



HIGH COURT OF AUSTRALIA

14 October 2015

PT BAYAN RESOURCES TBK v BCBC SINGAPORE PTE LTD & ORS

[2015] HCA 36

Today the High Court unanimously dismissed an appeal from the Court of Appeal of the Supreme Court of Western Australia. The High Court held that it is within the inherent power of the Supreme Court of Western Australia to make a freezing order in relation to an anticipated judgment of a foreign court which, when delivered, would be registrable by order of the Supreme Court under the *Foreign Judgments Act 1991* (Cth) ("the Act").

The appellant, a company incorporated in Indonesia, owns shares in the second respondent, a company incorporated in Australia. The first respondent is a company incorporated in Singapore. The appellant and the first respondent are parties to a joint venture agreement which is governed by the law of Singapore. The first respondent commenced a proceeding against the appellant in the High Court of Singapore, claiming, amongst other things, damages for breach of that agreement. That proceeding remains pending.

After commencing the Singaporean proceeding, the first respondent applied ex parte to the Supreme Court of Western Australia for freezing orders against the appellant and the second respondent in respect of the appellant's shares in the second respondent. The application was made pursuant to O 52A of the Rules of the Supreme Court 1971 (WA) ("the Rules"). The Supreme Court made interim freezing orders. The appellant and the second respondent then commenced a separate proceeding in the original jurisdiction of the High Court seeking declaratory relief on the basis that the interim freezing orders were beyond power. That proceeding was remitted to the Supreme Court and determined concurrently with the first respondent's application for continuation of the interim freezing orders. The primary judge dismissed the remitted proceeding, discharged the interim freezing order against the second respondent and continued the freezing order against the appellant. The primary judge made detailed findings of fact in relation to the continuation of the freezing order against the appellant, including that there was a real and sensible risk that any judgment by the High Court of Singapore in favour of the first respondent would remain unsatisfied. The Court of Appeal unanimously dismissed an appeal by the appellant from the orders of the primary judge.

On appeal to the High Court, the appellant accepted that the findings of the primary judge established a factual foundation for the continuation of the freezing order in accordance with the criteria set out in O 52A r 5 of the Rules, but contended that the Supreme Court lacked power to make a freezing order in accordance with those criteria. The High Court unanimously held that the power to make a freezing order in relation to an anticipated judgment of a foreign court, which when delivered would be registrable by order of the Supreme Court under the Act, is within the inherent power of the Supreme Court. The Court so held because the making of the freezing order is to protect a process of registration and enforcement in the Supreme Court which is in prospect of being invoked. The Court determined that the criteria set out in O 52A r 5 of the Rules are appropriately tailored to the exercise of that inherent power.

- *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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