

Held

1. The determination of the First Exemption Application did not finally determine the right of the tenement holder to the grant of an exemption; it merely determined the fate of that particular application. There was nothing in the *Mining Act* 1978 (WA) to prevent ACM from lodging the Second Exemption Application after the refusal of the First Exemption Application.
2. There was no room for the application of principles relating to *functus officio* or abuse of process because the Second Exemption Application relied upon different grounds and raised different issues to the First Exemption Application.
3. In this case, there was not 'reasonable cause' for an extension of time, pursuant to reg 104, because:
 - (a) The large extension of time was required and ACM had contributed to this by its own inaction and lack of due diligence.
 - (b) The refusal of the extension was of limited prejudice to ACM because there was nothing to stop ACM raising the same material relied upon in the Second Exemption Application in defence of the Plaintiff.

REQUIREMENT OF SIGNATURE ON PLAINT*

Exmin Pty Ltd v Australian Gold Resources Limited ([2002] WAMW 29 (Warden's Court, Perth, Calder SM))

Plaint for forfeiture – Strike-out – Non-compliance with Regulation 122(1) – Requirement of signature on Plaintiff

Facts

The Plaintiff lodged complaints seeking forfeiture of three mining leases for non-compliance with expenditure conditions.

The complaints were purportedly signed by the donee of a power of attorney from the Plaintiff. The donee of the power of attorney was neither a solicitor nor a director of the Plaintiff. The Defendant applied to strike out the complaints for non-compliance with reg 122(1) of the *Mining Regulations* 1981 (WA).

Submissions

On behalf of the Defendant it was submitted that:

1. Pursuant to reg 122(1), a complaint cannot be signed by a non-solicitor agent of the Plaintiff.
2. As a general rule, a statutory requirement of signature is satisfied by the signature of an authorised agent, but in this case, the presumption is excluded by:
 - (a) the language of reg 122(1), in particular, the express reference to "solicitors" in reg 122(1) which excludes, by implication, non-solicitor agents;
 - (b) the language of the *Mining Act* 1978 (WA) as a whole, in particular, reg 122(1) can be contrasted with s 102 of the *Mining Act* 1978 (WA) which expressly authorises "agents";
 - (c) the policy justification for excluding non-solicitor agents from signing complaints:
 - (i) Regulation 122(1) is a statutory embodiment of the general rule of practice at common law that a party must personally represent itself or be represented by a solicitor.

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- (ii) The reason for the rule is to ensure that proceedings are conducted by persons who have the authority of the party they represent and over whom the court has proper control.
- 3. Even if the power of attorney was valid at the date which the plaints were signed, a power of attorney is merely a formal type of agency. The signature of the donee of a power of attorney is not deemed to be the personal signature of the donor. Accordingly, a plaint signed under a power of attorney from the plaintiff does not comply with reg 122(1).
- 4. A plaint which does not comply with reg 122(1) is a nullity which cannot be cured pursuant to s 142 of the *Mining Act* 1978 (WA).

On behalf of the Plaintiff it was submitted that:

- 1. The word “shall” in reg 122(1) creates a mandatory requirement only in relation to the requirement that the plaint be signed, not in relation to who it should be signed by. Non-solicitor agents would only be clearly excluded by reg 122(1) if the word “only” was inserted after the word “shall”
- 2. A company is a “person” for the purposes of s 98(1) of the *Mining Act* 1978 (WA) and therefore a company may apply for forfeiture. In accordance with s 18 of the *Interpretation Act* 1984 (WA), a construction should be placed upon reg 122(1) which promotes the purpose of the act by facilitating the issue of plaints by corporations.
- 3. Regulation 108 authorises the appointment of an attorney in dealing with a mining tenement. The signing of plaints under a power of attorney is authorised by reg 108 because a plaint is a “dealing” within the meaning of that regulation. In this case, the donee who signed the plaints was validly authorised under the power of attorney, regardless of whether the power of attorney was lodged and registered with the Department.

Decision of Warden Calder

- 1. Warden Calder considered that parliament determined that the issue of a plaint for forfeiture is such a significant procedural step that it should only be taken by a plaintiff in person or his solicitor. Parliament indicated that intention by expressly referring to a solicitor for the plaintiff in reg 122(1). As a solicitor is a type of agent, the words “or his solicitor” would be redundant if the term “plaintiff” was meant to be construed as including agents.
- 2. A party cannot, by power of attorney, grant a donee the power to do any act which the donee could not otherwise lawfully do. Accordingly, a non-solicitor agent cannot, by power of attorney, be empowered to sign a plaint for forfeiture.
- 3. A plaint which does not comply with reg 122(1) is a nullity. Non-compliance with reg 122(1) is not a mere ‘informality’ which can be cured by s 142(2) of the *Mining Act* 1978 (WA). Furthermore, non-compliance with reg 122(1) cannot be cured by s 142(4) because s 142(4) presupposes the existence of valid proceedings.
- 4. The plaints were struck out.¹

¹ The Plaintiff has indicated that it intends to seek judicial review of the decision but as at the date of writing it has not issued a writ of certiorari.