

PARTIES: NORTHERN TERRITORY LAND CORPORATION

v

RIGBY, Ronald

And:

MOW, Paul

TITLE OF COURT: SUPREME COURT OF THE NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION

FILE NO: 128 of 2015 (21559389)

DELIVERED: 12 April 2016

HEARING DATES: 18 March 2016 and 8 April 2016

JUDGMENT OF: BARR J

CATCHWORDS:

CIVIL LITIGATION – *Supreme Court Rules* Order 53 – originating motion for recovery of possession – Crown Lease in Perpetuity conferred right of exclusive possession on plaintiff registered proprietor – respondents occupying land without licence or consent – arguments based on Aboriginal sovereignty rejected – plaintiff’s right to possession obvious – judgment for recovery of possession

Western Australia v Ward (2002) 213 CLR 1, applied.

New South Wales v Commonwealth (1975) 135 CLR 337; *Coe v Commonwealth* (1979) 53 ALJR 403 at 408; *Coe v Commonwealth* (1993) 68 ALJR 110; *Risk v Northern Territory* [2006] FCA 4094; *Risk v Northern Territory* (2007) 240 ALR 75; *Quall v Northern Territory* [2009] FCA18; *Quall v Northern Territory* (2009) 180 FCR 528; *R v Murrell and Bummaree* [1836] NSW SupC 35, referred to.

REPRESENTATION:

Counsel:

Plaintiff:	Ms S Brownhill SC
Defendant:	First defendant in person, assisted by R McNamee as McKenzie friend.

Solicitors:

Plaintiff:	Clayton Utz
Defendant:	

Judgment category classification:	B
Judgment ID Number:	Bar1605
Number of pages:	6

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Northern Territory Land Corporation v Rigby & Anor [2016] NTSC 18
No. 128 of 2015 (21559389)

BETWEEN:

**NORTHERN TERRITORY LAND
CORPORATION**
Plaintiff

AND:

RONALD RIGBY
First Defendant

AND:

PAUL MOW
Second Defendant

CORAM: BARR J

REASONS FOR JUDGMENT

(Delivered 12 April 2016)

- [1] The plaintiff's application relates to NT Portion 2626 ("the land"), situated in the area near Darwin known as Gunn Point.
- [2] The plaintiff is the registered proprietor of a leasehold estate in the land under the terms of NT Crown Lease in Perpetuity 311 ("CLP 311").¹ The Lease was granted, or commenced, on 26 June 1984.

¹ CLP 311 also includes Portion 2199 Hundred of Bagot.

- [3] The plaintiff brings this proceeding by Originating Motion seeking an order pursuant to Order 53 of the *Supreme Court Rules* for recovery of the land, or of that part of the land on which the defendants remain in occupation.
- [4] At some time prior to April 2015 the first defendant, Ronald Rigby, established a “camp” at Point Stephens, on part of the land.
- [5] Mr Rigby erected or placed an elevated dwelling on the land, and brought onto the land a number of items of personal property including motor vehicles, vessels, quad bikes, caravans, trailers and tents.
- [6] Photographs of the improvements and various other chattels on the land are contained in the exhibit ‘HG-5’ to the affidavit of Helen Gordon sworn 30 November 2015. Those photographs were taken by Senior Constable Winter on 21 September 2015.²
- [7] The usual occupants of the camp have been the defendants, although they may also reside elsewhere. It is unclear just how much of the time each of those gentlemen actually spends at Point Stephens.
- [8] Mr Rigby told Senior Constable Winter in April 2015 that he had permission from the Larrakia people to live on the land. He told Senior Constable Winter that he had been frequenting the Point Stephens area for about 10 years and that, some four years prior to April 2015, had been given permission to live on the land by Johnny Baird, said to be a traditional

² Affidavit of Senior Constable Winter sworn 14 January 2016 par 9.

owner of the Tree Point Conservation Reserve. After receiving such permission, Mr Rigby started to construct a permanent dwelling on the land.

[9] The defendants entered into occupation of the land without the plaintiff's licence or consent. They remain in occupation without the plaintiff's licence or consent.

[10] The plaintiff has written a number of letters to the defendants requiring that they vacate the land and that the dwelling and other property be removed from the land, but to no avail.

[11] On 16 July 2015, Constable Winter served the first defendant at his home in Virginia with a letter dated 19 June 2015 under the hand of the Chairman of the plaintiff. The letter stated, inter alia: "The Corporation requires you to vacate and remove this camp immediately and to cease construction of the building and remove it immediately."³

[12] On 12 August 2015, Helen Gordon personally served the second defendant with a letter or copy letter dated 12 August 2015 written by the Chairman of the plaintiff, addressed "To whom it may concern", notifying the recipient "you must vacate NTP 2626 Gunn Point within 24 hours from the issue of the letter."⁴

[13] As registered proprietor of a leasehold estate in perpetuity under CLP 311, the plaintiff is entitled to exclusive possession of the land the subject of the

³ Annexure 'SJW-2' to the affidavit of Constable Winter sworn 14 January 2016.

