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Case note

Trust undermined: the Rinehart family feud

Bernadette Carey*

Abstract

The recent Australian case of *Welker & Ors v Rinehart*[1] and its related appeal judgments raise two important issues in the context of the litigation of family trusts in the state of New South Wales (NSW). The first issue is whether it is truly in the interests of open justice for full details of a dispute between a trustee and beneficiaries to be the subject of suppression and non-publication orders. The second issue is whether the parties to the trust dispute can rely on a collateral agreement containing alternative dispute resolution provisions to have the proceedings stayed to allow private mediation or arbitration. Both issues have recently been the subject of furious debate before the NSW Supreme Court and the Court of Appeal.

Litigation involving family trusts, particularly those settled by high net worth individuals, is rarely reported or debated with much public fervour in Australia. However, a recent dispute over the vesting of a trust settled by the late Lang Hancock, the patriarch of one of Australia's wealthiest families, has media scrambling to allocate front-page space to what is an increasingly bitter and embarrassing family feud.

The claims forming the basis of the litigation are set to be heard in a substantive trial later this year. However, pending the substantive trial, the defendant has been busy pursuing two interlocutory applications before the New South Wales (NSW) Supreme Court and then the Court of Appeal. The first was an application to have full details of the case made subject to suppression and non-publication orders. The second was an application to stay the proceedings pending alternative dispute resolution on the basis that the dispute is in fact one that must be heard and determined privately in accordance with the terms of a deed executed by the parties in 2006.

Unfortunately for the defendant, both applications have now been dismissed and, consequently and somewhat ironically, the battles over suppression and confidentiality of the proceedings have been played out in public. The warring family factions have done little to stem the flow of personal information leaking into the public arena, each releasing a series of competing press releases perforated with rancorous barbs. And, a series of recent actions by the trustee, coupled with breach of trust allegations now thrust into the open by the beneficiaries, indicates that the Australian courts have an epic family duel on their hands.

The Rinehart family

Recently crowned the world's wealthiest woman,[2] Gina Rinehart's personal wealth is currently estimated

* Bernadette Carey, Senior Associate, Colin Biggers & Paisley, Level 42, 2 Park Street Sydney NSW 2000, Australia. Tel: +61 2 8281 4582. Email: bmc@cbp.com.au

1. *Welker & Ors v Rinehart & Anor* (No 6) [2011] NSWSC 1094.

2. On 23 May 2011, Mrs Rinehart was named the world's wealthiest woman in the annual *BRW Rich List 2012* published by *BRW* a leading Australian Business Magazine.

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to be just over AUD$29 billion.[3] Much of that wealth has been accumulated through and is held by her primary company, Hancock Prospecting Pty Ltd (HPPL). HPPL is a legacy of Mrs Rinehart's deceased father, the wealthy mining magnate Lang Hancock, who, legend has it, discovered a vast resource of iron ore in the 1950s while in an aircraft flying low through a gorge in Western Australia. HPPL now holds stakes in some of Australia's biggest coal and iron ore mines.

The voting shares in HPPL, of which there are 6000, have been divided between Mrs Rinehart personally and the Hope Margaret Hancock Trust ('the Trust') which is named after Lang Hancock's late wife, Mrs Rinehart's mother. The Trust was settled by Mr Hancock in 1988 for the benefit of his grandchildren. Mrs Rinehart's children, Bianca, Hope, John, and Ginia (collectively, 'the Beneficiaries') constitute the present class of capital and income beneficiaries of the Trust.

Mrs Rinehart is executive director of HPPL and holds 4593 of the HPPL voting shares, constituting over 75 per cent of the voting share capital and forming the basis of her control over HPPL. The remaining 1407 voting shares have been settled into the Trust. According to reports in the media, the shares held in the Trust were estimated to be worth approximately AUD$2.4 billion in September 2011.[4] However, as a result of soaring demand from China for Australian coal and iron ore, the value of HPPL shares since that date has supposedly doubled and media reports suggest that the true value of the Trust's assets may, at the date of writing, be much closer to AUD$9 billion.[5] The Trust receives dividends from HPPL, some of which are distributed to the Beneficiaries from time to time at Mrs Rinehart's discretion as trustee of the Trust.

