



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 08 Sep 2020 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: B21/2020
File Title: Clayton v. Bant
Registry: Brisbane
Document filed: Form 27F - Outline of oral argument
Filing party: Appellant
Date filed: 08 Sep 2020

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

B21/2020

BETWEEN:

CLAYTON

Appellant

BANT

Respondent

APPELLANT'S OUTLINE OF ORAL ARGUMENT

10 **Part I Certification**

1. It is certified that this Outline is in a form suitable for publication on the internet.

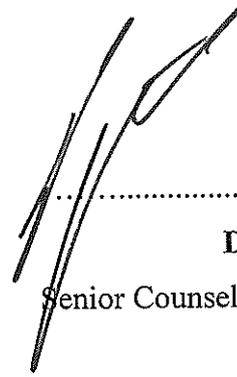
Part II Outline

1. The principal issue is whether a divorce effected in Dubai in the United Arab Emirates, precludes the prosecution of the appellant's claims in the Family Court for property settlement under s. 79 and spousal maintenance under s. 75 of the *Family Law Act 1975* whether by *res judicata* (or cause of action estoppel), or "the Henderson extension" (AS2, RS 2).
- 20 2. **Background.** The appellant is Australian, the respondent Emerati. They met in Dubai and married there on 15 July 2007. They have one daughter, now 11. They separated in Australia on 5 June 2013, and the appellant and the child have thereafter resided in Australia. The property interests of the parties appear at J[6]-[9], CAB 10.
3. On 29 July 2013 the appellant instituted her proceedings for property settlement and spousal maintenance and on 2 September 2014 instituted divorce proceedings in Australia. On 15 July 2014 the respondent instituted divorce proceedings in the Second Personal Status Family Circuit of the Dubai Court (AS4-8).
4. In the Dubai Court the only order made in relation to the property of the parties was that the appellant repay her dowry of 100,000 Dirhams. The appellant was ordered to pay court charges and fees and 400 Dirhams of attorney's fees: AFM 16 paras 74 and 75, and AFM 15, para 11; AS17-19.
- 30 5. **Proceedings in the courts below.** The respondent sought to have the appellant's proceedings for property settlement and spousal maintenance in the Family Court permanently stayed on the basis that the Dubai court's judgment and order amounted

“to a bar to the same by virtue of the operation of *res judicata*/cause of action estoppel” (AS12). The primary Judge found against the respondent and refused to grant a stay of the claim for settlement of property, but would have found in favour of the respondent on the question of spousal maintenance if satisfied that the Dubai court had dealt with that issue but held it had not (AS 13).

6. The Full Court held that the Dubai decree finally determined the financial consequences of the marital breakdown, that the appellant had had a remedy to obtain an adjustment of property under Art. 62.1 of the UAE Federal Law No 28 of 2005 and that not having done so, her claim for property settlement was barred by the Henderson extension. Her claim for spousal maintenance was also barred by the Henderson extension (AS14).
7. ***Argument re property settlement.*** There were two impediments to the Dubai court making orders in relation to the parties’ property. One was that referred to at AS20, 21; Reply 5, namely that any claim must be in respect of property in the development of which both parties participated. The other was that the court in Dubai had no jurisdiction with respect to property outside the territorial jurisdiction of the UAE.
8. This could not be a case of *res judicata*. There was not and could not be any litigation in Dubai of the appellant’s claims except in relation to property referred to in Art. 62.1 of the Personal Status Law (AS28-30, Reply 3-5).
9. Nor could cause of action estoppel have any application. No relevant claim had been determined by the Dubai judgment (AS31).
10. The Full Court’s reliance on *Anshun* estoppel was also misplaced. For that form of estoppel to apply the claim or issue to which it is intended to operate should be so connected with the subject matter of the earlier proceeding to have made it unreasonable for the claim not to have been made or the issue raised in the first proceedings (AS32, Reply 17). Where, as here, the appellant’s property settlement claims could not have been made and adjudicated upon the Dubai proceedings (AS33, 34, Reply 8), there was no basis for the application of the doctrine.
11. ***Spousal maintenance.*** There has never been any determination by the Dubai court of spousal maintenance. Nor was it established that the appellant’s rights in that regard were exhausted (AS49-55, Reply 21).

Dated: 8 September 2020



.....
D.F. Jackson QC
Senior Counsel for the appellant