

FEDERAL COURT OF AUSTRALIA

Kingdom of Spain v Infrastructure Services Luxembourg S.à.r.l. (No 2)

[2021] FCAFC 28

Appeal from: *Eiser Infrastructure Ltd v Kingdom of Spain* [2020] FCA 157

File number: NSD 329 of 2020

Judgment of: **ALLSOP CJ, PERRAM AND MOSHINSKY JJ**

Date of judgment: 4 March 2021

Catchwords: **PRACTICE AND PROCEDURE** – amendment of first instance transcript – corrigendum to judgment

Cases cited: *Kingdom of Spain v Infrastructure Services Luxembourg S.à.r.l.* [2021] FCAFC 3

Division: General Division

Registry: New South Wales

National Practice Area: Commercial and Corporations

Sub-area: International Commercial Arbitration

Number of paragraphs: 4

Date of last submission: 18 February 2021

Date of hearing: Determined on the papers

Solicitor for the Appellant: Squire Patton Boggs

Solicitor for the Respondents: Norton Rose Fulbright

REASONS FOR JUDGMENT

NSD 329 of 2020

BETWEEN: **KINGDOM OF SPAIN**
Appellant

AND: **INFRASTRUCTURE SERVICES LUXEMBOURG S.A.R.L**
First Respondent

ENERGIA TERMOSOLAR B.V.
Second Respondent

ALLSOP CJ:

- 1 I have read the short reasons of Perram J concerning the transcript correction. My agreement with the reasons of Perram J as expressed in [1] and following of my reasons in *Kingdom of Spain v Infrastructure Services Luxembourg S.à.r.l.* [2021] FCAFC 3 remains unchanged and should be now read as agreement with his Honour's reasons published on 1 February 2021 and as agreement with his Honour's reasons published today, subject to my reasons published on 1 February 2021.

I certify that the preceding one (1) numbered paragraph is a true copy of the Reasons for Judgment of the Honourable Chief Justice Allsop.

Associate:

Dated: 4 March 2021

REASONS FOR JUDGMENT

PERRAM J:

- 2 The Full Court delivered judgment in this matter on 1 February 2021: *Kingdom of Spain v Infrastructure Services Luxembourg S.à.r.l.* [2021] FCAFC 3 ('Judgment'). I there wrote, at [68]-[69] of my reasons:

...The Respondents claim that a submission was made to the trial judge at T66.1ff that the relief sought was in the nature of recognition. There it was said:

And coming back to your Honour's question about the "or", there's nothing in even the French or Spanish version that talks of immunity from recognition.

One way in which this court recognises *international law* as being – as having the status of a judgment of this court is by making a declaration that it does have that status, and the question is what flows from that.

I incline to the view that this was not sufficient to raise the point. However, it makes no difference. The issue is directly raised by ground 3 of the Respondents' amended notice of contention and was addressed in their written submissions in the Full Court. Although Spain submitted that it was too late for the matter to be raised it did not point to any species of procedural prejudice occasioned to it by the alleged late raising of the matter. Further, it did not make any substantive submission as to why the proceeding could not be characterised as a recognition proceeding although it had an abundant opportunity to do so in this Court.

(Emphasis added)

- 3 On 18 February 2021, I received a letter from Mr Battison of Norton Rose Fulbright, Solicitor for the Respondents, on behalf of the parties, which explained that the parties had identified an error in the transcript of the first instance hearing: namely, that the words 'international law' in the above quotation should instead have read 'an international award'. The parties apologised that the error was not identified, and the transcript corrected, at an earlier stage. I instructed the parties to raise the matter with the trial judge, Stewart J, which the parties did by way of letter from Mr Battison on 23 February 2021. Stewart J's Chambers subsequently requested the transcript provider to reissue the relevant portion of the transcript incorporating the amendment suggested by the parties. That having occurred, I will arrange for an

appropriate corrigendum to be made to the above quotation in my reasons for judgment. The alteration does not alter the conclusion I expressed at [69].

I certify that the preceding two (2) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Perram.

Associate:

Dated: 4 March 2021

REASONS FOR JUDGMENT

MOSHINSKY J:

- 4 I have read the reasons of Perram J concerning the correction to the transcript of the hearing at first instance that was quoted in his Honour's reasons dated 1 February 2021, with which I largely agreed in my reasons of the same date. My agreement with the reasons of Perram J dated 1 February 2021 is unaffected by the correction, and should now be read as agreement with his Honour's reasons of 1 February 2021 and of today, subject to the qualification in my reasons of 1 February 2021.

I certify that the preceding one (1) numbered paragraph is a true copy of the Reasons for Judgment of the Honourable Justice Moshinsky.

Associate:

Dated: 4 March 2021