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The trust deed provided that on the death of Mr Hancock, Mrs Rinehart became absolutely entitled to a proportion of those shares in HPPL that were settled on the Trust. The balance of the shares in the Trust were to continue to be held in the Trust until the date on which the youngest of the surviving children of Mrs Rinehart attained the age of 25 years ('the Vesting Date') and from that date the shares were to be held by the trustee on trust for the survivors as tenants in common in equal shares.

Clause 7 of the trust deed gives the trustee, Mrs Rinehart, power to alter or vary the Trust prior to the Vesting Date. However, it prescribes that this power must be exercised solely for the benefit of all or any one or more of the Beneficiaries. Clause 9.1 of the trust deed provides that, subject to Mrs Rinehart's agreement at any time prior to 6 September 2011, the Beneficiaries agree to extend the Vesting Date of the Trust:

> to the maximum extent permitted by law or to any prior date after 6 September 2011 by agreement of the majority of Beneficiaries.

To vest or not to vest?

On 6 September 2011, Mrs Rinehart's youngest daughter, Ginia, turned 25 years old. For the purposes of the trust deed, this was to be the Vesting Date of the Trust. Ultimately, it was not.

On 3 September 2011, Mrs Rinehart, in her capacity as trustee of the Trust, wrote to each of the Beneficiaries and informed them of concerns she

3. According to BRW, Mrs Rinehart's wealth has effectively tripled over the past 12 months thanks to new investments in coal and iron ore mines in Australia and intense international demand for minerals.

4. Court documents include an email dated 4 September 2011 from the Chief Executive Officer of HPPL which indicates that, at that time, each of the four children were beneficially entitled to a AUD$600 million share of the trust assets.

5. This estimate is based on the valuations of Mrs Rinehart's wealth that catapulted her to the top of the *BRW Rich List* published on 24 May 2012.

held about the capital gains tax (CGT) implications of a vesting of the Trust. Mrs Rinehart's letter stated that she had instructed PricewaterhouseCoopers (PwC) to advise her on this point. She said she had received advice ('the PwC Advice') which confirmed that upon the vesting of the Trust, at which point the Beneficiaries would become absolutely entitled to a share of the Trust estate, each would become liable to a substantial CGT liability on the value of the Trust estate. This CGT liability translated, at that time, to approximately AUD$100 million for each Beneficiary.

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Mrs Rinehart noted in her letter that HPPL's constituent documents ('the Constitution') prevent both her and the Beneficiaries from either selling HPPL shares to a third party or borrowing funds using HPPL shares as security. The Beneficiaries would not, therefore, be able to rely on a sale of some of the HPPL shares to meet the CGT liability and:

> the vesting of the trust and the consequent tax liability that would result would therefore lead to the bankruptcy of each Beneficiary.

Perhaps igniting the spark that may ultimately have burned the family bridges, Mrs Rinehart went on to note:

> Bankruptcy is not in the financial interests of the beneficiaries. It may however be reasonably arguable that personal development-wise it would be in the best interests of [each of the children] to force them to go to work and reconsider their holidaying lifestyles and attitudes.

Ostensibly to avoid this outcome, Mrs Rinehart asked each of the Beneficiaries to sign a deed poll that provided for the Vesting Date to be extended to the maximum period allowed under the law of perpetuity. However, the deed poll had certain strings attached. Among other things, it required the Beneficiaries to agree that Mrs Rinehart would continue to control the Trust for the foreseeable future, and that the Beneficiaries would not commence legal proceedings against Mrs Rinehart in her capacity as trustee of the Trust.

