JURISDICTION	**:**	MINING WARDEN
TITLE OF COURT	**:**	BEFORE THE WARDEN IN CHAMBERS
LOCATION	**:**	PERTH
CITATION	**:**	APPLICATIONS FOR RESTORATION OF LATE PROSPECTING LICENCES 09/461 & 09/462 BY VICTOR BELLOTTI [2012] WAMW 31
CORAM	**:**	WILSON M
HEARD	**:**	ON THE PAPERS ON 18 SEPTEMBER 2012
DELIVERED	**:**	18 SEPTEMBER 2012
FILE NO/S	**:**	APPLICATIONS FOR RESTORATION 402512 & 402513
TENEMENT NO/S	**:**	PROSPECTING LICENCES 09/461 & 09/462
BETWEEN	**:**	Application for Restoration of late Prospecting Licences 09/461 & 09/462 by: Victor James Bellotti (Applicant)

Catchwords:

Application – Restoration – Late Payment of Rent – Forfeiture

Legislation:

Nil

Result:

Application for the Restoration of late Prospecting Licences 09/461 and 09/462 to Mr Bellotti be granted.

Representation:

Applicant : Nil (On the Papers)

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

BRGM Nominees Pty Ltd v Hake (unreported, Kalgoorlie Warden's Court, 26 October 1988, noted in 8 AMPLA Bull 17)

Hayes Mining Pty Ltd v Tantalum Australia NL [2006] WAMW 6

BACKGROUND

1. Victor James Bellotti was granted Prospecting Licence 09/461 & 09/462 on 21 April 2010. Mr Bellotti is required as a condition of grant of the Prospecting Licences to pay annual rent. He failed to pay annual rent for both Prospecting Licences by the due date of 20 April 2012.
2. As a result of non-payment of annual rent by Mr Bellotti for the 2012 year proceedings were commenced before the Warden for the forfeiture of the Prospecting Licences. Notice of the proceedings to forfeit the Prospecting Licences were forwarded to Mr Bellotti's registered address and published in the Government Gazette. Mr Bellotti did not pay the outstanding annual rent for both Prospecting Licences nor did he respond to the various notices forwarded to him and published in the Government Gazette.
3. On 20 July 2012, the proceedings for Forfeiture of both Prospecting Licences came before the Warden. In the absence of payment of the outstanding annual rent for each of the Prospecting Licences and some explanation by Mr Bellotti as to the circumstances that gave rise to the non-payment of annual rent the Warden ordered both Prospecting Licences be forfeited.
4. On 27 July 2012, Mr Bellotti lodged applications for the Restoration of both Prospecting Licences and also lodged with the Mining Registrar the amount of the outstanding annual rent.
5. The time for the lodging of objections for the Restorations of both Prospecting Licences closed on 31 August 2012. No Objections have been lodged by any person. No applications for mining tenements have been lodged by any person with the Mining Registrar for the land that comprised the Prospecting Licences.
6. The Applications for Restoration of both Prospecting Licences come before the Warden for consideration. Mr Bellotti submits in support of Restoration of both the Prospecting Licences that he failed to pay the annual rent because he had moved house and mail was being sent to an old address. He then changed the address to his family home in Carnarvon as his new address was not long term. However, his family failed to forward to him his mail and time to pay the annual rent had expired.
7. Mr Bellotti says he has been working both Prospecting Licences and has expended more than the minimum amount required in each of the expenditure

years since grant. He also says he now has long term accommodation in Karratha and will change his address with the DMP to that address.

8. In ***BRGM Nominees Pty Ltd v Hake (unreported, Kalgoorlie Warden's Court, 26 October 1988, noted in 8 AMPLA Bull 17)*** the warden held in determining whether a mining lease should be restored consideration should be given to the explanation for the non-payment of the rent, the degree of lack of care on the holder of the mining tenement in attending to payment of rent and the existence of any special circumstances. In ***Hayes Mining Pty Ltd v Tantalum Australia NL [2006] WAMW 6*** the warden endorsed the principles in the ***BRGM case*** and said he should also examine the reasons the mining tenement was put at risk, consider whether the explanation for the failure to comply and investigate whether there are special circumstances that justify restoration of the mining tenement.

9. The explanation for the non-payment of annual rent for both Prospecting Licences reveals a significant lack of care on the part of Mr Bellotti. He submits, in essence, the responsibility for him not paying the annual rent on time was because his family did not re-direct mail to him with notices from DMP of the annual rent payable and notices of the forfeiture applications. With respect Mr Bellotti misses the point. One of the fundamental conditions upon grant of a mining tenement is the obligation of the holder to pay annual rent on time. It is not the responsibility of any person than the holder of the mining tenement to pay the annual rent on time. Notices that are sent to the holder of mining tenements by DMP reminding them of their requirement to pay annual rent is done as a matter of courtesy and not out of any statutory obligation.

10. Regrettably, Mr Bellotti has not had a good history in the payment of annual rent for both the Prospecting Licences. In 2011, Mr Bellotti was late in the payment of his annual rent and in lieu of forfeiture of both of the Prospecting Licences was fined. In the light of that occurrence in the previous year it is almost incomprehensible that in the following year he again failed to pay the annual rent for both of the Prospecting Licences on time.

11. The history of late payment of annual rent should be considered in any special circumstances that may exist to justify restoration of the Prospecting Licences. It is of note that no objection has been made to the application for the restoration of both Prospecting Licences nor has there been any application lodged over the same land by any person with the Mining Registrar for the grant of another mining tenement. It is noted that despite the tardiness of Mr Bellotti in the payment of annual rent for both the Prospecting Licences he has in each expenditure year expended in excess of the minimum amount of expenditure and has lodged the Annual Expenditure Reports.

12. In the ***BRGM case*** the matters of what constitutes special circumstances was considered by the warden. I note that many of those considerations have not been addressed by Mr Bellotti in his supporting statutory declaration and are probably not applicable to the relatively small prospecting operation he conducts.

However, it is of note that in the 2 years Mr Bellotti has held both of the Prospecting Licences he has expended a significant amount on prospecting the land. Those circumstances alone would indicate the significant effort and expenditure by Mr Bellotti on both of the Prospecting Licences would be lost in the event the application for restoration was refused. It also appears that no other person has an interest in the ground upon which the Prospecting Licences were located. If that was not the case it would have been expected that either objections to the Restoration or an application for another mining tenement would have been lodged.

13. Despite the significant tardiness of Mr Bellotti in the payment of his rent it would be of significance that the effort he has put in both physical work and expenditure on the Prospecting Licences would be lost if the Restorations were refused. Having said that, Mr Bellotti should be well aware the obligation to pay annual rent on time is his, and his alone, and he should not rely upon anyone else to prompt him of that obligation in the future.

14. It is noted Mr Bellotti, in his statutory declaration in support of the Restoration of the Prospecting Licences dated 27 July 2012, stated he intends to change his postal address with the Mining Registrar from the apparent problematic address in Carnarvon to his address in Karratha. I note that as at today's that change has not occurred. Mr Bellotti would do well to attend to that change as a matter of urgency.

15. For those reasons, I am satisfied that Applications for the Restoration of Late Prospecting Licences 09/461 and 09/462 should be granted. Accordingly, I order the Restoration of Prospecting Licences 09/461 and 09/462 to Mr Bellotti.