SUPREME COURT OF QUEENSLAND

CITATION:	*Gibson & Ors v The Minister for Finance, Natural Resources and the Arts & Anor* [2011] QSC 401
PARTIES:	**RUSSELL KURT GIBSON** (First Applicant) **GREGORY RAYMOND MCLEAN, JUNE EMILY PEARSON AND NEVILLE IAN BOWEN** (Second Applicant) **HOPEVALE ABORIGINAL COUNCIL** (Third Applicant) v **THE MINISTER FOR FINANCE, NATURAL RESOURCES AND THE ARTS** (First Respondent) **HOPEVALE CONGRESS ABORIGINAL CORPORATION RNTBC (INC 3135)** (Second Respondent)
FILE NO/S:	500 of 2011
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court, Cairns
DELIVERED ON:	14 December 2011 (ex tempore)
DELIVERED AT:	Cairns
HEARING DATE:	13 December 2011
JUDGE:	Henry J
ORDER:	**1. The application for summary dismissal is dismissed;** **2. The application for an injunction and stay is dismissed;** **3. The costs in respect of both applications are reserved;** **4. I will hear the parties as to further orders for the future conduct of the matter, including its listing for hearing proper** **Pursuant to rules 367 and 573 of the Uniform Civil Procedure Rules 1999 the Court directs that:** **(a) disclosure to be made by the parties to the**

application by way of a list of documents by no later than 20 January 2012;

(b) inspection of documents be completed by no later than 25 January 2012;

(c) the applicants file and serve any affidavit material intended to be relied upon in the application by no later than 31 January 2012;

(d) the respondents file and serve any affidavit material intended to be relied upon in the application by no later than 10 February 2012;

(e) the applicants file and serve any affidavit material in reply intended to be relied upon in the application by no later than 17 February 2012;

(f) the application be listed for hearing in the week commencing 20 February 2012 to commence not before Wednesday 22 February 2012;

(g) the parties have liberty to apply on two clear days notice in writing;

(h) the applicants file and serve their outlines of submissions five days before hearing, and the respondents submit their outlines of submissions two days before hearing.

CATCHWORDS: EQUITY – EQUITABLE REMEDIES – INJUNCTIONS – INTERLOCUTORY INJUNCTION – INJUNCTIONS TO PRESERVE STATUS QUO PENDING DETERMINATION OF RIGHTS – Where an injunction is sought by the applicants to restrain the respondent Minister from taking further action giving effect to the decision to appoint the second respondent as trustee of the deed of grant in land over Aboriginal lands in Hopevale – Where the applicants submit the status quo ought to be maintained as the operations of the Hopevale Shire Council will be impeded by the appointment – Whether the balance of convenience favours the granting of the injunction.

STAY OF PROCEEDINGS – Where application is made to stay the respondent Minister's decision pursuant to s 29 of the *Judicial Review Act 1991* (Qld) until judicial review of decision can occur.

SUMMARY DISMISSAL – Where second respondent makes application for summary dismissal pursuant to s 48(1) of the *Judicial Review Act 1991* (Qld) on the basis that no reasonable basis for the application is disclosed and that it would be inappropriate for the application to continue.

Judicial Review Act 1991 (Qld) – ss 29, 48.

Native Title Act 1993 (Cth)

Native Title (Prescribed Bodies Corporation) Regulation 1999 (Cth) – s 7.

Aboriginal Land Act 1991 (Qld) – ss 38, 39 (former s 27A), 40 (former s 28), 42, 46, 203.

COUNSEL:	D J Campbell SC with A D Scott for the applicants W Sofronoff QC with T Pincus for the first respondent D Rangiah SC with D Yarrow for the second respondent
SOLICITORS:	Bottoms English Lawyers for the applicants Crown Law for the first respondent P&E Law for the second respondent

HIS HONOUR: The applicants seek a statutory order of review of the decision of the first respondent, the Minister, to appoint the second respondent, Congress, as grantee of the Hopevale Deed of Grant in Trust, the so-called called DOGIT, pursuant to section 40 of the Aboriginal Land Act 1991. It is likely that application will be heard during the first half of next year.

In the meantime, the applicants apply for interlocutory relief, namely:

(1) An interlocutory injunction pending the final determination of the application restraining the first and third respondents from taking any further action to give effect to the decision, including delivery of the DOGIT and any action taken in furtherance thereof. There is a misprint in the reference to the "third respondent"; it should read the "second respondents" and argument proceeded on that understanding.

