

Oppedisano v Micos Aluminum Systems [2012] NSWSC 53.

FACTS:

The Plaintiff owned property which contained 4 separate single occupancy units. The plaintiff resided in one, and members of his family resided in others. The Defendant was contracted to perform glazing work on the property, and submitted a payment claim to the plaintiff. The plaintiff supplied a payment schedule and outlined reasons for payment not being made.

The matter was heard before an adjudicator which found in favour of the defendant and ordered the plaintiff to pay for the work undertaken in line with the payment claim.

ISSUES:

Whether the adjudicator acted outside their jurisdiction in finding against the plaintiff due to the operation of s7(2)(b) of the Building and Construction Industry Security of Payment Act 1999 (NSW) ("BCISOPA"), which would exclude the work from the application of BCISOPA.

FINDING:

The court held that the adjudicator did not exceed their jurisdiction in hearing the payment dispute, finding that s7(2)(b) did not apply to exclude the contract from the operation of BCISOPA. The court found that due to the plaintiff only residing in one of the units, and there being multiple units on the site, that s7(2)(b) could not exclude the contract from the application of BCISOPA.

QUOTE:

McDougall J found at [36]:

"the evidence seems to be clear that the construction contract related to the premises as a whole"

[at 38]:

"it seems to me that s 7(2)(b) has no application."

[at 39]:

"There is no evidence... of any common household or family life. There is no evidence that the residents of one unit use and enjoy, as of right, the facilities of another. Nor is there any evidence that they do so by permission."

IMPACT:

Failure to expressly deny facts in the Payment Schedule may amount to an admission that those facts are not disputed.

Contract Managers must be careful to fully define all their reasons for non-payment in the Payment Schedule to avoid being prevented from raising new reasons later.

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