The battle begins

With just one day to consider Mrs Rinehart's proposal, the Beneficiaries[6] sought legal advice. The next day, being the date on which the Trust was to vest, lawyers purporting to act for each of the Beneficiaries made an application *ex parte* to the NSW Supreme Court for urgent relief in relation to the Trust. The primary relief sought on this date was an order varying the Trust such that the date of its vesting was extended by one year in order to enable the parties to enter into further discussions regarding Mrs Rinehart's proposals.[7] An order giving effect to the variation proposed by the Beneficiaries was duly made.

Upon serving the order on Mrs Rinehart, the lawyers for the Beneficiaries were informed that Mrs Rinehart had already executed a variation to the trust deed that had the effect of extending the Vesting Date to 5 September 2058—the maximum period allowed under the law. She had done so, according to her lawyers, in good faith and by exercising

6. There is some suggestion that at this point only two of the four children had in fact instructed lawyers to act for them in this matter, but this was later resolved and has not given rise to any technical difficulties in the proceedings so far.

7. The application was made in reliance on section 90 of the *Trustees Act 1962* ('the Trustees Act'), a statute in the jurisdiction of Western Australia. Section 90 of the Trustees Act provides for the court to authorize a variation of a trust at the request of the beneficiaries of that trust if the court thinks it fit to do so in the circumstances of the application.

a unilateral power available to her in the trust deed.[8] The result was that the Beneficiaries, previously just days away from receiving their inheritance from the Trust, now faced a 56-year wait. By the end of that period, the youngest child would be 81 years old; the eldest a centenarian.

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At this point, it also became apparent that Ginia was in fact supportive of the actions taken by her mother and wished to be removed as a named plaintiff in the proceedings so as to join her mother in opposing the claims.[9] On learning of these developments, the three aggrieved children, Bianca, Hope, and John (hereafter, collectively 'the Plaintiffs') sought leave to file an amended claim against Mrs Rinehart in the NSW Supreme Court.

By their amended claim, the Plaintiffs sought a number of remedies. First, they sought the removal of Mrs Rinehart as trustee of the Trust, including declarations that Mrs Rinehart had misconducted herself in the administration of the Trust.[10] Secondly, the Plaintiffs sought orders that the Trustee provide to the Plaintiffs certain financial information including the accounts of the Trust from 1992 to date and the accounts of HPPL over the same period.[11] Thirdly, the Plaintiffs sought orders varying the trust deed in order to split the Trust into separate trusts. One trust was to hold a 17.7 per cent share of the trust fund for the benefit of Mrs Rinehart,[12] and a further trust ('the Second Trust') was to hold the residue of the trust property in favour of Mrs Rinehart's children. Finally, the Plaintiffs sought to have one or all of the Beneficiaries appointed as Trustees of the Second Trust.

Mrs Rinehart fights back

Mrs Rinehart's first step in response to the proceedings was to file an application seeking an interim suppression order under the *Court Suppression and Non-Publication Orders Act 2010 (NSW)* ('the CSNPO Act') in order to avoid further details of the dispute becoming public. Mrs Rinehart also issued a notice of motion seeking a stay of the proceedings on the basis that the parties were bound by an agreement to privately mediate and/or arbitrate the dispute. The Plaintiffs, she argued, had erred in filing their claim in court without prior resort to the confidential alternative dispute resolution mechanisms in that agreement.

The Hope Downs Deed

The agreement in question is the Hope Downs Deed ('the Deed'), which was entered into by Mrs Rinehart and her children in 2006 following previous disharmony between the parties.

The Deed contains provisions that impose an obligation on any of the parties who has a dispute 'under the Deed' with another party to notify the other or others and to attempt to resolve their differences by confidential mediation. If mediation fails, the Deed requires the parties to advance to confidential arbitration, the proceedings of which are also to be kept confidential.

