

Dismissal of claimant application - want of prosecution

Pappin v NSW Minister for Land & Water Conservation [2005] FCA 1430

Stone J, 12 October 2005

Issue

This case deals with whether a claimant application and three related compensation applications should be dismissed for failure to prosecute the proceedings with due diligence. The court decided to dismiss all four.

Background

At a directions hearing held on 1 September 2005, the court was told the applicants were aware that they were required to take steps to progress their application or they would be liable to be dismissed. As counsel for the applicants was content for the applications to be dismissed, Justice Stone made orders accordingly pursuant to O 35A r 3(1) of the Federal Court Rules and indicated she would provide written reasons at a later date. This is a summary of those reasons.

Since July 2001, the parties have been engaged in mediation of the claimant application, including mediation of disputes within the claimant group. However, those attempts have been largely unsuccessful. Stone J noted that:

- in its present form, the claimant application had a number of problems, including the description of the claimant group and the lack of connection material;
- the applicant had not taken any significant steps to progress the matter for a number of years;
- since October 2000, the claimant application had been before the court or a registrar of the court 15 times without any appreciable progress being made—at [7].

Decision

In relation to the claimant application, her Honour found that:

[T]he applicant, in failing to take adequate steps to prosecute the proceeding, was in default under O 35A r 2(1)(f) of the Federal Court Rules. As such, the Court is empowered to dismiss the application pursuant to O 35A r 3(1). I accept that the failure to prosecute the claimant application is not due to deliberate neglect on the part of the applicant group. Further, the applicant ... appears to be actively engaged in negotiations with third parties in respect of matters outside the scope of the NTA. *However, this does not alter the fact that the applicant has not taken adequate steps to prosecute its claim under the NTA. It is the claimant application before the Court and the claims made therein that the applicant must prosecute with due diligence.* In my opinion, this has not been done.

The above comments in respect of the claimant application ... apply with equal weight to the compensation claims—at [8] to [9], emphasis added.

The claimant application and the related compensation applications were all dismissed with the court noting that (among other things) New South Wales Native Title Services will continue to conduct anthropological and historical research in the claim area and assist the claimants in their negotiations outside the scope of the NTA—at [10].