



# SUPREME COURT OF WESTERN AUSTRALIA

David Malcolm Justice Centre  
28 Barrack Street  
Perth WA 6000

Media Contact: Manager, Media & Public Liaison  
Ph: (08) 9421 5303; Mob: 0439 953 898

---

***SINO IRON PTY LTD v MINERALOGY PTY LTD [No 15]***  
**[2023] WASC 56**

**(CIV 1915 of 2019)**  
**(CONSOLIDATED WITH CIV 2326 OF 2021)**

**JUDGMENT SUMMARY**  
**REASONS OF 7 MARCH 2023**

**What follows below is an unofficial broad summary of the Court's more detailed reasons published today in this action after trial and which together amount to 900 pages.**

**The summary is issued by the Court informally and is merely provided as an aid to assist an easier understanding of the much lengthier reasons as published today. This document is not a component of, nor does it provide any level of qualification to or upon, today's published reasons. The summary has no purpose or effect beyond this informal objective.**

The trial of this major civil litigation took place before Justice Kenneth Martin across 33 hearing days during February, March and April 2022.

Today, his Honour published reserved reasons substantially rejecting the trial case of the plaintiffs (the Hong Kong based corporation CITIC Ltd, and its Australian subsidiary corporations Sino Iron Pty Ltd (Sino Iron) and Korean Steel

Pty Ltd (Korean Steel)) - which entities had sought to obtain court orders by way of mandatory injunctions seeking to compel Mineralogy Pty Ltd (Mineralogy) to implement certain affirmative conduct steps with regard to the Sino Iron Project, currently conducted in the Pilbara region of Western Australia.

The Sino Iron Project is located some 100 km to the south and west of Karratha. It extracts and processes magnetite (iron) ore from a series of mining tenements granted to Sino Iron and Korean Steel by Mineralogy under longstanding (2006 - 2008) contractual arrangements. Processed magnetite concentrate is later shipped out of a nearby industrial port at Cape Preston (Cape Preston Port) by a process of transshipment to Chinese steel mill customers.

Action CIV 1915 of 2019 was originally commenced in the Federal Court of Australia during October 2018. Later in 2019, it was remitted to the Supreme Court of Western Australia under national cross-vesting laws. The action as filed had sought to compel Mineralogy by injunctions to join with Sino Iron and Korean Steel in them all submitting for the anticipated approval of the relevant State Minister (Minister), two Mine Continuation Proposal documents (or MCPs - one each for Sino Iron and for Korean Steel in parallel terms) under the regime of the State agreement, found scheduled to the *Iron Ore Processing (Mineralogy Pty Ltd) Agreement Act (2002)* (as amended) (State Agreement).

Two MCPs were prepared in their most contemporary iterations during December 2017. They were then given to Mineralogy on behalf of Sino Iron and Korean Steel to accept and to submit to the Minister for approval under the regime of the State Agreement.

Under the State Agreement regime, it was not possible for Sino Iron and Korean Steel to by themselves advance their further operational proposals (MCPs) for the Sino Iron Project concerning future mining operations - Mineralogy needed to be at least a co-proponent in seeking the required ministerial approval of those two MCPs.

The prepared MCPs provided to Mineralogy in 2017 for advancement to the Minister contained expansion proposals for the Sino Iron Project to enable an expansion of the existing mine pit area, construction of expanded volume tailings storage facilities, greater volume of waste rock storage locations (or dumps) and more shoreside land at the Cape Preston Port to be used for the stockpiling of greater volumes of export magnetite concentrate prior to its shipping and other related expansion measures.

Under existing project agreement arrangements (of 2006 - 2008), Mineralogy had provided designated areas to Sino Iron and Korean Steel from out of Mineralogy's own tenements for, in effect, the exclusive use and mining exploitation - as the envisaged Sino Iron Project was to be constructed and established - essentially from bare paddock tenements.

The trial dispute was not over the original tenement areas that were granted by Mineralogy under the founding project agreement arrangements of 2006 - 2008. Rather, it was over additional tenement areas - sought from Mineralogy for the expansion and continuance of the Sino Iron Project.

The additional land (tenement) areas as the subject matters of some of the expansion proposals under the MCPs were being sought by Sino Iron and Korean Steel from Mineralogy from out of Mineralogy's other adjoining local area mining tenements (referred to in the trial as 'additional tenure areas').

