Supreme Court of Victoria Affirms Judicial Restraint in Arbitral Appeals

September 22, 2023

In the realm of arbitration, the delicate balance between finality and fairness often finds itself at the heart of appellate scrutiny. The recent judgment from the Victorian Supreme Court in Factory X Pty Ltd v Gorman Services Pty Ltd unveils yet another layer of this intricate interplay, particularly focusing on the threshold for leave to appeal questions of law emanating from arbitration awards. The court's reasoning, deeply rooted in the principles laid down by Lady Justice Arden in HMV UK Ltd v Propinvest Friar Limited Partnership, provides a rich tapestry for understanding the nuanced approach towards the 'obviously wrong' standard under s 34A(3)(c) of the Commercial Arbitration Act 2011 (Vic).

The focal point of the discourse centers around Lady Justice Arden's clarification of an 'obviously wrong' decision as one that is unarguable, makes a false leap in logic, reaches a result for which there is no reasonable explanation, or represents a major intellectual aberration. The respondent, in underscoring these parameters, argued that a mere arguable error on a point of law or a divergent conclusion by the judge does not suffice to meet the threshold of 'obviously wrong'. The clarity and transparency of the error, as emphasized by the respondent, stand as indispensable requisites to traverse the appellate pathway.

The court, in its analysis, concurred with the respondent's submissions, accentuating that the arbitrator's decision

should not be deemed ‘obviously wrong’ merely because the court might harbor a different interpretation of a contractual clause. This stance resonates with the fundamental ethos of arbitration, where deference to the arbitrator’s decision is emblematic of the autonomy and finality that arbitration envisages.

Furthermore, the court’s acknowledgment of the arbitrator’s rejection of the applicant’s construction in the arbitration award underscores the appellate reluctance to re-engage with matters of critical relevance already deliberated and dismissed by the arbitrator. This judicial restraint is emblematic of a broader jurisprudential acknowledgment of the arbitrator’s role as the primary adjudicator of disputes, whose decisions are to be interfered with sparingly and only under manifestly erroneous circumstances.

The South Australian Court of Appeal’s stance in Inghams Enterprises (10 February 2022), as highlighted by the court, further cements this principle. Despite recognizing the ‘some force’ in Inghams’ submissions and the complex nature of the construction question, the Court was unpersuaded that the arbitrator’s decision displayed any ‘obvious error’. This narrative underscores the high threshold that appellants must surmount to successfully navigate the appellate avenue.

In dissecting the contract clause, the court acknowledged the lack of clarity in its drafting and the applicant’s submissions on the practical implications of the arbitrator’s construction. However, the court remained unswayed by the possible merits of the applicant’s construction, reiterating that the arbitrator’s conclusion was not ‘obviously wrong’ for the purposes of s 34A of the Act. The arbitrator’s meticulous consideration of other possible constructions, including those submitted by the applicant, fortified the court’s stance against an obvious error in the arbitrator’s decision.

This judgment, in its essence, epitomizes the judicial

restraint and deference towards arbitration awards, reinforcing the high threshold for leave to appeal on questions of law. It underscores the imperative for clear and transparent errors in arbitration awards to warrant appellate intervention, thereby preserving the sanctity and finality of arbitration as a distinct and autonomous mechanism for dispute resolution..

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com