



HIGH COURT OF AUSTRALIA

30 March 2011

NOELENE MARGARET EDWARDS & ORS v SANTOS LIMITED & ORS
[2011] HCA 8

Today the High Court issued a writ of certiorari to quash decisions of the Federal Court of Australia which had dismissed proceedings instituted by registered native title claimants arising out of negotiations for an Indigenous Land Use Agreement ("ILUA") under the *Native Title Act 1993* (Cth) ("the NTA").

The plaintiffs are members of the Wongkumara People. The land the subject of their native title claim is in Queensland and New South Wales. Two of the defendants hold an authority to prospect in respect of land in Queensland falling within the boundaries of the claimed land ("the petroleum defendants"). The authority to prospect was granted by the second defendant, the State of Queensland, under the *Petroleum Act 1923* (Q). Section 40 of the *Petroleum Act* entitled the holder of an authority to prospect to the lease of land for petroleum exploration (a "production lease").

The Wongkumara People and the petroleum defendants negotiated entry into an ILUA in relation to future grants which might be "future acts" within the meaning of the NTA. The petroleum defendants asserted that the authority to prospect which they held pre-dated the NTA and that any production leases emanating from the authority to prospect would be "pre-existing rights based acts" and not subject to the "right to negotiate" under the NTA. The plaintiffs took issue with the contention that the production leases would be pre-existing rights based acts and instituted proceedings in the Federal Court seeking declaratory and injunctive relief.

The plaintiffs' claim was summarily dismissed under s 31A(2) of the *Federal Court of Australia Act 1976* (Cth) on the ground that the application had no reasonable prospect of success and that the Federal Court did not have jurisdiction to hear the application. The Full Federal Court refused leave to appeal from the orders of the primary judge.

Section 33(4B)(a) of the *Federal Court of Australia Act* precluded the plaintiffs from seeking special leave to appeal to the High Court against the Full Court's decision. Accordingly, the plaintiffs applied, in the High Court's original jurisdiction, for the issue of writs pursuant to s 75(v) of the Constitution in relation to the Federal Court decisions.

The High Court held that the Federal Court had jurisdiction to hear and determine the plaintiffs' application because there had been a "matter" arising under a federal enactment, namely, the NTA, the plaintiffs had not sought an advisory opinion and the plaintiffs had standing to seek declaratory and injunctive relief. The Federal Court had wrongfully denied its jurisdiction and thereby fell into jurisdictional error attracting a writ of certiorari to quash its decisions.

A majority of the High Court additionally considered that an order in favour of the plaintiffs should be made for the costs of the Federal Court proceedings under the High Court's power in s 32 of the *Judiciary Act 1903* (Cth) to grant remedies in the cause or matter before it to completely and finally determine so far as is possible all matters in controversy between the parties.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.