Mrs Rinehart's applications for suppression orders and a stay of the proceedings were heard separately by the NSW Supreme Court in September 2011. At first instance, Brereton J made a temporary suppression order under the CNSPO Act and granted Mrs Rinehart leave to file a motion to stay the proceedings

8. While certain provisions of the trust deed have been released publicly, the full trust deed was not available for review at the time of drafting and the soundness of Mrs Rinehart's argument on this point remains to be assessed.
9. Ginia was duly removed as a plaintiff and added as Second Defendant to the proceedings with the consent of all parties.
10. These heads of relief are sought in reliance on ss 77(1) and (2)(b) of the *Trustees Act* (WA), which expressly provide for such remedies.
11. The relief sought under this head appears to be pursued in reliance on common law principles regarding disclosure of information to beneficiaries.
12. This reflects that portion of the fund to which Mrs Rinehart is absolutely entitled pursuant to the provisions of the trust deed referred to earlier.

in reliance on the provisions of the Deed.[13] The questions of whether the interim suppression order should be continued, and a stay of the proceedings should be granted in the light of the contents of the Deed, were then argued in early October 2011.[14]

The arbitration of trust disputes

In considering, and then rejecting, Mrs Rinehart's application for a stay of the proceedings in the light of the private mediation and arbitration provisions in the Deed, the court considered whether an application by beneficiaries to remove the trustee of a trust was in fact a dispute 'susceptible to resolution by private justice' rather than by the courts.

The court noted that in certain circumstances the subject matter of a dispute renders it appropriate for that dispute to be resolved by the courts of specialist tribunals rather than privately. In the context of trusts disputes, the parties cannot by agreement entirely exclude the jurisdiction of a court of equity, inherent or statutory, to entertain applications for the resolution of such disputes. Importantly, the court found that an agreement to submit a trust dispute to mediation and arbitration does not oust the jurisdiction; rather it merely requires prior submission of the dispute to private mediation and arbitration. The court concluded that there is no reason why a dispute between beneficiaries and a trustee, including an application by beneficiaries for removal of the trustee, could not be referred to arbitration or mediation in the first instance, noting:

> public policy encourages the private resolution of disputes concerning family matters and there is no reason why this should not include family trusts.[15]

The court concluded that there is no reason why a dispute between beneficiaries and a trustee, including an application by beneficiaries for removal of the trustee, could not be referred to arbitration or mediation in the first instance, noting: 'public policy encourages the private resolution of disputes concerning family matters and there is no reason why this should not include family trusts'

Having concluded that the Deed did not operate contrary to law, the court turned to consider whether the wording of the dispute resolution provisions of the Deed applied to the dispute before it. The court found that the parties to the Deed did not agree to submit all disputes between them to arbitration, only those 'under the Deed'. Mrs Rinehart argued that the dispute between the parties was a 'dispute under the Deed' because it concerned an extension of the Vesting Date, an action expressly referred to in clause 9 of the Deed. Mrs Rinehart's position was that the proceedings were an abuse of process as they had been commenced without prior compliance with the confidential alternative dispute resolution procedures provided for in the Deed.

The court had a different interpretation. It found that a dispute 'under the Deed' is a dispute that derives from or depends on the Deed or involves enforcing or invoking some right created by the Deed. The court decided that the change in the Vesting Date was not the key issue in the case and the Plaintiffs' claim was, at its heart, a claim for the removal of Mrs Rinehart as trustee on the grounds of misconduct. Accordingly, it did not 'invoke, involve, derive from or depend on clause 9.1 of the Deed in any way'. Further solidifying the court's decision in this regard, the nature of the Plaintiffs' claim was also found not to fall within the term 'claim' as defined in the Deed. In the light of these findings, the court dismissed Mrs Rinehart's application to stay the proceedings such that the parties could attend private mediation and arbitration.

