COURTS RE-AFFIRM THEIR PRO-ARBITRATION STANCE

BY ELLIOTT SMITH

A recent decision in the Full Federal Court of Australia has re-affirmed the pro-arbitration stance being implemented by the Australian courts and clarified the interpretation of arbitration agreements.

In the decision of *Hancock Prospecting Pty Ltd v Rinehart* [2017] FCAFC 170 (27 October 2017), the Court held that an arbitration agreement should be interpreted and construed broadly and liberally to protect the decision of the parties to resolve their disputes by arbitration.

Background

The applicants in the overall dispute alleged that their mother, Mrs Rinehart, engaged in wholesale breaches of equitable and contractual duties in wrongfully transferring commercial assets from entities which would benefit the applicants, to entities which would benefit Mrs Rinehart.

In disputing the allegations, various deeds were relied upon, which contain relevant releases. Proceedings were brought to stay the main proceedings pursuant to arbitration agreements in those various deeds and this dispute was an appeal from an interlocutory decision seeking an order that the parties be referred to arbitration in respect of the disputes relating to those various deeds.

The key relevant question for determination was whether a dispute concerning the validity of the deeds themselves was appropriate for determination by arbitration in circumstances where the relevant arbitration agreements in the deeds all provided that *'any dispute under the deed'* should be resolved by way of arbitration.

The original decision of Gleeson J followed Bathurst CJ's decision in the New South Wales Court of Appeal case of *Rinehart v Welker* [2012] NSWCA 95, which concerned the scope of the same arbitration agreement. In that case, Bathurst CJ held that the word 'under' should be read to specifically limit those disputes '*governed or controlled*' by the deed. In following that decision, Gleeson J held that a dispute in relation to the validity of the deed itself should not be determined by arbitration.

The decision re-affirms the pro-arbitration stance we have seen in other decisions, where a party's decision to arbitrate in a contract is paramount.

Held

The Full Federal Court held that the primary judge, Gleeson J, failed to give the necessary 'liberal width' to the phrase '*any dispute under the deed*', and as a result of that narrow construction, the primary judge was forced to examine individual disputes to ascertain whether each was '*governed or controlled*' by the deed. The proper construction of arbitration agreements and the principles that apply, should be no different from those principles that apply to the construction and interpretation of written contracts. In that regard, the Full Federal Court held that:

> *'where one has relational phrases capable of liberal width, it is a mistake to ascribe to such words a narrow meaning, unless some aspect of the constructional process, such as context, requires it"*

In particular, the words '*any dispute under the deed*' could cover a broad range of disputes including a dispute as to the validity of the deed itself and that was held to be the objective intention of the parties to it. On that basis, Gleeson J's decision was reversed and the relevant disputes were held to be the subject of an arbitration agreement.

Significance

The decision clarifies the previous New South Wales Court of Appeal decision of *Rinehart v Welker*, which had created some confusion by its narrow interpretation of an arbitration agreement. The decision re-affirms the pro-arbitration stance we have seen in decisions such as *WDR Delaware v Hydrox* (2016) (FCA), F*our Colour Graphics v Gravitas* [2017] FCA, where a party's decision to arbitrate in a contract is paramount.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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