Freddy v Western Australia [2010] FCA 1158

McKerracher, 26 October 2010

Issue

The issue was whether a creditor of a mining company that had made an application for an exploration licence over an area subject to a claimant application should be joined under s. 84(5) of the *Native Title Act 1993* (Cwlth) (NTA). Justice McKerracher found this was too tenuous an interest to justify joinder—at [22].

Background

Among other things, Charles Ghaneson applied to the court be joined as 'an interested party' to a claimant application made on behalf of the Wiluna native title claimants. He also (among others) sought orders to:

- review and investigate the functions of Central Desert Native Title Services Ltd (CDNTS) and 'its effectiveness in representing' the Wiluna claimants;
- terminate funding to CDNTS on the grounds of 'unsatisfactory performance of functions of a representative body' under the NTA and replace CDNTS with another 'totally independent' representative body in relation to the claim;
- 'cease proceedings in relation to determination' of the Wiluna claim until the court had considered his notice of motion.

Mr Ghaneson was a creditor of Seven Star Investment Group (SSIG), which had an application on foot for the grant of an exploration licence. Mr Ghaneson's affidavit evidence contained allegations against CDNTS and what he called 'evidentiary documentation', much of was 'not in admissible form' and, in any case, 'difficult to follow'. It was found the court had no power to make the orders sought in relation to CDNTS because, under s 203DF, 'that power lies with the Commonwealth'. Therefore, Mr Ghaneson's application was treated an application to become a party to the proceedings—see [4] to [13].

Joinder

Subsection 84(5) states 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.

McKerracher J noted the comments in *Chapman v Minister for Land and Water Conservation* (NSW) [2000] FCA 1114 at [10] that, because a respondent to the claim has 'the power ... to veto the process of mediation and conciliation' that the NTA favours, the requisite interests must be 'capable of clear definition' and 'of such a character that they may be affected in a demonstrable way by a determination in relation to the application'. Implicitly, Mr Ghaneson was asserting SSIG had an interest in the Wiluna claim for the purposes of s. 84(5) and, therefore, he too had 'a relevant interest as a creditor of that company'—at [15].

The court noted (among other things) that in *Members of the Yorta Yorta Aboriginal Community v Victoria* [1996] FCA 453 (*Yorta Yorta*), it was found that a single application for an exploration licence did not constitute a sufficient interest for joinder—at [19].

Decision

The court dismissed Mr Ghaneson's application because:

- there was no evidence of the status of the exploration licence application or any other interests SSIG may have in the area concerned and so it could not be accepted that SSIG had 'a relevant interest within the meaning' of s. 84(5);
- more importantly, the interest Mr Ghaneson claimed (i.e. as a creditor of SSIG) was 'more tenuous still' and 'insufficient to fall within the boundaries set by Emmett J in *Yorta Yorta*'—at [21] to [23].

Postscript

The National Native Title Tribunal determined that SSIG must not be granted an exploration licence – see *Seven Star Investments Group Pty Ltd/Western Australia/Freddie* [2011] NNTTA 53, summarised in *Native Title Hot Spots* Issue 34.