Strike out under s. 84C — Wiradjuri People

Grant v Minister for Land and Water Conservation (NSW) [2003] FCA 621

Wilcox J, 20 June 2003

Issue
This concerns an unsuccessful application to strike out a claimant application on the ground that the applicant had not been properly authorised to make the application.

Background
Overlapping claimant applications were lodged in respect of the same area of land at Lake Cowal in central-west NSW. One, filed by Florence Grant, was for a native title determination in relation to the land at Lake Cowal. The application stated that Ms Grant was:

> [A]uthorised by the Wiradjuri Council of Elders to lodge this claim on its behalf representing Wiradjuri People and is entitled to make this application as an authorised representative of the Wiradjuri Council of Elders.

Neville Williams, who was the applicant in an overlapping application made on behalf of the Mooka People (a sub-group of the Wiradjuri People), became a respondent. He later sought to strike out the application made by Ms Grant under s. 84C of the *Native Title Act* 1993 (Cwlth) (NTA) on grounds that she was not authorised to make the application as required by s. 61(1). Authorisation must be given either according to a process of decision-making under the traditional laws and customs of the claim group mandated for making decisions of that kind or, in the absence of such a process, by an agreed and adopted decision-making process—see s. 251B(b).

The claimant application brought by Ms Grant described the decision-making process of the Wiradjuri People as remaining traditional but existing 'in a contemporary context'. It referred to a process of voting by elders present at a Wiradjuri Council of Elders meeting which amounted to an attempt to achieve consensus through extensive and often prolonged discussion and consultation. The affidavit evidence filed indicated general acceptance that the local Wiradjuri group responsible for Lake Cowal was the Condobolin Aborigines, or the Condo people. It also showed that there was a division between supporters of Ms Grant and Mr Williams amongst the Condo people. There was also evidence of four formal meetings, including two meetings of the Wiradjuri Council of Elders and a general meeting of Wiradjuri people funded by a prospective mining lessee in relation to the application area.

The nature of authorisation process
Mr Williams relied upon s. 251B(b) of the NTA, asserting that the evidence of the meetings failed to indicate notice was given to every member of the Wiradjuri People

and that the resolutions passed were inadequate to confer the proper authority required by s. 61. Ms Grant relied upon s. 251B(a), asserting that her authority did not derive from the meetings. Rather, it came via her own initiation of a process of long consultation and discussion with elders and Wiradjuri People of the Condobolin area and, more generally, in an effort to achieve consensus in accordance with traditional Wiradjuri custom and tradition. Ms Grant tendered affidavit evidence as to these discussions and decisions.

Decision

Justice Wilcox accepted that:

- there was a traditional decision-making process under the traditional laws and customs of the Wiradjuri People and that it was one of discussion between elders and heads of families;
- Ms Grant's unchallenged affidavit evidence was that she had obtained her authorisation to act through this traditional process —at [29] to [30].

His Honour concluded Ms Grant was authorised to make the claim in accordance with s. 251B(a), thus satisfying the requirements of s. 61 and, accordingly, dismissed the notice of motion—at [31] to [33].