The court then heard argument about Mrs Rinehart's application for a further interim suppression order under the CNSPO Act in order to allow

13. *Welker & Ors v Rinehart* [2011] NSWSC 1094, 13 September 2011 ('Judgment No 1').
14. *Welker & Ors v Rinehart & Anor* (No 2) [2011] NSWSC 1238, 7 October 2011 ('Judgment No 2').
15. See para 25 of Judgment No 2.

Mrs Rinehart to make an application for leave to appeal against the court's findings regarding the application of the Deed. A further temporary suppression order was granted, preventing publication of the pleadings and affidavit evidence to be kept private pending the outcome of an appeal by Mrs Rinehart.

The Court of Appeal

Mrs Rinehart duly filed for leave to appeal. In addition to arguing that there was a fundamental flaw in the Judge's temporary suppression order, she disputed the Judge's findings regarding the interpretation of the Deed. These two points were argued separately.

The temporary suppression order

The suppression issue was heard by Tobias AJA. Mrs Rinehart argued that the temporary suppression order was defective in that it did not prohibit disclosure or publication of the judgment itself, or of orders made in the proceedings. This was an important oversight because, in his reasons for judgment, the judge at first instance had set out in detail the relief sought by the Plaintiffs against Mrs Rinehart, including the fact that the Plaintiffs were alleging serious misconduct on the part of Mrs Rinehart and sought to have her removed as trustee. As the information was contained within the terms of the judgment, it did not fall within the suppression order and could be released into the public domain. This, it was argued, rendered the suppression order nugatory.

In considering the suppression issue, Tobias AJA agreed that a wider, temporary suppression order was necessary in the circumstances and noted that 'the administration of justice would be prejudiced' if full details of the allegations against Mrs Rinehart were put in the public domain pending determination of whether those allegations should in fact be the subject of a confidential mediation or arbitration.[16]

The Plaintiffs then applied to the Court of Appeal for review of that decision, supported by certain media interests who argued that no suppression order should ever have been made. They were successful. The Court of Appeal found that the CSNPO Act:

> makes it clear that open justice is the primary aspect of the administration of justice on which the Act is focused and that the orders made by Tobias AJA effectively allow a private agreement as to confidentiality to outflank the purpose of the Act.[17]

The court found that there was no evidence that publication of the matters that were the subject of the suppression order would expose Mrs Rinehart or Ginia:

> to any financial loss, although we accept (as did the review judgment at [54]) that the disclosure of the information may be embarrassing to Ms Gina Rinehart.[18]

Accordingly, the suppression orders made by Tobias J were discharged.

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Interpretation of the Deed

Mrs Rinehart's appeal in relation to her application to have the proceedings stayed based on her interpretation of the Deed was also unsuccessful. The full bench of the Court of Appeal agreed with the

16. *Rinehart v Welker* [2011] NSWCA 345.
17. *Rinehart v Welker and Ors* [2011] NSWCA 403.
18. *Rinehart v Welker* [2012] NSWCA 95.

findings of the Supreme Court and dismissed the appeal on the basis that the dispute between the parties was not a dispute under the Deed and the private dispute resolution provisions did not apply.

In their decision,[19] the full bench revisited the question of whether trust disputes can properly be resolved by private mediation or arbitration. The Court of Appeal found that, in circumstances where the trustee and each beneficiary have expressly agreed to their disputes being referred to arbitration, a court should give effect to that agreement. This is because the supervisory jurisdiction of the court is not ousted. It continues to have the supervisory role conferred upon it by the relevant legislation, in this case the *Commercial Arbitration Act 1985 (WA)*. The Hon. Chief Justice noted:

> There may be powerful commercial or domestic reasons for parties to have disputes between a trustee and beneficiary settled privately. It does not seem to me that the matters to which I have referred above should preclude a court from giving effect to such an agreement provided the jurisdiction of the court is not ousted entirely. The fact that an arbitrator may not have power to remove a trustee or make a vesting order does not alter this position. An arbitrator could give effect to a claim for removal by ordering the trustee to resign, to appoint a new trustee and to convey the trust property to that person. Such an award could be enforced as a judgment . . .[20]

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In reaching this decision, the Chief Justice reiterated that, in this case, the private dispute resolution clause was contained in a separate deed executed by the parties. His Honour noted that the question as to the enforceability of clauses compelling the private arbitration of trust disputes would be more difficult if the arbitration clause was contained in the trust deed itself, as opposed to a separate agreement, and purported to bind all persons beneficially entitled under the Trust, including infants and unborn beneficiaries. There is no authority on the point in this jurisdiction and whether or not such clauses will be construed as lawful remains to be determined.

