Sale of ILC-held pastoral lease

Lapthorne v Indigenous Land Corporation [2008] FCA 682

Siopis J, 7 May 2008

Issue
The main issue in this case was whether, in the absence of any evidence of authorisation, the Federal Court should dismiss an application brought by Andrew Lapthorne in which a claim to native title in relation to a pastoral lease known as Edmund Station was made. The application was dismissed.

Background
The leasehold to Edmund Station was purchased by the Indigenous Land Corporation (ILC) in February 1999 for the cultural needs of the Gnulli People. However, in June 2006 the ILC decided to dispose of the property because it was of the view that neither the Gnulli people nor any other Aboriginal corporation had demonstrated an ability to manage it—see s. 191J(2) of *Aboriginal and Torres Strait Islander Act 2005* (Cwlth).

Mr Lapthorne made an application to the Federal Court on 19 February 2008. This was the same day as his application to extend the caveat he had lodged on the title to the station was dismissed by the Supreme Court of Western Australia. The substantive claim in his application to the Federal Court was that: 'The Thudgari Native Title Claim Group be granted Native Title rights over the area of land which is part of the land known as Edmund Station'.

However, Mr Lapthorne's application was not brought in the form required for the making of a claimant application pursuant to s. 13(1) of the *Native Title Act 1993* (Cwlth) (NTA). There is a claimant application made on behalf of the Thudgari people on foot that covers Edmund Station and Mr Lapthorne is a member of the native title claim group for that application. However, he is not one of the people authorised to make that application and deal with matters in relation to it i.e. he is not one of the group that constitutes 'the applicant' for the Thudgari claimant application.

The sale of Edmund Station was completed on 13 March 2008. The ILC made application for either summary judgment pursuant to s. 31A of the *Federal Court of Australia Act 1976 (*Cwlth) or dismissal of the application under O 20 r 5 of the Federal Court Rules.

Decision
His Honour Justice Siopis held that:

- proper authorisation was an essential element for the commencement of a claim for native title and that Mr Lapthorne had not satisfied the requirements of s.

61(1) of the NTA i.e. he had not produced evidence to show that he was authorised by the Thudgari people to make the claim;

- failure to provide such evidence was fatal and, as there was no reasonable prospect of the claim succeeding, it should be dismissed;
- insofar as the claim was one brought for the purposes of seeking to stop the sale of the leasehold interest, the property had already been sold and transferred and so this was 'a futile exercise' – at [13] and [15] to [16].

As a result, Mr Lapthorne's application was dismissed.