ORDER that the consolidated appeals to Her Majesty in Council from the several judgments and orders of the Full Court of the Supreme Court of Queensland made in the said Action No.929 of 1972 in this Honourable Court on the 18th day of May, 1973:-

(contd.)

- (a) whereby the Demurrer delivered by the Respondent on the 12th day of December, 1972 to the applicant's Statement of Claim delivered on the 30th day of August, 1972 was allowed and it was adjudged that the respondent recover against the applicant his costs of such Demurrer to be taxed; and
- 20 (b) whereby judgment was ordered to be entered in such action in favour of the respondent and that the applicant do recover nothing against the respondent and the applicant was ordered to pay to the respondent his costs of the action to be taxed;

be allowed to be made

30 AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the costs of and incidental to this motion abide the event unless Her Majesty in Council should otherwise order

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the costs of and incidental to this motion be paid by the applicant in the event of the said consolidated appeals not being proceeded with or being dismissed for want of prosecution.

BY THE COURT

(Sigd.)

REGISTRAR

3/52.

No.11

NO. 11

Certificate of Registrar of the Supreme Court of Queensland certifying transcript Record of Proceedings

CERTIFICATE OF THE REGISTRAR OF THE SUPREME COURT OF QUEENSLAND CERTIFYING TRANSCRIPT RECORD OF PROCEEDINGS

IN THE PRIVY COUNCIL

No.18 of 1973

ON APPEAL FROM THE FULL COURT OF THE SUPREME COURT OF QUEENSLAND

B E T W E E N : CUDGEN RUTILE (NO.2) PTY. LTD. (Plaintiff) 10
Appellant

- and -

GORDON WILLIAM WESLEY CHALK (Defendant) 10
Respondent

I, VINCENT GERALD McMAHON, Registrar of the Supreme Court of Queensland at Brisbane DO HEREBY CERTIFY that this Record contains a true copy of all proceedings, judgments and orders had or made in this matter so far as the same have relation to the cause in which CUDGEN RUTILE (NO.2) PTY. LTD. is the Appellant and GORDON WILLIAM WESLEY CHALK is the Respondent so far as the same have relation to the matter of the Judgment of the Full Court of the Supreme Court of Queensland pronounced in Action No.929 of 1972 on the 18th day of May 1973, and an Index of Reference of all papers and documents in the said action (except documents of a merely formal character or otherwise immaterial for the purposes of an Appeal to Her Majesty in Council), and a list of the said formal and immaterial documents which have been omitted. 20
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IN FAITH AND TESTIMONY WHEREOF I have hereunto affixed my Seal of Office and also the Seal of the Supreme Court of Queensland in the State of Queensland the Seventeenth day of July One thousand nine hundred and seventy three

REGISTRAR

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IN THE PRIVY COUNCIL

No. 18 of 1973

O N A P P E A L
FROM THE FULL COURT OF THE
SUPREME COURT OF QUEENSLAND

B E T W E E N :

CUDGEN RUTILE (NO.2) PTY LTD. (Plaintiff)
Appellant

- and -

GORDON WILLIAM WESLEY
CHALK
(Defendant)
Respondent

RECORD OF PROCEEDINGS

LOVELL, WHITE & KING,
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Solicitors for the Respondent