JURISDICTION	**:**	MINING WARDEN
TITLE OF COURT	**:**	OPEN COURT
LOCATION	**:**	MEEKATHARRA
CITATION	**:**	BREWER -v- TAIPAN RESOURCES NL(No 2)
CORAM	**:**	WILSON SM
HEARD	**:**	7 MARCH 2002
DELIVERED	**:**	7 MARCH 2002
FILE NO/S	**:**	PLAINT 3/001 OBJECTION 7/001 APPLICATION FOR EXEMPTION 220/001
TENEMENT NO/S	**:**	E 53/356
BETWEEN	**:**	GERARD VICTOR BREWER **(O**bjector) AND TAIPAN RESOURCES NL (Applicant)

Catchwords:

Application\Plaint\Expenditure\Exploration Licence
Plaint\Application\Exploration Licence
Objection\Exemption\Exploration Licence
Application\Plaint\Exemption\Objection\Exploration Licence

S WILSON SM

Legislation:

Nil cited

Result:

Exemption Application withdrawn by Leave
Objection remitted to Mining Registrar to be dealt with by Hon Minister
Plaint upheld
EL recommended for Forfeiture

Representation:

No appearance by Taipan
Mr Brewer appeared in person

Case(s) referred to in judgment(s):

Commercial Properties Pty Ltd v Italo Pty Ltd, unreported; FCt SCt of WA; 16 December 1998

Case(s) also cited:

Nil

1 I have before me two matters; an application for Exemption from Expenditure Conditions ME 220/001('the Exemption") for Exploration Licence 53/356("EL") brought by Taipan Resources NL ("Taipan"). An Objection to the Exemption 7/001 ("the Objection") has been lodged by Gerard Victor Brewer ("Brewer"). There is also before me, Plaint 3/001 ("Plaint") for non- compliance with Expenditure Conditions brought by Brewer against the EL.

There has been correspondence with this Court by letter from St Barbara Mines Ltd but signed under the name of Taipan by Marcus Walter, Land Manager, dated 25 September 2001 indicating that Taipan seeks to withdrew the Exemption. Accordingly, leave is granted to Taipan to withdraw the Exemption application. The Objection now, in my opinion, effectively falls away and can be remitted to the Mining Registrar to be dealt with as if were not defended.

2 The only other matter that remains before me is the Plaint against the EL filed by Brewer. Produced into evidence by Brewer is a certified copy of the Register of the Mines Department in Meekatharra in respect to the EL. That document was certified on 18th April 2001 and reveals that the anniversary date for expenditure on the EL is 8th August in each year. Therefore, Brewer claims that there has been non-compliance with the minimum expenditure requirement of $80,000 for the year ending 8th August 2000.

3 A Form 5, being an Operations Report for the Expenditure on a Mining Tenement, filed by Taipan for the Expenditure Year ending 8th August 2000, indicates that expenditure of only $22,776 was expended by Taipan on the EL. Therefore, there is a shortfall of $57,224 on the minimum expenditure required to be made by Taipan on the EL.

There is no appearance by Taipan at this hearing. There has been service of the appropriate notices upon Taipan of each adjournment of the Plaint, Objection and Exemption Applications. Taipan was informed by letter dated 22 February 2002 that this matter was listed for hearing today.

4 In ***Commercial Properties Pty Ltd v Italo Pty Ltd***, unreported; FCt SCt of WA; 16 December 1998 the Court said that in case of failure to comply with expenditure conditions the legislation contemplates forfeiture. Hence, upon *prima facie* proof of non-compliance the Court considered that the Plaintiff likewise establishes a *prima facie* case for forfeiture. Thus in such circumstances the evidentiary burden is on the

Defendant to satisfy the Warden that the case is otherwise not of sufficient gravity to justify forfeiture.

5 Therefore, I am satisfied upon the production of the Register of the Mines Department by Brewer and the Form 5 that there is a shortfall of expenditure upon the EL. Upon the granting of the application to withdraw the Exemption Application by Taipan has been established *prima facie* proof of non-compliance with the expenditure conditions for the EL and a *prima facie* case for forfeiture.

6 There being no appearance by Taipan Resources or any further correspondence from them in relation to the matter, I am satisfied that the failure to comply with the expenditure requirements for the EL is of sufficient gravity to justify forfeiture.

Accordingly, I recommend to the Honourable Minister, that Exploration Licence 53/356 be forfeited for non-compliance with expenditure conditions.

In respect to the need to make a specific order that Brewer be granted a 14-day right of priority to mark out a tenement or tenements, it is in my opinion that, by law he has that right in any event and I do not need to make such an order.