(2) An order pursuant to section 29 of the Judicial Review Act 1991 staying the decision pending the final determination of the application.

The application for interlocutory relief, heard yesterday, requires prompt determination because the decision is to take effect tomorrow when the DOGIT is to be handed over to the second respondent. The volume of material received belatedly and falling for consideration in competition with the other

business of the Court yesterday and today, and the need for an urgent decision, means my reasons are necessarily delivered extempore. Given the limited time available and the nature of the application, my reasons inevitably involve a much less detailed consideration of the substantive issues in the application for judicial review than will occur in respect of the hearing proper.

A cross application by Congress for summary dismissal of the application for statutory order of review was also heard yesterday. It is useful to consider it first.

The application for summary dismissal is made under section 48(1) of the Judicial Review Act. It provides for a number of bases upon which the Court may stay or dismiss an application for review. The two relied on by Congress are that no reasonable basis for the application is disclosed and that it would be inappropriate for proceedings in relation to the application to be continued.

The submission that no reasonable basis for the application is disclosed necessarily involved an attack upon all grounds. It is important to bear in mind I am not engaged in a determination on the merits. The present issue is not whether the application should succeed, or even whether it has reasonable prospects of success. Rather, the issue is whether there is a reasonable basis for the application.

Grounds 1 and 2 are: (1) that the decision was not authorised

by the enactment under which is was purported to be made; (2) that the making of the decision was an improper exercise of the power conferred by the enactment under which it was purported to be made in that it was so unreasonable that no reasonable person could so exercise the power.

The grounds are accompanied by lengthy particulars. It is evident those grounds essentially allege an inconsistency between the duties of Congress under the Native Title Act and its duties as trustee of the land under the looming grant. Congress, a prescribed body corporate under the Native Title Act 1993 and thus subject to the Native Title (Prescribed Bodies Corporation) Regulation 1999 has an obligation under that statutory and regulatory regime as agent and trustee of the region's clans in respect of their native title rights and interests over land within the DOGIT.

Congress's obligations as trustee under the DOGIT would, under the Aboriginal Land Act section 38, not only be to the native title holders in the areas, but to all Aboriginal people particularly concerned with the land. As Mr Campbell SC for the applicants pointed out, this would include Aboriginal people who have maintained their ancestors' traditional affiliation with particular areas of land, and Aboriginal people who have a historical association with particular areas of land based on them, or their ancestors having lived on or used the land or neighbouring land.

Mr Campbell submits:

"Congress will be bound by the usual duties of trustee. It must ensure that it does not put itself in a position where its duties as trustee conflict with its interests and other duties, and must not obtain any benefit or gain from its position as trustee, see Bray v. Ford [1896] AC 44; Chan v. Zacharia (1984) 154 CLR 178.

Congress must not bind itself to a future exercise of the trust in a particular manner which is determined by considerations other than its own conscientious judgment at that future time regarding what is in the best interests of the trust, see re Brockbank Deceased; and Ward v. Bates [1948] Ch 206.

The substantial overlap between the areas subject to the clans' native title rights and interests in the DOGIT means that Congress cannot afford a conflict between its duty to perform these functions and its duty as grantee under section 40 of the Aboriginal Land Act. For example, many of the dealings that Congress will enter upon in respect of land the subject of the new DOGIT will, because that same land is subject to the clans' native title rights and interests, be matters relating to those rights and interests. Congress will be required to act for the benefit of all the Aboriginal people particularly concerned with the land but at the same time act as agent or representative for the native

titleholders. Congress cannot comply with these two duties simultaneously...

Congress's duty to 'hold money ... in trust' (under section 7 of the regulation) is not limited in terms to any particular money. The money which it must hold in trust includes payments received as compensation or otherwise related to the clans' native title rights and interests. However, it is not limited to such monies. Congress's duty to hold money in trust is in terms a direction to Congress as to how it must deal with all monies that it holds. It is a direction that it must hold those monies on trust. Congress is then under a duty to invest or otherwise apply that money as directed by the clans. This duty incompatibly fetters the duty Congress would be under as grantee under section 40 of the Aboriginal Land Act to only apply royalties received under section 203 of the Aboriginal Land Act for the benefit of the Aboriginal people particularly concerned with the land."

