

John Holland Pty Ltd v Walz Marine Services Pty Ltd -&- Ors [2011] QSC 39 Queensland Supreme Court 11 March 2011.

FACTS:

John Holland, the main contractor on a new wharf and coal loading facility in North Queensland subcontracted Walz Marine Services to build the extension of the wharf which already extended 1km out to sea. The Contract contained provisions for delays caused by weather. Walz submitted a Payment Claim which included delay costs and the matter went to adjudication. The adjudicator allowed the amount claimed in the Payment Claim. John Holland applied to have the determination set aside arguing the certain contractual requirements had not been met and the adjudicator made an error by not properly valuing the claim.

ISSUES:

Whether the adjudicator erred in valuing the claim, by not considering contractual requirements not raised by John Holland in the Payment Schedule nor considering those contractual requirements himself.

Whether if an error existed was it a jurisdictional error or an error in the interpretation of the contract.

FINDING:

The Court held that the adjudicator had not erred by not considering the reasons outlined in the adjudication response where they were not raised in the Progress Schedule as the dispute is defined by the Payment Claim and Payment Schedule.

QUOTE:

Wilson J at [51 -52]:

“Counsel for John Holland submitted that the adjudicator erred in not examining the claim to see if the elements of the claim for delay and disruption had been established...I do not accept that this is what the adjudicator did...he considered whether he could be satisfied that inclement weather events meeting the thresholds had occurred... and whether the costs claims had been calculated correctly.”

[at 54]

“[W]here there is a payment schedule as well as a payment claim, the factual and legal issues... are defined by those documents. If the validity of the claim depends on certain acts... failure expressly to put those facts in issue in the payment schedule may amount to an admission of them.”

IMPACT:

Failure to expressly deny facts in the Payment Schedule may amount to an admission that those facts are not disputed. Therefore, Contract Managers must be careful to fully define all their reasons for non-payment in the Payment Schedule to avoid being prevented from raising these reasons later.

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