



HIGH COURT OF AUSTRALIA

8 May 2019

BIANCA HOPE RINEHART & ANOR v HANCOCK PROSPECTING PTY LTD & ORS;
BIANCA HOPE 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

[2019] HCA 13

Today the High Court unanimously dismissed appeals from two decisions of the Full Court of the Federal Court of Australia. The High Court found that disputes as to the validity of certain deeds are subject to arbitral clauses in those deeds. By majority, the High Court also allowed a cross-appeal from one of the decisions, finding that three companies who were not parties to the deeds were "part[ies]" within the meaning of s 2(1) of the *Commercial Arbitration Act 2010* (NSW) ("the NSW Act").

The appeals and cross-appeal arise out of proceedings brought in the Federal Court of Australia by the appellants, Ms Bianca Rinehart and Mr John Hancock, in which they make a number of claims concerning the conduct of Mrs Gina Rinehart, Hancock Prospecting Pty Ltd ("HPPL") and others, which is said to have diminished the assets of trusts of which the appellants are beneficiaries ("the substantive claims"). Mrs Rinehart sought an order pursuant to s 8(1) of the NSW Act that the matters the subject of the proceedings be referred to arbitration. That sub-section relevantly provides that a court before which an action is brought in a matter which is the subject of an arbitration agreement must in certain circumstances refer the parties to arbitration. Mrs Rinehart, HPPL and other related companies also sought orders including that the proceedings be dismissed or permanently stayed. All of these applications relied upon a number of deeds between one or both of the appellants and various of the respondents. The three deeds the subject of the appeals ("the Deeds") came into existence against the background of and were addressed to claims and threats of litigation made publicly by Mr Hancock in relation to the substantive claims. Each Deed contains an arbitral clause providing that in the event of a dispute "under this deed" (or, in one of the Deeds, "hereunder") there is to be a confidential arbitration. The appellants claimed that the Deeds are void as against them because their assent was procured by misconduct on the part of Mrs Rinehart, HPPL and others ("the validity claims").

The primary judge held that the validity claims are not subject to the arbitral clauses, based on a perceived limitation on the scope of the clause resulting from the words "under this [deed]". The Full Court disagreed, holding that the arbitral clauses should be given a liberal interpretation, such that the arbitrator could deal with all issues, including the validity claims. The High Court unanimously held that it is clear that the arbitral clauses, construed in context, include as their subjects the validity claims. It could not have been understood by the parties to the Deeds that any challenge to the efficacy of the Deeds was to be determined in the public spotlight.

In relation to the cross-appeal, at first instance three companies who are not parties to the Deeds applied for orders that the claims against them be referred to arbitration pursuant to s 8(1) of the NSW Act on the basis that each was a person claiming "through or under" a party to one of the Deeds, and, therefore, a "party" within the extended definition in s 2(1) of the NSW Act. The primary judge rejected the application, and the Full Court upheld the rejection. By majority, the High Court found that, having regard to the subject matter in controversy, the third party companies, as assignees of mining tenements from parties to the relevant Deed, are persons

claiming "through or under" a party to that Deed and, therefore, are parties for the purposes of s 8 of the NSW Act.

- *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.*