The applicant goes on to submit, somewhat less persuasively, that there was before the Minister evidence of Congress's intention to act in breach of trust, but it is unnecessary to consider that aspect. In my view, the above identified argument as to the conflict or incompatability (hereinafter referred to as "*the conflict issue*") in respect of Congress's obligations under the Native Title Act and regulation and under the DOGIT pursuant to the Aboriginal Land Act, and thus

as to Congress's inherent unsuitability or ineligibility for appointment by the decision-maker is not so lacking in substance that it provides no reasonable basis for the application.

In reaching that conclusion I acknowledge the apparent cogency of the arguments advanced to the contrary, including that duties relating to money under the Native Title Act only relate to money received pursuant to that Act, not by ex gratia payment by the State Government, and that section 40 of the Aboriginal Land Act expressly permits the appointment of a so-called CATSI corporation as a grantee. Congress is such a corporation.

However, as sometimes occurs with summary judgment applications turning largely on matters of law, the issues are not so simple as to lend themselves to summary disposition without a proper hearing. My conclusion that there is a reasonable basis for the application is not in any way a commentary on the strength of the competing arguments. It is merely an acceptance that there is a reasonable basis for an argument to be had.

The abovementioned conflict points also pervades grounds 3 and 4, so I am not of the view that they have no reasonable basis either.

My conclusion that there is at least some arguable substance to the conflict point will have the consequence when I turn to

the application for injunctive relief that I consider grounds 1 to 4 involve a serious question to be tried.

Grounds 5 to 7 relate to section 42(3)(a)(ii) of the Aboriginal Land Act which provides:

> "*However, the Minister need not act as mentioned in subsections (1) and (2) in relation to land until the Minister is reasonably satisfied –*
>
> *(a) arrangements are in place to ensure -...*
>
> *(ii) the local Government for the area in which the land is situated can continue to provide Local Government services to communities on the land after it is granted.*"

The applicant submits grounds 5 to 7 relate to the requirement in section 42(3)(a)(ii) of the Aboriginal Land Act that the Minister's jurisdiction to make the decision was conditioned on her being reasonably satisfied that arrangements are in place to ensure the Council can continue to provide Local Government services to communities on the land the subject of the new DOGIT after it is granted. The applicants submit the corollary of that requirement is that the Minister's jurisdiction to make the decision did not arise if, before making the decision, the Minister had not formed the required state of satisfaction reasonably, see Minister for Immigration and Multicultural Affairs v. Eshetu (1997) 197 CLR 611.
It is contended for these grounds by the applicant that the Minister failed to form the required state of satisfaction

reasonably by taking into account irrelevant considerations and failing to take into account relevant considerations. It is therefore contended that the Minister did not have jurisdiction to make the decision.

That interpretation of s.42(3)(a)(ii) appears, with respect, to be wrong. It appears to erroneously interpret section 42(3)'s words, "*need not act*", as meaning, "*must not act*". Section 42(3)(a)(ii) does not require the Minister to be satisfied of anything as a condition of appointing a grantee. It merely gives liberty to the Minister to delay fulfilling the duty imposed by section 42(1) if the Minister wishes to so delay until reaching the required level of satisfaction. Section 42(3) is not a condition, but a permissive provision by which the Minister is not obligated by the imperative in section 42(1) and (2) to act as soon as practicably.

It appears the applicant's apparently erroneous interpretation of section 42(3) is central to its arguments in grounds 5 to 7. In the light of that apparently erroneous interpretation and the manner in which grounds 5 to 7 were argued, it has not been shown that grounds 5 to 7 involve a serious question to be tried, as would be necessary to secure injunctive relief. However, different considerations are in play as regards the application for summary dismissal.

Grounds 5 to 7 are not all articulated and particularised with express reliance on section 42(3) and, it follows, the applicant's erroneous interpretation thereof. The question

whether, if the applicant's interpretation is wrong, any of grounds 5 to 7 still have any reasonable basis was not meaningfully addressed in argument.

I have already found there is a reasonable basis for the application and where it is unclear whether the applicants contend there is any substance lingering in grounds 5 to 7, if their interpretation is wrong, I will not exercise my discretion under section 48(1) of the Judicial Review Act to summarily dismiss that part of the application which relies upon grounds 5 to 7.

The other basis advanced for summary dismissal, that it would be inappropriate for proceedings in relation to the application to be continued, is founded upon the doctrine of Anshun estoppel, that a party may not litigate an issue that was reasonably open to be raised in earlier litigation, as which, see Port of Melbourne Authority v. Anshun Proprietary Limited (1981) 147 CLR 589; Wong v. Minister for Immigration and Multicultural and Indigenous Affairs (2004) 146 FCR 10.

