

Rinehart & Anor v Hancock Prospecting Pty Ltd & Ors;

Rinehart & Anor v Georgina Hope Rinehart (in her personal capacity as Trustee of the Hope Margaret Hancock Trust and as Trustee of the HFMF Trust) & Ors [2019] HCA 13

GINA ALWAYS WINS

FACTS

On 20 March 1992, Mr Lang Hancock executed a Deed declaring the four children of Mrs Gina Rinehart (**Respondent**) as equal beneficiaries of the Hancock Family Memorial Foundation Trust (**HFMF Trust**) and the Hope Margaret Hancock Trust (**HMH Trust**).

In October 2014, Mr John Hancock and Ms Bianca Rinehart (**Appellants**) commenced proceedings in the Federal Court against the Respondent and other parties. The Appellants allege in their Statement of Claim that the Respondent was in breach of the trusts and other equitable and contractual duties (**Substantive Claims**).

The Respondent sought an order pursuant to s8(I) of the *Commercial Arbitration Act 2010* (NSW) (**the Act**) to refer the proceedings to arbitration. The application relied on a number of deeds (**the Deeds**) entered into between the appellants and various respondents between September 2003 and November 2010. The appellants allege that their signing of the deeds was subject to misconduct by the Respondent (**Validity Claims**). It is also alleged that the Respondent transferred mining tenements from parties to the Hope Downs Deed to third party companies.

ISSUES

1. Whether the validity claims were subject to the arbitral clauses in the Deeds;
2. Whether there is a distinction between disputes “arising under” and those “arising out of” agreements; and
3. Whether third-party companies are privy to the agreements.

FINDING

The High Court held that the phrase “any dispute under this deed” was sufficiently broad to allow for the validity claims to be subject to the arbitral clauses in the Deeds.

The High Court held that as the third-party companies were claiming “through or under” the arbitration clauses in the Deeds, they could be named as parties to the arbitration under the *Commercial Arbitration Act 2010* (NSW).

QUOTE

Mr Justice Edelman held:

“Every clause in a contract, no less arbitration clauses, must be construed in context. No meaningful words, whether in a contract, a statute, a will, a trust, or a conversation, are ever contextual.”

IMPACT

This case highlights the High Court’s willingness to give a wider interpretation to arbitration clauses, to consider context in the interpretation of arbitration clauses, and to be more willing to send parties to arbitration.

The case also demonstrates the persuasive power of Mrs Gina Rinehart in all areas.

© **Doyles Construction Lawyers 2019**

This publication is intended to be a report on recent cases in the construction, development and engineering industries. This publication is not intended to be a substitute for professional advice, and no liability is accepted. This publication may be reproduced with full acknowledgement.

Jim Doyle
1800 888 783

jdoyle@doylesconstructionlawyers.com
www.doylesconstructionlawyers.com