RINEHART & ANOR v HANCOCK PROSPECTING PTY LTD (S143/2018)
RINEHART & ANOR v GEORGINA HOPE RINEHART (IN HER PERSONAL CAPACITY AND AS TRUSTEE OF THE HOPE MARGARET HANCOCK TRUST AND AS TRUSTEE OF THE HFMF TRUST) & ORS (S144/2018)

Court appealed from: Full Court of the Federal Court of Australia
[2017] FCAFC 170
[2017] FCAFC 208

Dates of judgment: 27 October 2017
15 December 2017

Special leave granted: 18 May 2018

In October 2014 the Appellants, Ms Bianca Rinehart and Mr John Hancock, commenced Federal Court proceedings against their mother, Mrs Georgina Rinehart ("Mrs Rinehart"), Hancock Prospecting Pty Ltd ("HPPL") and other persons and companies. In those proceedings, the Appellants allege various forms of misconduct by Mrs Rinehart in the administration of trusts of which the Appellants are beneficiaries. The Appellants also impugn, on the basis of alleged wrongdoing by Mrs Rinehart and HPPL, a series of deeds that were entered into by one or both of the Appellants with various of the respondents in the proceedings between 2003 and 2010. The deeds contain releases and covenants not to sue. Each deed also contains a provision that the parties to the deed are to resolve any dispute by confidential arbitration (those provisions together, "Arbitration Agreements").

A group of respondents ("the HPPL Respondents") applied for the Federal Court proceedings to be stayed, contending that by executing the deeds the Appellants had given up any rights to bring such proceedings and that the claims were to be resolved by confidential arbitration. In support of their application, they relied on s 8(1) of the *Commercial Arbitration Act 2010* (NSW) ("the NSW Act") or alternatively the identical s 8(1) of the *Commercial Arbitration Act 2012* (WA) ("the WA Act"), in conjunction with the Arbitration Agreements. The Arbitration Agreements variously identified "all disputes hereunder" (in one deed), "any dispute under this deed" (in two of the deeds), and "[a]ny dispute or claim arising out of or in relation to this Deed" (in two of the deeds). Mrs Rinehart (along with one of the respondent companies) made a similar application, seeking that the proceedings be dismissed or permanently stayed and that the parties be referred to arbitration.

On 26 May 2016 Justice Gleeson ordered a separate trial of the question whether any of the Arbitration Agreements was null and void, inoperative or incapable of being performed within the meaning of s 8(1) of the NSW Act or the WA Act. This was after her Honour had held that various matters in dispute did not fall within the scope of an apparently valid arbitration agreement. Those matters included the very validity of the Arbitration Agreements and of certain deeds themselves (on grounds that included the non-disclosure of material

information and a lack of negotiation at arms' length). Her Honour considered that certain claims by the Appellants could, if successful, lead to a finding that each of the Arbitration Agreements was void or inoperative.

The HPPL Respondents appealed, as did Mrs Rinehart.

The Full Court of the Federal Court (Allsop CJ, Besanko and O'Callaghan JJ) unanimously allowed both appeals and set aside the orders made by Justice Gleeson. The Full Court held that the respective contexts of the relevant deeds, which involved the quelling of disputes about title to valuable mining assets, tended to widen the deeds' operation. Though the meaning of the phrase "any dispute under this deed" was narrower than the meaning of "a dispute in connection with this deed", the former phrase was nevertheless to be read liberally so as to encompass any dispute framed by a claim that was met by pleading the deed. Such a dispute included the Appellants' impugning of the deeds' validity. Their Honours held that Justice Gleeson had erred by finding that the Appellants' respective claims impugned the Arbitration Agreements as distinct from the deeds containing them. The Appellants' claims of invalidity were for the most part directed at the deeds rather than at particular arbitration agreements within them. The Full Court then stayed the Federal Court proceedings, pending arbitration.

In each appeal, the ground of appeal is:

- The Full Court erred in:

    a) finding that the arbitration clauses in cl 14 of the 2005 Deed of Obligation and Release, cl 20.2 of the Hope Downs Deed and cl 9.2 of the 2007 HD Deed extend beyond disputes, the outcomes of which would be governed or controlled by those Deeds, to cover disputes concerning the validity of those Deeds or provisions thereof (reasons of the Full Court [193]); and

    b) failing to find that the claims for relief advanced in prayers 35 to 41 of the applicants' Originating Application dated 31 October 2014 were not matters the subject of apparently valid arbitration agreements.

In appeal S143/2018, the Sixth to Eighth Respondents (three of the companies among the HPPL Respondents) have filed a summons seeking leave to file a notice of cross-appeal out of time. The proposed ground of cross-appeal relates to a finding by the Full Court that the Sixth to Eighth Respondents were not parties within the meaning of the NSW Act because they were not "claiming through or under" a party to certain of the Arbitration Agreements and therefore they were not entitled to seek an order under s 8(1) of the NSW Act.

In respect of both appeals, Wright Prospecting Pty Ltd has applied for leave to intervene and the Australian Centre for International Commercial Arbitration Limited has applied for leave to be heard as *amicus curiae*.