JURISDICTION	:	MINING WARDEN
LOCATION	:	PERTH
CITATION	:	RE: TREMJONES PTY LTD [2018] WAMW 14
CORAM	:	WARDEN J O'SULLIVAN
HEARD	:	On the papers
DELIVERED	:	21 September 2018
FILE NO/S	:	Applications for Restoration 525296, 525366 and 525372
TENEMENT NO/S	:	Prospecting Licences 80/1828, 80/1829 & 80/1830
APPLICANT	:	**TREMJONES PTY LTD**

Catchwords: Restoration – Forfeiture for non-lodgement of Operation Reports – turns on own facts.

Legislation:

- *Mining Act 1978 (WA) s97A*

Result:

Application to restore P80/1828, P80/1829, P80/1830 is granted.

Representation:

Applicant : In person

Cases referred to:

- ***BRGM Nominees Pty Ltd v Hake*** unreported Kalgoorlie Wardens Court; 26 October 1988; noted 8 AMPLA Bulleton 16

1. In accordance with s97A of the *Mining Act 1978 (WA)* the applicant seeks the restoration of three prospecting licences (P80/1828, P80/1829 and P80/1830) (the Tenements).

2. The applications were the subject of objections by Halls Creek Mining Pty Ltd, however, the objections were withdrawn on 29 June 2018.

3. As a consequence the applications are to be dealt with on the papers.

4. The Register reveals that the Tenements were forfeited on 8 March 2018 for non-compliance with the reporting requirements

5. The applicants rely on a statutory declaration (9 February 2018) from Russell Tremlett who is a director of the applicant and an affidavit (2 August 2018) from his daughter, Laurel Tremlett, who assists her father to manage the Tenements, to set out the circumstances giving rise to the forfeiture of the Tenements:

   (1) Notification was provided by the Department of Mines, Industry Regulation and Safety (DMIRS) on 12 January 2018 that operations reports had not been submitted and that forfeiture was scheduled on 8 March 2018.

   (2) Towards the end of January 2018 a forfeiture letter was received from the DMIRS. On 9 February 2018, Russell Tremlett posted a statutory declaration to the DMIRS seeking an extension of time to lodge the Operations Reports.

   (3) The statutory declaration and Operations Reports were not received by the DMIRS until 12 March 2018 (four days after the Tenements were forfeited). It appears the letter took more than a month to arrive because the mail service from Halls Creek was delayed because of extensive flooding resulting in Great Northern Highway being impassable for many days.

   (4) The initial failure to lodge the Operations Reports by the due date is explained by Ms Tremlett:

> *"During January and February I was required to travel to Kununurra to attend a coronial inquiry into my partner's death and make arrangements for my partner's funeral at the beginning of March."*

(5) Mr Tremlett says further that he relies heavily on his daughter to assist him comply with his obligations to manage the Tenements. In a matter of months they have lost three very close family members including a prospecting companion. This includes the sudden death of Ms Tremlett's long-term partner.

The Law

6. In ***BRGM Nominees Pty Ltd v Hake*** [1] Warden Reynolds set out the relevant principles.

> *"The Act is silent on the matters to be taken into account when determining whether a mining lease should be restored or not. Without wishing to be exhaustive it seems to me that consideration should be given to the explanation for the non-payment of the rent, the degree of the lack of care, if any, on the part of the holder in attending to the payment of the rent and the existence of any special circumstances*
>
> ...
>
> *In my opinion the decision whether to restore or not would involve the weighing of the considerations mentioned. As a matter of general principle at the outset none of those considerations should be given any greater priority than any other. The facts of each particular case will determine where the emphasis should be placed. Where there is no good explanation, a gross lack of care and no special circumstances then restoration should be refused. Where there is no good explanation and a gross lack of care it may be appropriate for the tenement to be restored if there are special circumstances. It may not be necessary for any special circumstances to exist where the holder is able to provide some good explanation for the non payment of the rent or show that the non-payment was not the result of any lack of care on his part.*
>
> *When determining whether any special circumstances exist, the Court should give consideration to the length of time that the holder had held the tenement, the expenditure incurred in any years prior to the date upon which the rent became payable, whether the holder had delineated an ore body, whether the holder had caused the necessary arrangements to be made for a mining operation to commence, whether the holder was actually carrying out a mining operation on the tenement, the size of any planned mining operation or existing mining operation and generally the prejudice that*

[1] Unreported Kalgoorlie Wardens Court; 26 October 1988; noted 8 AMPLA Bulleton 16

> *would be suffered by the holder if the tenement was not restored. Whether special circumstances exist or not depends of course on the facts in each particular case."*

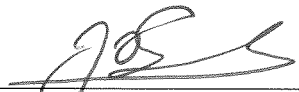
Conclusion

7. In my view, having regard to the extenuating circumstances confronting the tenement holder during the relevant period, I am satisfied that a good explanation exists for the failure to lodge the Operations Reports.

8. Furthermore, it is apparent that the forfeiture of the Tenements may never have occurred had the statutory declaration from Mr Tremlett not been held up by disruption to the mail service.

9. Having come to that view, I do not need to consider whether special circumstances exist.

10. Accordingly, I order the restoration of Prospecting Licences 80/1828, 80/1829 and 80/1830.



Warden J O'Sullivan

21 September 2018