



HIGH COURT OF AUSTRALIA

12 March 2014

STATE OF WESTERN AUSTRALIA v BROWN & ORS

[2014] HCA 8

Today the High Court unanimously held that certain native title rights and interests held by the Ngarla People in respect of land in the Pilbara region of Western Australia were not extinguished by the grant of two mineral leases to some joint venturers for the mining of iron ore at Mount Goldsworthy. The Court held that the mineral leases did not grant the joint venturers a right to exclude any and everyone from access to the land the subject of the mineral leases.

In 1964, the State of Western Australia made an agreement with some joint venturers about the development and exploitation of iron ore deposits at Mount Goldsworthy. Pursuant to the agreement, the State granted mineral leases for iron ore to the joint venturers. The agreement required the joint venturers to allow the State and third parties access over the land the subject of the mineral leases provided that such access did not unduly prejudice or interfere with the joint venturers' operations. In accordance with the agreement, the joint venturers developed the Mount Goldsworthy iron ore project. A mine, a town and associated works were constructed. The mine subsequently closed in 1982 and the town closed in 1992.

Alexander Brown and others (on behalf of the Ngarla People) applied to the Federal Court of Australia for native title determinations in respect of land and waters in the Pilbara region of Western Australia. The claimed areas included the areas the subject of the mineral leases. The native title rights and interests claimed were the non-exclusive rights to access and camp on the land, to take certain traditional resources (excluding minerals) from the land, to engage in ritual and ceremony on the land, and to care for, maintain and protect from physical harm particular sites and areas of significance. It was agreed that, subject to the question of whether they had been extinguished, the claimed native title rights and interests existed in the land the subject of the mineral leases.

The Federal Court concluded that the claimed native title rights and interests had been extinguished in the area where the mine, the town and the associated works had been constructed. On appeal, the Full Court of the Federal Court of Australia concluded that the native title rights and interests had not been extinguished on the land the subject of the mineral leases but that those rights and interests could not be exercised for so long as the joint venturers continued to hold rights under the mineral leases. By special leave, the State appealed to the High Court.

The High Court held that the grant of the mineral leases did not extinguish the claimed native title rights and interests. Although the joint venturers could prevent others from using the land for mining purposes and could use any part of the land for the extraction of iron ore, the joint venturers did not have an unqualified right to exclude any and everyone from access to the land. The Court held that the joint venturers' rights under the mineral leases were not inconsistent with the claimed native title rights and interests over the land.

- *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.*