

Party status

Atkinson on behalf of the Gunai/Kurnai People v Victoria (No 3) [2010] FCA 906

North J, 16 August 2010

Issue

William Maxwell Rheese applied to be joined as a respondent to the Gunai/Kurnai #2 claimant application pursuant to s. 84(5) of the *Native Title Act 1993* (Cwlth) on the basis that he was a recreational user of public lands subject to that application. The application for joinder was dismissed because Mr Baldwin was in default and, in any case, had not demonstrated an interest of the kind required.

Background

Subsection 84(5) provides that:

The Federal Court may at any time join any person as a party to the proceedings, if the Court is satisfied that the person's interests may be affected by a determination in the proceedings and it is in the interests of justice to do so.

Mr Rheese attested to his use of public land in part of claim area for bushwalking, hunting and camping. His evidence was that he had done so extensively since 1972, typically 10 to 12 times a year for two to four days at a time and often with friends.

Mr Rheese was given notice of the hearing but did not appear. It was found that this amounted to 'a default within the meaning' of O 35A r 2(f) of the Federal Court Rules, i.e. he was in default because he failed to 'prosecute the proceeding with due diligence'. Pursuant to O 35A r 3(a), where an applicant is in default, the court may order that 'the proceeding be stayed or dismissed as to the whole or any part of the relief claimed by the applicant'. The application for joinder was dismissed because of the 'non-appearance' — at [3] to [6].

It was also found that the application did not satisfy the requirements of s. 84(5) in that ADA did not have an interest of the kind identified in *Byron Environmental Centre Incorporated v Arakwal People* (1997) 78 FCR 1 (*Byron*). The 'particular land on which the activities are undertaken' was not identified, which meant that 'the detail is insufficient to base a claim to become a party, with all the attendant participation in the application which would be the result'. Further, Mr Rheese had not 'made clear that the activities undertaken would be affected in a demonstrable way by a determination in relation to the application' — at [7] to [8].

Decision

The application for joinder was dismissed.