The High Court

Mrs Rinehart was not yet done with the appeal process. She then applied for special leave to appeal to the High Court of Australia in respect of the findings of the Court of Appeal. This application also failed, with a two-judge panel finding that the prospects of success on an appeal against the decision of the Court of Appeal were not sufficient to warrant the grant of special leave.[21]

Embarrassing details

As prophesied by the Court of Appeal, the disclosure of the information contained in the court documents has indeed been embarrassing. Following the failed suppression attempt, details of the case flooded the papers.

The Plaintiffs fired the first shot in what was to become a bloody battle fought with press releases as primary weapons. The Plaintiffs alleged that Mrs Rinehart had placed 'emotional, financial, and legal pressure' on them by threatening their financial ruin, seeking their agreement to extending her control of the trust under duress, and unilaterally extending the Vesting Date before notifying them or seeking their

19. ibid.
20. ibid, para 175.
21. *Rinehart v Welker & Ors* [2012] HCA Trans 57 (9 March 2012).

agreement. They also accused her of 'high-handed and dictatorial' behaviour and to have acted 'with gross dishonesty and deceitfully'.[22] Further sordid allegations were made publicly, including suggestions that Mrs Rinehart offered quarterly payments to her eldest daughter, Bianca, in exchange for dropping the legal action.[23] Correspondence between the parties that had been produced to the Court were transcribed in full in newspaper reports under lurid headings, including quotes from emails sent by Mrs Rinehart to her children containing statements seemingly lifted straight from a Hollywood movie script:

> Sign up or be bankrupt tomorrow . . . the clock is ticking. There is one hour to bankruptcy and financial ruin.[24]

Correspondence between the parties that had been produced to the Court were transcribed in full in newspaper reports under lurid headings, including quotes from emails sent by Mrs Rinehart to her children containing statements seemingly lifted straight from a Hollywood movie script: 'Sign up or be bankrupt tomorrow . . . the clock is ticking. There is one hour to bankruptcy and financial ruin'

By way of return volley, Mrs Rinehart has rejected the allegations in their entirety and described them as 'incorrect and offensive'.[25] Ginia has been less reserved. She has accused her three older siblings of greed, releasing a press statement reading:

> It is very painful to have my family's disagreement aired so publicly. This case is motivated entirely by greed. I have no doubt that one day soon my brother and sisters will regret putting money before family.

In a further statement she rejected the need for the relief sought by the Plaintiffs and described her siblings as lacking 'the perseverance, work ethic, responsibility and dedication . . . to administer the trust'.[26] Evidently, her mother agrees. She has said publicly that none of the children have the required trust, independence, or ability for the job in that they have never 'held any paid position in the resources industry, other than as arranged or paid for' by Mrs Rinehart.[27] A barbed response issued by John singled out Ginia, whose preferred mode of transport is apparently an AUD$1.2 million car, stating:

> I'd love to have inherited projects and royalties to work with – instead I've got to rely on the skills I possess. I won't be able to replicate Ginia 'earning' the achievement of a Rolls-Royce at 25.[28]

Even local politicians were drawn into the fray, with leaked emails confirming that a popular Senator had written an email about the litigation to Mrs Rinehart's daughter, Hope, stating that:

> You are a family Australia needs. All good families have their problems but before it gets really out of hand, I would try to get it back in house and out of public view.[29]