The earlier litigation of relevance here culminated in the decision of Jones J in Hopevale Aboriginal Shire Council and Others v. the Minister for Natural Resources and Water [2011] QSC 272. There, the applicants were Hopevale Aboriginal Shire Council, Gregory Raymond McLean, June Emily Pearson, Neville Ian Bowen and the Hopevale Foundation Limited. The respondent was the Minister for Natural Resources and Water.

In that matter, as is apparent from paragraph 5 of the judgment, the applicant sought an injunction to restrain the Minister from granting the DOGIT to Congress. They did so contending that the proposed grant to Congress could not be made in terms notified under the then section 28, now replaced by section 40, of the Aboriginal Land Act and argued the only basis for such appointment was that prescribed by the then 27A, now replaced by section 39, of the Act.

The affidavit material filed by the applicants in that application contains much content identical to content filed for the applicants in the present application, particularly in respect of grounds 1 to 4. Most of the arguments underlying the grounds now raised, particularly the conflict point, could have been raised at the time of that application.

I am conscious that consideration of this argument is a value judgment to be made referrable to the proper conduct of modern litigation and ought not be made mechanistically, as was observed by Allsop P in Champerslife Proprietary Limited v. Manojlovski [2010] 75 NSWLR 245. However, a comparison of the parties to the two proceedings immediately demonstrates the presence of an applicant, in the present application, Mr Gibson, who was not present in the former. It has not been demonstrated why Mr Gibson ought be deprived of his right to pursue the present litigation when he was not even a party to the earlier litigation. Moreover, the nature of the present application is different from the former in that it involves

review of a decision made and includes review of whether in making the decision the decision-maker failed to take into account considerations which should have been taken into account. While some of those considerations, for instance the conflict point, could have been raised at the time of the earlier application, they were not relevant to the subject of the application which was made. There would have to have been a broader based application for them to have been relevant.

There is a difference between a matter which could have been litigated at the same time as the earlier litigation and a matter which properly belonged to the subject of the earlier litigation. It is the latter characteristic which potentially raises an Anshun estoppel. It is not present here.

That is not to say that the failure to litigate the primary foundation for the present application at an earlier time is irrelevant to the application for injunctive relief but the present application is not precluded by Anshun estoppel.

In the circumstances, the argument that it would be inappropriate for proceedings in relation to the application to be continued must fail. The application for summary dismissal will therefore be dismissed. Given the character of these proceedings costs will be reserved.

Turning to the application for interlocutory relief, that is the stay and injunction, it is common ground, following ABC v. O'Neill (2006) 227 CLR 57 that the applicant must show: (1)

there is a serious question to be tried as to their entitlement to the final relief sought by the application for judicial review; (2) that the applicants are likely to suffer injury for which damages will not be an adequate remedy if the interlocutory relief sought is not granted; and (3) the balance of convenience favours maintaining the status quo pending the final determination of the application.

For reasons explained earlier, there is a serious question to be tried.

As to whether damages will be an adequate remedy, most of the concerns expressed by the applicant fell away in the light of the second respondent's giving of the undertakings now contained in Exhibit 2.

A concern said to remain was the effect of section 46(4) of the Aboriginal Land Act which provides:

> "*If the registrar of titles is given notice of the creation of an interest after the issue of the deed of grant, the registrar of titles must make an appropriate note in the register.*"

It was initially submitted "*an appropriate note*" meant registration, however, it was conceded it probably does not mean that. Indeed, section 46(1) suggests section 46 is of limited application and no application to a deed of grant of the kind we are here concerned with. However, even if it did

mean that, the second respondent would be in peril of breaching its second undertaking were it to give notice to the Registrar of Titles.

Really, the only remaining concern is the capacity of Hopevale Aboriginal Shire Council to continue to operate in the meantime and whether any incapacity may cause injury for which damages will not be an adequate remedy. The concern, in short, goes to the obvious need for Local Governance to continue. The Shire Council needs to be able to continue to fulfil its obligations and duties.

I pause to observe that Council is a party to this proceeding and was a disappointed party before Jones J in an era when it was agitating for a different organisation than Congress to be awarded the DOGIT. It is important Council does not allow forensic considerations relevant to its role as a party to contaminate its approach to its obligations and duties as a Local Government. Some correspondence exhibited in this matter suggests Council, in its role as a Council and not a party, has been slow to engage in discussions with relevant entities about the looming transition. I put it no higher than that, given the late filing of that material and the applicants' objection to the extent they have not had proper opportunity to respond with other material. I also note Mr Campbell SC for the applicants was instructed that Council has participated in the consultation process, "to the best extent it can". In any event, it warrants emphasis that Council should not have any regard to its forensic interests as a

party to this proceeding in carrying out its duties and obligations as a Shire Council.

