



## HIGH COURT OF AUSTRALIA

14 August 2024

CBI CONSTRUCTORS PTY LTD & ANOR v CHEVRON AUSTRALIA PTY LTD  
[2024] HCA 28

Today, the High Court, by majority, dismissed an appeal from a judgment of the Court of Appeal of the Supreme Court of Western Australia. The appeal concerned two issues: firstly, whether the Supreme Court had the power to set aside an arbitral award under s 34(2)(a)(iii) of the *Commercial Arbitration Act 2012* (WA) ("the Arbitration Act"); and secondly, if the Supreme Court had that power, the standard by which it was to exercise the power.

The arbitration proceedings arose from a contract under which the appellants (collectively, "CKJV") provided staff to work at certain construction sites and the respondent ("Chevron") reimbursed CKJV for the staff costs. CKJV commenced arbitration proceedings against Chevron, contending that it was entitled to recover staff costs on the basis of contractual "rates", rather than actual costs. By counterclaim, Chevron alleged that it had overpaid CKJV for staff costs. The tribunal proceedings were bifurcated, with separate hearings dealing with issues of liability and quantum. In December 2018, the tribunal issued an interim award ("the First Interim Award"). CKJV then repleaded its case on quantum (the "Contract Criteria Case"). Chevron objected to the Contract Criteria Case on two bases: (1) that CKJV was precluded from advancing the case by reason of *res judicata*, issue estoppel, or *Anshun* estoppel; and (2) that the tribunal was *functus officio* in respect of the Contract Criteria Case. In August 2020, the tribunal issued a further interim award ("the Second Interim Award") rejecting each of Chevron's objections.

Chevron applied to the Supreme Court to set aside the Second Interim Award under s 34(2)(a)(iii) of the Arbitration Act on the basis that the award dealt with a dispute not contemplated by or falling within the terms of the submission to arbitration, or contained decisions on matters beyond the scope of the submission to arbitration. The primary judge held that it was open to the Supreme Court to examine afresh Chevron's objections to the tribunal considering the Contract Criteria Case and that the tribunal was *functus officio*. The Court of Appeal dismissed CKJV's appeal. The Court of Appeal upheld the primary judge's conclusion that the tribunal was *functus officio* when it purportedly determined the Contract Criteria Case and that the Second Interim Award should be set aside.

The High Court, by majority, held that an award is liable to be set aside under s 34(2)(a)(iii) of the Arbitration Act when a tribunal exceeds its authority or jurisdiction in making the award. The majority held that the unchallenged findings of the Court of Appeal in relation to the tribunal being *functus officio* with respect to the Contract Criteria Case compel the conclusion that the Supreme Court was empowered to consider Chevron's application under s 34(2)(a)(iii) to set aside the Second Interim Award. The majority held that the standard of review to be applied is a *de novo* review of the correctness of the decision of the tribunal as to its jurisdiction.

*This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*