You are a family Australia needs. All good families have their problems but before it gets really out of hand, I would try to get it back in house and out of public view

22. 'Gina Rinehart's Children Say Their Billionaire Mother "Pressured" Them to Give up Trust' published in *The Australian*, 12 March 2012.
23. ibid.
24. 'Inside Rinehart Family Feud' published online by ABC News at: http://www.abc.net.au/mediawatch/transcripts/1206_afr3.pdf accessed 19 June 2012.
25. 'Rinehart's Children May Have $4.7 Billion Stake in Trust', published online Bloomberg Business at: http://mobile.bloomberg.com/news/2012-03-12/rinehart-children-may-have-stake-of-at-least-4-7-billion-in-family-trust accessed 19 June 2012.
26. 'My Kids Are Not Up To It', published in *The Australian*, 13 March 2012.
27. ibid.
28. 'Statement from John Langley Hancock', published online by *Sydney Morning Herald*: http://www.smh.com.au/national/statement-from-john-langley-hancock-20120309-1uppv.html accessed 19 June 2012.
29. 'MPs "pressured" Gina Rinehart's kids', published in *The Australian* 13 March 2012.

A further twist

The concept of 'getting the matter back in house' will now likely seem like a very distant dream for Mrs Rinehart's supporters. However, the stream of failed applications to the court and the associated negative press undoubtedly prompted a review of her legal strategy in defending the Plaintiffs' claims.

Reflecting this, on 9 May 2012, Mrs Rinehart's lawyers informed the NSW Supreme Court that, in the period since the parties last appeared, Mrs Rinehart had exercised her trustee powers and moved the Vesting Date of the Trust back to 30 April 2011. The Court was also informed that Mrs Rinehart had relinquished her power to distribute the trust funds at her discretion, meaning that each of her four children were entitled to an equal share in the trust assets should they wish to call on it.

This most recent change in the Vesting Date means that the Trust has now been terminated and replaced by a bare trust that holds the HPPL shares. Mrs Rinehart is the trustee of that bare trust. While the vesting at least notionally allows the Beneficiaries to take ownership of their shares in HPPL, its practical effect remains to be seen. It seems unlikely that the Beneficiaries will collect the millions of dollars of dividends that the litigation appears to have initially been designed to unlock.

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This is for three reasons. Firstly, according to Mrs Rinehart's summary of the PwC Advice, the vesting of the Trust may have triggered an enormous CGT liability. At the time of writing, the PwC Advice had not yet been released to the Beneficiaries in order that they might better assess their position in this regard nor is it clear if the Beneficiaries have sought their own advice on the point. Secondly, even if the Beneficiaries call on their interest, it seems they will only receive cash payments if HPPL has paid out dividends on the shares. Thirdly, the shares themselves may ultimately prove to be lacking any true market value. As noted earlier, HPPL's Constitution provides that only a person who is a Hancock family group member is entitled to hold and control a share in HPPL. It is therefore not possible for Mrs Rinehart in her capacity as trustee, or for any of the Beneficiaries, to sell the HPPL shares originally settled in the Trust to a third party or to raise funds using the shares as security.

In the light of this most recent development, there have been suggestions that any victory on the part of the Plaintiffs from this point will be pyrrhic. This does not appear to have given the Plaintiffs cause to yield. The Plaintiffs have confirmed that they will continue to pursue their application for the release of the PwC Advice and it is anticipated that they will likely amend their claim to seek to remove Mrs Rinehart as trustee of the bare trust while continuing to advance their allegations of misconduct against her.

The matter is next before the NSW Supreme Court in July 2012. However, whether readers of the daily Australian papers will sit ringside to another bloody bout between mother and children remains to be seen. At the time of writing, all is quiet. But with full details of the Mrs Rinehart's alleged 'trustee misconduct' set to be rigorously debated in open court, this family saga will undoubtedly be subject to further twists and turns. The question still to be answered is, at what cost and to what end.