The applicants submit in the absence of interlocutory relief that Council will be deprived of substantial assets and land necessary in order for it to provide Local Government services in the Hopevale area.

Mr Campbell submitted:

> "*The new DOGIT excludes the township area, but includes the surrounding area on which there is considerable infrastructure built. So, for example, sewerage works, water reticulation works, rubbish works, are all built on areas of land which will be the subject of a new DOGIT. These are owned and operated by the Council. By creating a new grantee of a DOGIT, title for those fixtures in the land will move to the new owner of the land, the new trustee. What does Council do in such a situation? ... The problem highlights itself in this: It might be all very well while things keep running normally and Council might decide: oh well, we can still go out and maintain things and turn on the water supply and do things like this; but what happens if there's a big cyclone this year? What happens if there's $2 million repair work that needs to be done to the sewerage work? That sewerage work is owned by the new grantee, Congress, if the grant goes forward. How can someone expect Council to expend money on an asset that it doesn't own? How*

would it be correct or proper for council to do that?"

Those submissions are founded on a misconception as to Council's legal interest. It has always been the trustee of the land. It never owned the land except as trustee and had no beneficial interest.

As was observed by counsel for the first respondent in submissions, it had two functions: firstly as a Local Government under the Local Government Act; and secondly as a trustee of the land for the benefit of the Aboriginal inhabitants under the original DOGIT.

Mr Sofronoff submitted:

> "*If it chose to exercise its Local Government power to erect infrastructure upon land that doesn't belong to the Council in its capacity as a Council, as a Local Government, but chose to build it on land that is owned by a trustee, then that is a matter for it, but it must know that once it attaches a fixture to the ground that fixture will belong to the owner of the land which happened to be itself in its capacity as trustee, but nothing turns on that legally. And it must know that being the trustee of the land somebody else might be substituted as trustee, or as is going to happen in this case, the trust is going to be brought to an end and a new trust created with a new trustee. The Council does know that because...the Council itself proposed*

Foundation as a new trustee. So, if that had happened, there would be no different result. A new person would own the land as trustee upon which Council's infrastructure stands, and our learned friends says 'If there is a dreadful storm, the Council won't know what to do.' The position would obtain in either case whoever the new trustee might be if it was not the Council itself. In truth, there can never be any problem of the kind that is being proposed because the trustee of the land is bound to apply for the benefit of the inhabitants. The local authority of the land is bound to act in aid of good Local Government in the authority in the area in respect of which it is the authority. It is inconceivable that the trustee of the land might not permit the local authority to have whatever access it requires in order to use its infrastructure for the purpose for which it uses that infrastructure."

I have been taken to the content and annexures to an Indigenous Land Use Agreement, or "ILUA," which is Exhibit GRM17 to the second affidavit of Gregory McLean, and a deed poll which is Exhibit MD1 to the affidavit of Michael Neal from which Congress's intention to permit council access to the infrastructure is plain.

Clause 2.1 of the deed poll executed by Congress illustrates the point in providing:

"*Congress agrees that following the ALA transfer the Council is entitled to: (a) use and occupy the*

infrastructure land until the grant of the leases and/or easements; and (b) on the giving of written notice to Congress by the Council access the non-township land at all reasonable times for the purposes of: (i) ensuring the existing infrastructure remains serviceable; and (ii) arranging for the development and construction of any future infrastructure reasonably required; and (c) reasonable access to the non-township land for Council purposes."

The uncontroversial position is well explained in the first applicant's written submissions:

"*The identity of the legal owner of land upon which the Council has chosen to erect infrastructure cannot affect its duty, and nor can it affect its ability to perform its duty unless entry to the land is denied. There has been and will be no such denial.*"

There is no legitimate reason why Council cannot continue to fulfil its obligations and duties in and to the entire Council district if the interlocutory relief now sought is denied. Nor is there any basis to conclude Congress will obstruct that process.

Turning to the balance of convenience, the applicants submit there is no serious prejudice occasioned by maintenance of the status quo for another half year or so pending the hearing proper, in particular, that there is no special urgency in the

granting of the DOGIT. They make the point that merely because a celebration is planned around tomorrow's proposed grant, that is no justification to conclude the balance of convenience favours rejecting the interlocutory relief. I entirely agree, particularly bearing in mind the first respondent's decision not to meet the reasonable request by solicitors for the applicants that they be informed of the making of the decision.

