PARTIES:	ALCOOTA ABORIGINAL CORPORATION v CENTRAL LAND COUNCIL
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	AS36 OF 1996
DELIVERED:	15 September 1997
HEARING DATES:	1 May 1997
JUDGMENT OF:	MARTIN CJ.

CATCHWORDS:

Procedure - Costs - Interlocutory application - Urgent proceedings - Whether unnecessary or premature -

Aboriginal Land Rights (Northern Territory) Act (Cth) 1978, s50(2C)

REPRESENTATION:

Counsel:

Appellant:	Mr J Reeves
Respondent:	Mr D Avery

Solicitors:

Appellant:	James Noonan
Respondent:	Central Land Council

Judgment category classification:	C
Judgment ID Number:	mar97040
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mar97040

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

No. AS36 of 1996

BETWEEN:

ALCOOTA ABORIGINAL CORPORATION
Appellant

AND:

CENTRAL LAND COUNCIL
Respondent

CORAM: MARTIN CJ.

REASONS FOR JUDGMENT

(Delivered 15 September 1997)

The plaintiff seeks an order for costs arising from its successful application that the defendant deliver the common seal of the plaintiff to it.

Circumstances required that the application be dealt with without delay. The defendant had possession of the common seal by virtue of the provisions of the rules of the plaintiff requiring that it be kept in safe custody as directed

by the defendant or the committee of the plaintiff. There has been no direction by the committee prior to the events giving rise to these proceedings.

The plaintiff is the registered proprietor of a pastoral lease. Pursuant to the provisions of the *Aboriginal Land Rights (Northern Territory) Act* (Cth) 1978 a claim to the land on behalf of persons claiming to be traditional aboriginal owners of the land had been made. It was lodged on their behalf and by the defendant. On 6 March 1996, a meeting had been held of members of the plaintiff, and subsequently of members of its committee, as a result of which consent was given by the plaintiff to the land claim over its interest in the land (*Land Rights Act* s50(2C)). The validity of those procedures and the giving of the consent was disputed before the Aboriginal Land Commissioner, who ruled on 15 May 1996, that the plaintiff had consented to the making of the claim. It was not a matter before me.

A meeting of members of the committee was held on 20 May 1996 (there also appears to be some dispute about that, but I have not had to rule on the question). At that time the Commissioner was conducting a hearing in relation to the claim, and it was expected that that stage of the proceedings would be completed within a matter of a few days thereafter. The people at that meeting decided that:

> "1. The so called consent dated 6 March 1996 was not a proper consent of the Corporation.
>
> 2. If the so called consent dated 6 March 1996 was a proper consent of the Corporation it is hereby withdrawn.

3. The Corporation does not consent to the land claim dated 18 March 1993 lodged by the Central Land Council".

It was also decided that a document setting out the resolutions be prepared and that it be "signed under the seal of the Corporation". It is clear that it was intended that the document would be put before the Commissioner.

Having been advised by telephone by Mr Noonan, its solicitor, that the defendant appeared to be unwilling to deliver up the seal, the meeting authorised him to take legal proceedings to obtain it. It appears there were telephone calls between the members attending the committee meeting at Engawala and Mr Noonan who was in Alice Springs during the course of the meeting.

The purpose of the committee was to immediately inform the Aboriginal Land Commissioner, in a formal manner, of the outcome of its meeting as evidenced by the document and the seal. The defendant who was acting on behalf of the claimants in a hearing which was then under way had the seal.

Mr Noonan was in Alice Springs. Having received instructions from Mr Arthur Turner, the Chairman of the plaintiff's committee, he went to the office of the defendant firstly at about 8.35am on 20 May and sought the seal. He was informed by a person at the office that she had been looking for it, and I infer from that that Mr Turner had previously telephoned asking that it be

given to Mr Noonan. I need not detail the happenings during the remainder of the day. Suffice it to say that Mr Noonan attempted to obtain the seal by numerous telephone calls to, and personal attendances at the office of the defendant. During the course of the morning a direction in writing that the seal be delivered to Mr Noonan was sent by facsimile from the committee to the defendant. Mr Noonan made a formal written demand at 2.50pm that it be delivered to him by 3.15pm at an address he gave. Immediate proceedings were threatened if the demand was not met. The seal was not delivered.

During the course of the day Mr Noonan was directed to solicitors at the office of the defendant and spoke to them. No one could assist him, but various reason were given as to why the demand could not be met. I find that none of them were reasonable once the defendant had received the facsimile instructions from the committee.

Notice had been given to the defendant that an application would be made to the court the next day, and it came on at 8.30am. The defendant had been advised, but it did not then appear. The matter was adjourned until 1pm so that the court could be satisfied that the defendant had reasonable notice and at that time both parties were represented. The defendant could not then inform the court as to the whereabouts of the seal, it being thought by its solicitor that it may have been sent to Mr Noonan's Darwin office by post. Why that should be so, given Mr Noonan's personal attendances on the

defendant at Alice Springs the day before, and his written advice as to how he could be contracted and where he was staying, was a mystery. No good reason was advanced by the defendant as to why the order sought should not be made. Given the usual undertakings as to damages, and a further undertaking that the seal would not be used for any purpose other than to affix it to a copy of the Resolution of 20 May, (by consent the plaintiff was later released from that undertaking), it was ordered that the seal be delivered forthwith to the solicitor for the plaintiff. It was noted that it would not be a breach of the order if it turned out that it had in fact already been despatched by post to the Darwin office of that solicitor. Liberty was given to both parties to apply on short notice and the question of costs was adjourned.

There have been no further applications other than for costs. On that application I was informed that the seal was delivered on 21 May.

For the plaintiff it was put that it was wholly successful and therefore it should have its costs. For the defendant, it was submitted that the proceedings were unnecessary and therefore the plaintiff should not have its costs. It was submitted that all the defendant was doing on 20 May was to satisfy itself that the requirements of the Constitution by which it could be directed to deliver the seal to the committee had been met. In that, I accept that it was acting properly. The background, briefly set out above, shows the need for it to proceed with caution. However, during the course of the day it had been given

all it sought. It should have been satisfied, and it put no argument either on the hearing of the application nor on the hearing as to costs as to why it was not. Clearly, it had the seal, it knew of the urgency of the situation, it was on clear notice as to the intended application to court, it sought no additional time to comply with the demand, and it did not inform Mr Noonan of its decision to deliver up the seal prior to the application being made to the court. It should have delivered the seal to Mr Noonan by the end of the day of 20 May. Even on the 21st it was unsure of what it had done with it.

There must be some substantial reason established upon which to found an exercise of discretion to deprive a successful party of its costs. No such reason has been established in this matter. The proceedings were commenced because of the defendant's default in meeting the demand for delivery of the seal, and there is no explanation for its prevarication after it had received written confirmation from the committee of its decision.

The defendant is ordered to pay the plaintiff's costs.
