



## HIGH COURT OF AUSTRALIA

2 December 2015

### FIREBIRD GLOBAL MASTER FUND II LTD v REPUBLIC OF NAURU & ANOR

[2015] HCA 43

Today the High Court unanimously dismissed an appeal from a decision of the Court of Appeal of the Supreme Court of New South Wales but, by a majority, varied the orders made by that Court. The Court of Appeal had dismissed an appeal against an order setting aside both the registration of a foreign judgment against the respondent ("Nauru") and a consequential garnishee order relating to certain bank accounts Nauru held in Australia.

The appellant ("Firebird") was the holder of bonds guaranteed by Nauru. After the issuer of the bonds defaulted, Firebird obtained judgment in the Tokyo District Court for ¥1,300 million together with interest and costs ("the foreign judgment") against Nauru as guarantor, and subsequently obtained an order from the Supreme Court of New South Wales that the foreign judgment be registered under the *Foreign Judgments Act* 1991 (Cth). The summons for the order for registration was not served on Nauru. Firebird then obtained a garnishee order against the Australian bank in which the accounts of Nauru were kept. Nauru filed motions seeking to set aside the registration of the foreign judgment and the garnishee order, and the Supreme Court made those orders. Firebird appealed to the Court of Appeal.

The Court of Appeal held that Nauru was entitled to the immunity from jurisdiction recognised in s 9 of the *Foreign States Immunities Act* 1985 (Cth) and that the exception in s 11(1) of that Act for "commercial transactions" did not apply to the proceedings for registration under the *Foreign Judgments Act*. The Court of Appeal rejected Firebird's argument that there was an inconsistency in the operation of the two statutes. The Court of Appeal also agreed with Nauru's contention that service of the summons for the order for registration should have been effected upon Nauru before the foreign judgment was registered. A majority of the Court of Appeal further held that the funds in the accounts of the Australian bank were immune from execution under the garnishee order by virtue of s 30 of the *Foreign States Immunities Act*, and that the exception for "commercial property" in s 32(1) did not apply. By grant of special leave, Firebird appealed to the High Court.

In dismissing the appeal, the High Court unanimously held that the proceedings for registration of the foreign judgment under the *Foreign Judgments Act* were proceedings to which s 9 of the *Foreign States Immunities Act* applied so that Nauru was immune from the jurisdiction of Australian courts, subject to the exceptions for which the *Foreign States Immunities Act* provides. There was no inconsistency in the operation of the two statutes. The exception stated in s 11(1) of the *Foreign States Immunities Act* applied to the proceedings for the registration of the foreign judgment in this case because they concerned a commercial transaction; namely, the guarantee upon which the foreign judgment was based. Nauru therefore lost its immunity from jurisdiction. However, Nauru was immune from execution against the bank accounts held in Australia under the *Foreign States Immunities Act* because the purposes for which these accounts were in use, or for which the monies in them were set aside, were not commercial purposes. By a majority, the Court also held that there was no requirement that the summons for registration of the foreign judgment under the *Foreign Judgments Act* be served on Nauru before the foreign judgment was registered.

- *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.*

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