HIGH COURT OF AUSTRALIA

3 May 2017

TALACKO v BENNETT
[2017] HCA 15

Today the High Court unanimously allowed an appeal from the Court of Appeal of the Supreme Court of Victoria. The High Court held that the Court of Appeal erred in concluding that s 15(2) of the *Foreign Judgments Act* 1991 (Cth) did not prevent the issue of a certificate under s 15(1) of that Act, even though the judgment in question could not be enforced by execution by reason of s 58(3) of the *Bankruptcy Act* 1966 (Cth).

A dispute between three siblings concerning certain properties formerly owned by their parents in what is now the Czech Republic led to the commencement of legal proceedings in 1998. Those proceedings were compromised in February 2001 by written terms of settlement requiring one of the siblings, Jan Emil Talacko, to transfer all rights, title and interest in the properties to a nominated person. Mr Talacko reneged on that agreement, and in July 2005 the families of the other two siblings (collectively, "the respondents") reactivated the proceedings and in April 2008 obtained judgment. In November 2009, Mr Talacko was ordered to pay in excess of €10m as equitable compensation.

On 4 July 2012, upon the respondents' request, the Prothonotary of the Supreme Court of Victoria issued a document entitled "Certificate of Finality of Judgment and Orders" in purported reliance on s 15(1) of the *Foreign Judgments Act*. The respondents intended to file that certificate in proceedings then on foot in the Czech Republic against Mr Talacko and his sons. By this time, Mr Talacko had been made bankrupt by order of the Federal Court of Australia. Upon becoming aware that the certificate had been issued, he began to take steps to have it set aside. He died intestate shortly after, and his widow ("the appellant"), who was appointed representative of Mr Talacko's estate, issued a summons in the Supreme Court of Victoria seeking orders that the certificate (and a subsequently issued replacement certificate) were invalid and should be set aside.

On 4 February 2016 Sloss J declared the certificates to be invalid, relevantly on the basis that s 58(3) of *Bankruptcy Act*, which prevents creditors from enforcing any remedy against the property of a bankrupt in respect of a provable debt, operated to impose a "stay of enforcement of the judgment" within the meaning of s 15(2) of the *Foreign Judgments Act* and thus precluded the obtaining of a certificate under that Act. An appeal to the Court of Appeal was allowed on the basis that "stay of enforcement" referred only to a judicially ordered stay (or similar) and did not extend to include the statutory bar imposed by s 58(3) of the *Bankruptcy Act*.

By special leave, the appellant appealed to the High Court. The Court held that the meaning of the word "stay" is not necessarily confined to stays imposed by courts, but is capable of including any legal impediment to execution upon the judgment. The Court held that the evident purpose of s 15(2) of the *Foreign Judgments Act* is to prevent an application for a certificate which, if granted, would facilitate the enforcement abroad of a judgment that cannot be enforced in Australia. The judgment debt in question, because of s 58(3) of the *Bankruptcy Act*, was in that category. The orders of the Court of Appeal were set aside, with the effect that the declaration of the primary judge was reinstated.

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