

Read all about the Rinehart family secrets – just not quite yet

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Gina Rinehart, Australia's richest woman, has been fighting the media through the courts to suppress details of her bitter dispute with her own children over control of the billions in the Hancock family trust. Apart from being a compelling morality tale, the case raises an interesting question about whether the courts will protect confidentiality as part of an alternative dispute resolution process. It's the desire for confidentiality that often drives parties towards mediation or arbitration rather than the courts.

Three of Mrs Rinehart's children applied to the NSW Supreme Court to have her removed from her role as trustee. The problem was that the trust deed said that disputes 'under this deed', and 'between the parties to the deed', should be confidential and go to mediation/arbitration.

On this basis, Mrs Rinehart applied to the Court:

- to stop the proceedings being publicised; and
- for a permanent stay of the court case, while the dispute goes to mediation or arbitration.

The Court found that the children's claim was not a 'dispute under the deed', and therefore no stay. But it granted a suppression order while Mrs Rinehart pursued an appeal.

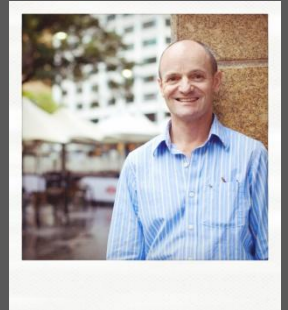
The Court found that an agreement for family disputes to be resolved in private should not always trump the public interest in the administration of justice.

While recognising the importance of confidentiality to arbitration and mediation, the Court did not accept that this meant a challenge to the validity or extent of the arbitration clause should be protected by a suppression order.

Fairfax, the ABC and Nationwide News all applied to have the suppression order removed. The Court of Appeal agreed and lifted the order. When Mrs Rinehart indicated she would be appealing the decision to the High Court, the judges said the case should remain suppressed until the appeal had been filed, or 13 January 2012. If the High Court refuses to hear the appeal, we get to find out the juicy details then.

What does it mean?

Courts have a hard time balancing the principle of open justice against commercial parties' desire for confidentiality. As such the specific wording of a confidential agreement will be very significant. Great care is needed in drafting these agreements if you want to stay out of both the courts and the media.



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