The further areas were demanded to be provided for Sino Iron and Korean Steel on a basis of Mineralogy's alleged contractual (and otherwise grounded) alleged obligation to provide the additional areas to them in the future, upon request - where those extra tenement areas sought for proposed use in the Sino Iron Project in future were 'reasonably required'.

The extra areas were also demanded from Mineralogy on a basis of there being no further payment made to Mineralogy in return for it providing the additional areas (beyond Mineralogy's past payments as received and its

continuing receipt of its existing income remuneration (i.e., royalty) entitlements under the parties' original project agreements of 2006 - 2008).

A fundamental dispute arose and persisted over providing the additional tenure areas being sought, and over the basis they could be obtained (i.e., for no greater payment to Mineralogy).

The unresolved dispute and related considerations saw Mineralogy refuse to join Sino Iron and Korean Steel to advance the Sino Iron Project MCPs to the Minister under the State Agreement, for their consideration and anticipated approval.

Absent Mineralogy's participation at least as a co-proponent along with Sino Iron and Korean Steel of the 2017 MCPs, there was an effective 'roadblock' against those MCPs ever reaching the Minister for consideration under the State Agreement, let alone the Minister evaluating them for approval. That dispute saw an effective 'stalemate' over the progress of the 2017 MCPs, which were moribund, and so, to the trial.

Ultimately, Justice Kenneth Martin concluded that whilst the foundational project agreements did impose contractual obligations of good faith and cooperation upon all parties - including thereby on Mineralogy in its contractual dealings with Sino Iron and Korean Steel concerning the Sino Iron Project - there was no more specific express or implied contractual obligation that could be found that bound Mineralogy to compulsorily provide Sino Iron and Korean Steel with the additional tenement areas they had requested. Nor was Mineralogy obliged to provide the extra tenement areas - beyond the existing delineated tenement area use arrangements (of 2006 - 2008) - for no further remuneration provided to Mineralogy beyond existing entitlements.

There was a legal obligation on Mineralogy to negotiate with Sino Iron and Korean Steel in good faith over it providing the requested additional tenement areas that Mineralogy held if those areas were shown to be reasonably required

for the Sino Iron Project - if they were extra tenement areas that were shown as necessary, essential or critical for the furtherance or support of the Sino Iron Project.

On the facts, his Honour concluded that not all of the demanded additional areas that were being sought from Mineralogy met that high standard - useful or desirable as they may otherwise be in future for the Sino Iron Project, if held.

Nor was Mineralogy contractually or otherwise required to act against its own commercial interests, or to provide additional tenement areas on a basis of it not seeking some negotiated level of remuneration in return for providing the extra areas.

The plaintiffs had alternatively advanced three further non-contractual causes of action - as two suggested estoppels and another action against Mineralogy pursued under the Australian Consumer Law over Mineralogy's alleged unconscionable conduct in adopting its negative position towards those MCPs and the providing of extra areas. Those alternate causes of action beyond the main contract action, also failed.

Failure of the statutory unconscionable conduct action being run against Mineralogy necessarily led then to the failure of the action also pursued by the plaintiffs against Mr Clive Palmer personally - as an alleged accessory to Mineralogy's alleged unconscionable conduct.

The State of Western Australia had been a further (third) defendant in the action - but no relief was ever sought against it. The State was only joined to the action by the plaintiffs on the basis of it being potentially affected by some of the relief that was ultimately unsuccessfully pursued by the three plaintiffs against Mineralogy.

The concluding paragraphs of the Court's reasons (see [2462]) provide a summary of the Court's non-exclusive major conclusions reached in the trial.

Since the action was conducted within the Court as a fully electronic trial,

that has enabled Justice Martin to provide some hypertext links in the electronic version of these lengthy reasons (published on the Court's website) - to all of the parties' exchanged pre-trial pleadings and, as well, to all of their extensive opening and closing written submissions, as were filed and relied upon during trial.

Another hypertext link provided within the electronic version of the reasons (see [123] thereof) should enable a reader to access two YouTube links established by the plaintiffs to drone-shot footage - being part of what was submitted to the Court during trial - providing a physical view of aspects of the Sino Iron Project concerning its mining facilities, infrastructure corridor and Cape Preston Port areas.

The Court also published today a series of earlier interlocutory decisions which had been delivered verbally by his Honour during the running of the trial and which have now become a subject of his Honour's settled published reasons in the wake of the trial.

*The full reasons constituting the decision of the Court are available under the [Judgments](#) tab on the Supreme Court of Western Australia website.*