

224. AUSTRALIA: SUPREME COURT OF QUEENSLAND – 16 March 1984 – *S.P.P. (Middle East) Limited v. The Arab Republic of Egypt**

Procedure for enforcing a foreign arbitral award

(See Part I.C.1)

MOYNIHAN J.: This is an application for leave to enforce an Award of the International Chamber of Commerce Court of Arbitration made on February 16, 1983 and for the entry of judgment against the respondent in terms of the Award. It is sought *ex parte*. Mr. Lennon Q.C. counsel for the applicant very properly drew my attention to the difficulties inherent in this mode of procedure and to another potential difficulty which I will subsequently mention. As to the question of proceeding *ex parte* Mr. Lennon was unable to point to any provision or authority directly on point. Since I have come to the conclusion, reluctantly, that I should refuse to permit the application to proceed *ex parte* I will shortly state my reasons. Section 8 of the *Arbitration (Foreign Awards and Agreements) Act 1974* (Commonwealth) provides (by subsec. (1)) that a Foreign Award is binding by virtue of the Act on the parties to the arbitration agreement pursuant to which it is made for all purposes. Subsection 2 of s. 8 provides that a Foreign Award may be enforced in a Court of a State or Territory and in accordance with the law of the State or Territory. The law of Queensland relevantly is s. 35 of the *Arbitration Act 1973*. That provides to the effect that an award on an agreement to arbitrate may be enforced in the same manner as a judgment or order to the same effect subject to obtaining the leave of the Court. When leave is so given judgment may be entered in terms of the Award. Such a judgment may then be enforced in the normal course; for example by means of an *ex parte* order for attachment pursuant to O. 49, r. 1.

Section 8(5) of the *Arbitration (Foreign Awards and Agreements) Act 1974* (Commonwealth) provides to the effect that in any proceedings in which the enforcement of a Foreign Award by virtue of the Act is sought the Court may, at the request of the party against whom it is invoked, refuse to enforce the Award if that party proves one or more of a number of specified matters to the satisfaction of the Court. By the same token s. 8(8) provides that to the effect that where in any proceedings in which the enforcement of a Foreign Award by virtue of the Act is sought and the Court is satisfied in respect of the matters specified by the subsection the Court may adjourn the proceedings, ordering the giving of security if it considers that appropriate. The provision of the *Arbitration (Foreign*

* The text is reproduced from Queensland Reports, Vol. 2, p. 410 ff.

Awards and Agreements Act 1974 (Commonwealth) are to be contrasted with the provision of the *Reciprocal Enforcement of Judgments Act* 1959 which was the legislation under consideration in *Hunt v. B.P. Exploration Co. (Libya)* (1979-80) 144 C.L.R. 565 which was cited to me in the course of the application. The legislation then under consideration contemplated a provision for service on the judgment debtor of the notice of registration of a judgment (s. 6(1)(c) and then, by s. 7) and then provided for application by any party against whom the judgment might be enforced to set it aside on specified grounds. The point in the instant case is, it seems to me, that as a consequence of the combination of the Commonwealth and Queensland legislation judgment may be entered against a party and steps taken to enforce it without the party ever having become aware of that. This may happen in circumstances where a party may wish to avail itself of the provisions of s. 8(5) or (8) of the Commonwealth Act. In this context I think the consequence inherent in s. 35 of the Queensland Act that judgment is entered is a critical consideration.

I do not think there is any comfort for the applicant in the passage at p. 573 of the report in *Hunt's* case (*supra*) in the joint judgment of Stephen, Mason and Wilson JJ's where it is said that the application for registration under the legislation there under consideration did not involve an action *in personam* requiring service of the Supreme Court's process in or outside the jurisdiction. But the point there in issue was the jurisdictional difficulty designed to be overcome by the *Reciprocal Enforcement of Judgments Act* 1959 which was inherent in the old procedure whereby a judgment creditor sued on the foreign judgment so as to obtain a fresh judgment in the Supreme Court which could then be enforced against local assets. Such action was an action *in personam* and the Supreme Court's jurisdiction depended on effective service of its process in or outside the jurisdiction.

The other potential difficulty which I mentioned is that of the application of the doctrine of sovereign immunity in respect of the first named defendant. Since I do not think the matter should proceed *ex parte* it is preferable that I offer no conclusion about that.

Summons adjourned

Lo Applicant
Lo Respondent
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5. I do not think there is any comfort for the applicant in the passage at p. 573 of the report in *Hunt's* case (*supra*) in the joint judgment of Stephen, Mason and Wilson JJ's where it is said that the application for registration under the legislation there under consideration did not involve an action *in personam* requiring service of the Supreme Court's process in or outside the jurisdiction. But the point there in issue was the jurisdictional difficulty designed to be overcome by the *Reciprocal Enforcement of Judgments Act* 1959 which was inherent in the old procedure whereby a judgment creditor sued on the foreign judgment so as to obtain a fresh judgment in the Supreme Court which could then be enforced against local assets. Such action was an action *in personam* and the Supreme Court's jurisdiction depended on effective service of its process in or outside the jurisdiction.

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Summons adjourned