

enforcing compliance with the Act. It is now believed that the Act will not be proclaimed until late 2004. The Act will not become law until it is proclaimed.

In the meantime, the DEP proposes to release draft regulations for comment by the general public. The mining and petroleum industry should closely consider these draft regulations and provide their comments on any aspects of the regulations that they feel will impact upon their business.

VALIDITY OF BARRISTER'S SIGNATURE ON PLAINT*

Goldstream Minerals & Exploration Pty Ltd v Newmont Duketon Pty Ltd & Ors ([2004] WAMW 5, Kalgoorlie Warden's Court, 9 June 2004, Warden Sharratt SM)

Plaint – Strike out – Regulation 122 (1) – Signature by barrister

Facts

The plaintiff lodged three complaints seeking forfeiture of mining leases. The complaints were signed by a barrister in the barrister's name and the signature was annotated "counsel for the Plaintiff".

The defendants applied to strike out the complaints on the basis that they did not comply with regulation 122(1) of the *Mining Regulations 1981 (WA)*. Regulation 122(1) provides, inter alia, that "every complaint shall be signed by the plaintiff or his solicitor".

Submissions

The defendants relied upon the authority of *Exmin Pty Ltd v Australian Gold Resources Ltd*,¹ wherein complaints which were signed by a tenement manager under a power of attorney were struck out, as authority for the proposition that a complaint which did not comply with regulation 122 was a nullity which should be struck out.

The defendants submitted that in view of the traditional distinction between a "barrister" and a "solicitor", the reference to "solicitor" in regulation 122(1) should be construed strictly so as to exclude a "barrister and solicitor" under the *Legal Practitioners Act 1893 (WA)* who had been admitted to the bar and had undertaken not to carry on the traditional work of a "solicitor".

The defendants further submitted that policy reasons supported this conclusion because the retainer between a solicitor and a plaintiff made it reasonable to assume that a solicitor had authority to issue a complaint whereas a barrister does not have a direct relationship of retainer with the plaintiff.

The plaintiffs disputed that the complaints were irregular, denied that any irregularity rendered the complaints a nullity and argued that any irregularity could be cured under section 142 of the *Mining Act 1978 (WA)*.

Held

Warden Sharratt SM noted that he was sitting administratively and that the same considerations that apply in judicial proceedings may not apply. He concluded that it was reasonably safe to assume, in all the circumstances, that the barrister had authority to issue the complaints even though there was no direct agency relationship between the barrister and the plaintiff.

* Alex Jones and Robert Edel, Gadens Lawyers.

¹ Exmin Pty Ltd has issued a writ of certiorari and mandamus in respect of the decision in *Exmin Pty Ltd v Australian Gold Resources Ltd* [2002] WAMW 29 but as at the date of writing it had not been heard.

Warden Sharratt SM was not satisfied that the legislature, in authorising solicitors to issue plaints had intended to exclude barristers.

He held that the decision of *Exmin Pty Ltd v Australian Gold Resources Ltd* had no application to the facts of the case.

No orders were made in respect of the strike out application.

WARDEN'S COURT DECISIONS ON-LINE

The Department of Industry and Resources has, at the request of the Mining Industry and Liaison Committee, posted on its website, the decisions of the Warden's Courts Decisions for 2000-2004. The website also provides a useful summary of the legislation considered and the findings made in each of the decisions. The decisions can be located at:

<http://www.doir.wa.gov.au/mineralsandpetroleum/B5D17898876D4B27AA2CB34E0A5D35BD.asp>

REASONABLE APPREHENSION OF BIAS OF MINING WARDEN*

Synergy Equities Group Ltd v Morellini (Perth Warden's Court, Warden Calder SM 11 May 2004, ex tempore decision)

Bias – Application for Warden to disqualify himself – Plaints for Forfeiture and Objections to Exemption Applications

Synergy Equities Group Limited (Synergy) is the holder of Mining Leases 70/815 and 816 (Tampia Tenements) and Mining Lease 15/621 (Bulla Bulling Tenement). Synergy is the applicant for exemption with respect to each of the Tampia Tenements and the defendant to a plaint by Mr Morellini affecting Mining Lease 70/815 (Tampia Proceedings)¹. Synergy is also the applicant for exemption and defendant to a plaint by Mr Morellini with respect to the Bulla Bulling Tenement (Bulla Bulling Proceedings). In July 2003 Warden Calder SM delivered his report and recommendations in the Bulla Bulling Proceedings². The Warden found for Mr Morellini, refusing the application for exemption and recommending forfeiture of the Bulla Bulling Tenement. The Warden made adverse findings regarding the evidence given by Synergy's Managing Director as well as adverse findings of fact about Synergy's actions and intentions in relation to compliance with the expenditure obligations of the Bulla Bulling Tenement.

Synergy sought orders from the Warden that he disqualify himself from the Tampia Proceedings, by reason of his findings of fact and findings upon the credibility of Synergy's material witness in the Bulla Bulling Proceedings, on grounds that his findings in the previous decision may create an apprehension that he may not bring an impartial mind to the matter and give Synergy a fair

* Mark Gerus, Blakiston & Crabb.

¹ See [2003] WAMW 21, *Morellini v Synergy Equities Group Ltd*.

² *IPT Systems Ltd v Morellini* [2003] WAMW 5, see (2003) 22 ARELJ at 427.