HIGH COURT OF AUSTRALIA

17 August 2017

FORREST & FORREST PTY LTD v WILSON & ORS
[2017] HCA 30

Today the High Court allowed an appeal from a decision of the Court of Appeal of the Supreme Court of Western Australia. A majority of the High Court held that the requirement in s 74(1)(ca)(ii) of the *Mining Act* 1978 (WA) ("the Act") that an application for a mining lease shall be accompanied by a mineralisation report imposed a condition precedent to the exercise of the powers conferred on various statutory officers under ss 74A(1) and 75(4), and on the Minister under s 75(6), to progress the application through to a grant.

On 28 July 2011, Yarri Mining Pty Ltd and Onslow Resources Ltd (the second and fourth respondents respectively) lodged applications for mining leases over land near Onslow in the Pilbara region of Western Australia. The land lay within the boundaries of a pastoral lease held by Forrest & Forrest Pty Ltd ("Forrest"). On 1 September 2011, Forrest lodged objections to those applications. The applications were not accompanied by either a mining proposal (as required by s 74(1)(ca)(i) of the Act) or a mineralisation report (as required, in the alternative, by s 74(1)(ca)(ii) of the Act). A few months after the applications were lodged, a mineralisation report for each application was lodged. On 31 January 2014, purportedly pursuant to s 75(4), the warden (the first respondent) determined that he had jurisdiction to hear the contested applications, and proceeded to make a recommendation to the Minister that the leases be granted.

Forrest applied for judicial review of that decision, arguing that the warden made a jurisdictional error in determining that he could hear the applications, on the ground that that jurisdiction could be enlivened only if the applicant had complied with the requirement in s 74(1)(ca)(ii). The primary judge concluded that the warden's hearing of the applications did not involve a jurisdictional error. Forrest appealed against that decision to the Court of Appeal of the Supreme Court of Western Australia. The Court unanimously dismissed the appeal, holding that, although s 74(1)(ca)(ii) did require a mineralisation report to be lodged contemporaneously with an application, that requirement was not a condition precedent to the hearing by, and recommendation of, the warden, with the result that the application could progress provided that a mineralisation report was lodged at some later point in time.

By grant of special leave, Forrest appealed to the High Court. A majority of the Court held that compliance with s 74(1)(ca)(ii) was a condition precedent to the exercise of the powers under ss 74A(1), 75(4) and 75(6) of the Act. Applying *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, a consideration of the language of the statute, its subject matter and objects, and the consequences for the parties of holding void acts done in breach of the Act conveyed an intention not to countenance any degree of non-compliance with s 74(1)(ca)(ii). This interpretation was consistent with authority establishing that where a statutory regime confers power on the executive government of a State to grant exclusive rights to exploit the resources of the State, compliance with the requirements of the regime will ordinarily be regarded as essential to the making of a valid grant. Accordingly, the appeal was allowed.

- *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.*

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