

The court's power to grant injunctive relief can rise no higher than the relief which would be available in the appeal proceeding. An interlocutory injunction will be granted only if there is an arguable case that the appeal will succeed. Lindgren J's view was that there was not an arguable case that his Honour erred in finding that *Johns* obliged him to refuse granting the interlocutory injunction.

In *Johns*, the majority held that a party seeking an injunction under section 16(1)(d) of the ADJR Act must establish a "right" to it under general law principles. His Honour found the submission made on behalf of the applicant, that Gaudron J disagreed that section 16 does not enlarge the scope to obtain an injunction, was incorrect. There was insufficient evidence on the factual basis for which an application for injunction relief could be supported and the appeal was dismissed.

APPLICATION TO DISMISS PROCEEDINGS FOR LACK OF JURISDICTION*

Williams v Water Administration Ministerial Corporation ([2003] NSWLEC 220, Land & Environment Court, 26 September 2003)

Application to dismiss proceedings for lack of jurisdiction – Section 253, Protection of the Environment Operations Act 1997

Background

The present proceeding is the latest in a series of proceedings brought by Neville Williams (an Aborigine of the Wiradjuri People) in respect of the Lake Cowal Gold Project. By related proceedings, Mr Williams sought injunctive relief under the provisions of the *National Parks and Wildlife Act 1974* (the NP&W Act) which provides a regime of protection for Aboriginal objects and Aboriginal places. The grant of authorisation by the Director-General of the National Parks and Wildlife Service (NP&WS) under sections 87 and 90 of the NP&W Act had the effect of removing the legal foundation of Mr Williams' claims. This claim focuses on the water licences necessary for the operation of the gold mine.

Mr Williams commenced these proceedings seeking declarations:

- (a) that the four bore licences had lapsed and the purported extensions were ultra vires;
- (b) that Barrick Gold of Australia Limited (Barrick) had failed to comply with a condition of the licences;
- (c) that Barrick and Barrick Australia Ltd (together, the respondents) breached section 117I of the *Water Act 1912*; or
- (d) alternatively that the respondents had breached the *Water Management Act 2000*.

Mr Williams also sought an injunction against the respondents carrying out activities relying upon the bore licences. The respondents made an application to the court that Williams be directed to discontinue the proceedings or that the proceedings be summarily dismissed because the Class 4 proceedings were outside the court's jurisdiction.

Facts

The Respondents submitted that the *Water Act 1912* did not confer judicial review of civil enforcement jurisdiction on the Land and Environment Court. This act was not included within the definition of "planning or environmental law" contained in section 20(3) of the *Land and*

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Environment Court Act 1970. There was no jurisdiction for the Class 4 proceedings, as the only provisions which would confer jurisdiction, namely sections 341, 342 and 343 of the *Water Management Act* 2000, have yet to commence.

The court considered Mr Williams' contention that his application fell within the jurisdiction conferred upon the court by section 253 of the *Protection of the Environment Operations Act* 1997 (PEO Act). Mr Williams alleged that harm was likely to be caused to the environment from water shortages and "construction extraction and transfer of water will cause damage to Aboriginal sites and objects".

The respondents argued they obtained a section 87 Permit from the Director-General of the NP&WS and a section 90 Consent that had been granted under the NP&W Act to destroy Aboriginal objects, which applied to the four identified water bores and proposed water pipeline. The authorisations granted by section 87 Permit and section 90 Consent (which had survived Mr Williams' challenge to their validity in related proceedings) support that the alleged environmental harm cannot be substantiated.

Decision

The court found that Mr Williams' reliance upon the jurisdiction conferred by section 253 of the PEO Act was not viably or realistically sustainable. Mr Williams failed to demonstrate that there had been any breaches of the *Water Act* 1912, which the Class 4 application alleges "is causing or is likely to cause harm to the environment". Therefore, the prerequisite under section 253 of PEO Act to bring proceedings in the Land and Environment Court was not fulfilled.

The foundation of these proceedings was based upon the likelihood of environmental harm being caused to the Aboriginal objects in the Lake Cowal area. Bignold J considered that the grant of the section 87 Permit and section 90 Consent effectively precluded environmental harm from being relied upon by Mr Williams to found the present proceedings upon the jurisdiction conferred by section 253 of the PEO Act.

Accordingly, the court had no jurisdiction to entertain the claims made by Mr Williams (that should properly be brought by proceedings in the Supreme Court). The proceedings were summarily dismissed for being outside the jurisdiction of the court.

APPLICATION FOR DECLARATORY AND INJUNCTIVE RELIEF AGAINST MINING ACTIVITIES*

Williams v Barrick Australia Limited & Ors ([2003] NSWLEC 218, Land & Environment Court, 26 September 2003)

Application for declaratory and injunctive relief against mining activities – Sections 87 and 90, National Parks and Wildlife Act

Background

In two related proceedings, Mr Williams sought declaratory and injunctive relief against the Respondents on the basis that damage had been caused by the mining companies during exploratory operations, breaching sections 90 and 86 of the *National Parks and Wildlife Act* 1974 (NSW) (NP&W Act).

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