However, the respondents submit that in the light of the undertakings there is no prejudice to the applicants' position either if interlocutory relief is not given. Further, they submit their position would be prejudiced, submitting, inter alia:

> "*The intended grant to Congress on 15 December 2011 will represent the culmination of an extremely difficult consultation process over many years, as explained in the affidavits of Ms Bradley and Mr Cobus. The position of the block holders is of particular concern. Some of them have been waiting for 25 years for regularisation of their interests and there has been a difficult process over the last decade, and particularly since 2004, to define their claimed interests and negotiate the necessary traditional owner consent for grant of leases to the block holders. There is now consent, as recorded in the ILUA. That the consent will expire unless the transfer to Congress occurs by 12 March 2012 and the leases are granted by 12 September 2012. There is a real*

risk that the process to regain the present position will be long and difficult. Mr McLean's own affidavit evidences the problem of divisiveness in this community."

Further to those considerations, which of themselves tip the balance of convenience against the applicants, the respondents assert, as a significant relevant consideration, the applicants' delay in pursuing the conflict issue, which is now the primary substantive issue underpinning that part of its application for judicial review and which in my view involves a serious question to be tried. It is an issue it could easily have pursued earlier. The applicants did not need to wait for the decision to occur. The affidavit material filed in the application before Jones J demonstrates two of the three current applicants were alive to it.

The first respondent submits:

"*Injunctive relief will be denied to an applicant who chooses to delay action and thereby permits the respondent to alter its position in reasonable reliance on the status quo, or otherwise permits a situation to arise which it would be unjust to disturb. The applicant does not have to know of legal conclusions available on the facts, but only to know of the facts from which the rights later asserted are said to arise, see Hourigan v. Trustees Executors and Agency Co Ltd (1934) 51 CLR 619 at 651; Lamshed v. Lamshed (1963) 109 CLR 440 at 453; Orr v. Ford (1989) 167 CLR 316 at 341.*

The applicants' failure to raise the present issues earlier has permitted the respondents to proceed through the extensive consultation and administrative arrangements detailed in Ms Bradley's affidavit to the cusp of the actual transfer to Congress, which has been contemplated since at least October 2010. It would be unjust to permit the applicants to derail this process at this very late stage."

Delay by an applicant is a relative consideration in considering injunctive relief, see, for example, State of Queensland and Another v. Commonwealth of Australia and Another [1988] 77 ALR 291 at 298. Nonetheless, delay of itself is not a disentitling factor in seeking an interlocutory injunction, see Nintendo Co Limited v. Carer (2000) 52 IPR 34..

Further, as observed by Doyle CJ in the Duke Group v. Alamain [2000] SASC 415 there must be a substantial detriment, not merely a trivial inconvenience caused by a plaintiff or applicant's delay. The failure to litigate the conflict issue has, in my view, given rise to a more than trivial inconvenience.

Ultimately, though, the prejudice occasioned is effectively the same as that I have already identified as tipping the balance of convenience against the applicants. The applicants' delay fortifies that conclusion, however, it is a

conclusion I would have reached in any event.

In the circumstances, the application for interlocutory relief should be dismissed and again, given the nature of this proceeding, costs reserved.

My orders are:

1. The application for summary dismissal is dismissed;
2. The application for an injunction and stay is dismissed;
3. The costs in respect of both applications are reserved;
4. I will hear the parties as to further orders for the future conduct of the matter, including its listing for hearing proper.

...

HIS HONOUR: Pursuant to rules 367 and 573 of the Uniform Civil Procedure Rules 1999 the Court makes the following directions:

(a) disclosure to be made by the parties to the application by way of a list of documents by no later than 20 January 2012;

(b) inspection of documents to be completed by no later than 25 January 2012;

(c) the applicants file and serve any affidavit material intended to be relied upon in the application by no later than 31 January 2012;

(d) the respondents file and serve any affidavit material

intended to be relied upon in the application by no later than 10 February 2012;

(e) the applicants file and serve any affidavit material in reply intended to be relied upon in the application by no later than 17 February 2012;

(f) the application be listed for hearing in the week commencing 20 February 2012, to commence not before Wednesday 22 February 2012;

(g) the parties have liberty to apply on two clear days' notice in writing;

(h) the applicants file and serve their outlines of submissions five days before hearing, and the respondents submit their outlines of submissions two days before hearing.
