Bonner v Queensland [2011] FCA 321

Reeves J, 6 April 2011

Issue

The Federal Court was asked to join three people as respondents under s. 84(5) of the *Native Title Act 1993* (Cwlth) (NTA). The court joined one as a respondent but deferred ruling on the application of the others.

Background

Kenneth Markwell sought leave to be joined as a party to the Jagera #2 claimant application (Jagera #2) on the basis that part of the claim area was Mununjhali country. Ruth James and Myfanwy Locke sought leave to be joined on the ground that some of the claim area was part of the traditional lands of the Ugarapul People. The applicant for Jagera #2 contended that joining these people was inconsistent with *Commonwealth v Clifton* (2007) 164 FCR 355; [2007] FCAFC 190 (*Clifton*) and that, in any case, none of them had a sufficient interest and it was not in the interests of justice to allow them to be joined.

Sufficient interest

On the strength of the affidavits provided, Justice Reeves was satisfied they all three claimed to hold native title rights and interests in various parts of the area covered by Jagera #2 that may be affected by a determination in those proceedings. This was a sufficient interest to allow them to be joined as respondents pursuant to s. 84(5) of the NTA.

Clifton

Justice Reeves noted that *Clifton* prevented those seeking joinder from becoming respondents if they wanted a determination of the existence of native title in their favour. However, *Clifton* was not authority for the proposition that they could not be joined as respondents for the purpose of seeking to protect the native title rights and interests they claim from 'erosion, dilution, or discount by the process' of the court making a determination in Jagera #2: '[P]ersons in positions similar to the present applicants may be joined as respondent parties … to seek to defensively assert their native title rights and interests'—at [16] and [17].

His Honour held that Mr Markwell was entitled to be joined as a respondent to the proceedings 'for the limited purposes of defensively asserting' his claim to hold native title rights and interests in parts of the application area and to seek 'to prevent any dilution of those rights and interests'—at [21] to [22].

Respondent not to be a representative party

The application made by Ms James and Ms Locke presented a difficulty because they sought to be joined 'on behalf of the Ugarapul people'. Following *Munn v Queensland* [2002] FCA 486, Reeves J noted that a person who wished to be joined to protect claimed native title rights and interests 'from erosion, dilution, or discount', as in this case, could not do so as a representative party. Further, it may be 'that their sole purpose in seeking to be joined is to obtain a determination of native title in their favour', contrary to *Clifton*. However, because Ms James and

Ms Locke were unrepresented, his Honour deferred ruling on their application until they had an opportunity to clarify what they were seeking to achieve—at [19] and [23].

Decision

The court joined Mr Markwell as a respondent but deferred ruling on the application of Ms James and Ms Locke.