⁴ Annexure 'HG-7' to the affidavit of Helen Gordon affirmed 30 November 2015.

Lease. I refer to *Western Australia v Ward*.⁵ The observations of the plurality in *Ward* in relation to Northern Territory Crown Lease Perpetual 581 and Special Purposes Lease 475 are relevantly applied to CLP 311. I note in this context that, although a number of rights are reserved to the Crown under the terms of CLP 311, the Lease contains no reservation in favour of Aboriginal people.⁶

[14] Although the first defendant told Senior Constable Winter that he had been given permission to reside on the land by a particular Larrakia person, there is no evidence that such permission was actually granted. Moreover, even if someone had granted or purported to grant such permission, it could not have enabled the first or second defendants to resist the claim of the plaintiff who has the right to exclusive possession of the land, possession to the exclusion of the Larrakia people or any particular Larrakia person.

[15] Both before and after its decision in *Mabo v State of Queensland (No 2)*,⁷ which recognised the existence of native title rights and interests, the High Court has rejected arguments, made by or on behalf of Aboriginal people, that there exists an Aboriginal nation with sovereignty over Australia, continuing to the present; or that the Crown's proclamations of sovereignty

⁵ *Western Australia v Ward* (2002) 213 CLR 1 at [439] and [433] – [434] per Gleeson CJ, Gaudron, Gummow and Hayne JJ.

⁶ The position may be contrasted with the pastoral leases considered in *Ward* at [417]: "... the grants of the respective pastoral leases were inconsistent with the continued existence of the native title right to control access to and make decisions about the land. Those rights were inconsistent with the right of the pastoral lessee to use the land for pastoral purposes. The respective pastoral leases were not necessarily inconsistent with the continued existence of all native title rights and interests ... the pastoral leases we are here concerned with did not confer upon the lessee the right to exclude native title holders from the land. The grants of the respective pastoral leases were therefore 'non-exclusive pastoral leases' within the definition in s 248B of the *Native Title Act*."

⁷ (1992) 175 CLR 1.

to Australia are invalid; or that Aboriginal people are not subject to the laws of the Commonwealth or of the States or Territories in which they reside. The decisions are referred to in paragraph 12 (footnote 13) in the written submissions of Ms Brownhill, senior counsel for the plaintiff, and I do not need to refer to them in detail.⁸

[16] The defendants therefore cannot rely on the asserted ground of Larrakia national sovereignty to argue that land laws passed by the Northern Territory legislature do not apply to them. There is no Larrakia system of land tenure in parallel to that under the *Land Title Act* (NT) or the *Law of Property Act* (NT).

[17] Further, for the reasons explained by Ms Brownhill in paragraph 14 of her written submissions, the Larrakia people do not hold any established rights or interests in land in and around Darwin from which a right in favour of the defendants to occupy the land at Point Stephens could derive.⁹

[18] Mr McNamee, assisting the first defendant as McKenzie friend, has referred to the decision of the New South Wales Supreme Court in *R v Murrell and Bummaree*,¹⁰ but I do not see that it is relevant to any of the issues in this proceeding, properly confined.

⁸ *New South Wales v Commonwealth* (1975) 135 CLR 337 at 388 per Gibbs J; *Coe v Commonwealth* (1979) 53 ALJR 403 at 408 per Gibbs J (Aickin J agreeing at 412), at 410 per Jacobs J; *Coe v Commonwealth* (1993) 68 ALJR 110 at 114 – 115 per Mason CJ, citing *Coe v Commonwealth* (1979) and referring to *Mabo (No 2)*.

⁹ See *Risk v Northern Territory* [2006] FCA 4094 at [232] – [233], [236] and [238] per Mansfield J; upheld on appeal *Risk v Northern Territory* (2007) 240 ALR 75; *Quall v Northern Territory* [2009] FCA18; upheld on appeal *Quall v Northern Territory* (2009) 180 FCR 528.

¹⁰ (1836) 1 Legge 72; [1836] NSW SupC 35, Forbes CJ, Dowling and Burton JJ.

[19] In the circumstances, I am satisfied that the defendants' adverse occupation of the land has no basis in law. The defendants' asserted grounds for occupation of the land are contrary to law or otherwise not maintainable.

[20] Accordingly, there will be judgment and consequential orders in favour of the plaintiff as follows:

1. As against both defendants, that the plaintiff recover possession of the land being Northern Territory Portion 2626 shown on Plan S84/179, comprised in Crown Lease in Perpetuity No. 311.¹¹
2. Pursuant to s 14(1)(b) *Encroachment of Buildings Act*, that the first defendant remove within 90 days all structures erected or caused to be erected or placed by him on the land.
3. That the first defendant pay the plaintiff's costs of this proceeding, to be taxed in default of agreement.
4. Liberty to apply.

¹¹ SCR 53.07(2); Form 53A.