

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Homburg v. Stichting Auroriteit Financiële Markten*, 2016 NSSC 317

**Date:** 20161117

**Docket:** HFX438492

**Registry:** Halifax

**Between:**

Richard Homburg, Homburg Bondclaim Limited,  
and Homburg Shareclaim Limited

Plaintiffs

v.

Stichting Autoriteit Financiële Markten, De Nederlandsche Bank N.V.,  
Belastingdienst, Theodor Kockelkoren, Marcus E. Wagemakers,  
Government of the Kingdom of the Netherlands

Defendants

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**Judge:** The Honourable Justice Michael J. Wood

**Heard:** November 1, 2, and 3, 2016, in Halifax, Nova Scotia

**Written Decision:** November 17, 2016

**Subject:** International Law – Immunity of Foreign States

**Summary:** Plaintiffs sued Kingdom of the Netherlands and agencies responsible for regulation of financial markets in that country. They allege that actions of the defendants were improper interference in management of a Canadian company which was licenced in the Netherlands. Plaintiffs claim damages based upon torts of misfeasance in public office, unlawful means and conspiracy.

Defendants brought motion to dismiss or stay proceeding on the basis that they were entitled to state immunity and court had no jurisdiction. Plaintiffs argued actions fell within commercial activity exception to immunity.

**Issues:** Does the commercial activity exception to sovereign

immunity apply to the conduct of the defendants?

**Result:**

The defendant agencies issued instructions that the majority shareholder and director could no longer be a policymaker for the company. Such a decision was within their authority under Dutch law as regulator of the financial markets of that country. The company was licenced in the Netherlands and as such had agreed to be subject to the agencies' authority. Shareholder unsuccessfully challenged the agencies' instruction through Dutch administrative courts.

Onus was on plaintiffs to show that commercial activity exception under *State Immunity Act* applied. Purpose of defendants' decision was regulation of a Dutch financial market participant. Fact that it was a Canadian domiciled company did not mean violation of Canadian sovereignty nor were the defendants' actions commercial in nature – they were regulatory.

Plaintiffs unable to show that commercial activity exception applies. Canadian court has no jurisdiction over Dutch government and agencies in these circumstances. Order granted dismissing the proceeding.

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