

Clayton v Bant [2020] HCA 44

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Facts

- The wife and husband married in Dubai in 2007 where they had a child and lived partly in the United Arab Emirates ("UAE") and partly in Australia.
- The couple separated in 2013. The wife and child remained in Australia. In 2013, the wife sought parenting orders in proceedings commenced in the Family Court, which were later amended to also seek orders for property settlement and spousal maintenance.
- In 2014 the husband instituted proceedings in Dubai, and in 2015 the Dubai Court made a ruling that granted the husband an "*irrevocable fault-based divorce*", which dissolved the marriage, and also ordered the wife to pay an amount corresponding to advanced dowry and costs.
- The husband applied to the Family Court for a permanent stay of the property settlement and spousal maintenance proceedings on the basis that the ruling of the Dubai Court operated as a bar to those proceedings by reason of the principles of *res judicata*, cause of action estoppel and/or the principle in *Henderson v Henderson*. This is also known as "*Anshun estoppel*".
- The primary judge dismissed the husband's application for a stay, holding that the Dubai proceedings did not involve the issue of the wife's right to claim property from the husband other than certain joint investment property, and did not deal with any right of the wife to alimony but rather described it as "*untimely*".
- On appeal, the Full Court unanimously allowed the husband's appeal and ordered a permanent stay of the property settlement and spousal maintenance proceedings, holding that the Dubai proceedings determined the same cause of action as the property settlement proceedings and gave rise to "*res judicata estoppel*". The Full Court also held that the wife was precluded from pursuing a claim for spousal maintenance by operation of *Anshun estoppel*. The wife appealed.

Issues

- Whether a ruling made by the the Dubai Court in divorce proceedings in the Dubai proceedings had the effect of precluding the wife from pursuing property settlement proceedings and spousal maintenance proceedings against the husband under the *Family Law Act 1975* (Cth).

Held

- Unanimously, the High Court allowed the appeal. A plurality held that the ruling of the Dubai Court could not give rise to a res judicata as the rights to seek orders for property settlement and spousal maintenance under sections 79 and 74 of the Act could only "*merge*" in the final judicial orders of a court having jurisdiction under the Act to make such orders.
- In relation to the property settlement proceedings, the Dubai Court's ruling was incapable of creating action estoppel or an Anshun estoppel because the right to seek a share in joint investment property in the Dubai proceedings was not in any degree equivalent to the nature of the right to seek the discretionary alteration of property interests under s 79 of the Act.
- In relation to the spousal maintenance proceedings, while the nature of the rights to alimony under UAE law and to spousal maintenance under section 74 of the Act were equivalent, there was a significant difference in the coverage of the two rights and it had not been shown that the former was able to be claimed beyond the date of divorce.
- For that reason, the wife's choice not to seek alimony in the Dubai proceedings provided no foundation for the operation of an Anshun estoppel.

Full Text

The full text is available here: <http://eresources.hcourt.gov.au/showCase/2020/HCA/44>

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