

BEREM INTERIORS PTY LTD V SHAYA CONSTRUCTIONS (NSW) PTY LTD [2007]

Supreme Court of New South Wales – South Wales 21 November 2007

FACTS

Berem Constructions Pty Limited (“Berem”) issued an Invitation to Tender to Shaya Constructions (NSW) Pty Limited (“Shaya”) for the supply, delivery and installation of suspended ceilings, partitions and lining works in respect of the alterations and additions to an existing industrial building to facilitate the construction of 14 retail tenancies, commercial suites and some residential apartments.

Berem Constructions Pty Limited had been awarded the tender for the Alterations and Additions to the existing industrial building. The scope of works listed within the Invitation to Tender was signed by the Berem Constructions Project Manager. Shaya commenced work on the site and sent monthly progress claims to “Berem Interiors”.

Once Shaya had left the site it served a payment claim on Berem Interiors Pty Ltd which remained unpaid. Shaya then referred the matter to adjudication.

ISSUES

Whether the misdescription of a contracting party may void a determination by an Adjudicator.

Whether the existence of a construction contract is an essential prerequisite for the exercise of an Adjudicator’s jurisdiction.

FINDING

The Court found that the Adjudicator made a jurisdictional error as no construction contract had been validly formed between Berem Interiors and Shaya, and as such the basic requirement for a valid determination had not been satisfied.

Further, the Court found that the misdescription of the contracting parties was sufficient to invalidate the Adjudicator’s determination as a result of the deficiency in the basic requirement of a valid construction contract.

QUOTE

Bergin J [at 33]

“I am satisfied that there is no construction contract between the plaintiff and the defendant and thus a basic and essential requirement as a prerequisite to a valid determination has not been satisfied. I am satisfied that the Adjudicator fell into error and that it was a jurisdictional error. The Determination is void.”

IMPACT

The case illustrates that the misdescription of parties in a payment claim may invalidate an adjudication based on such a claim as no relevant construction contract exists to find jurisdiction for the Adjudicator.

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