

COORDINATED CONSTRUCTION CO V J M HARGREAVES & ORS [2005] NSWSC 77

New South Wales Supreme Court - 22 February 2005

FACTS

Coordinated Construction Co ('Coordinated') entered into a construction contract with J M Hargreaves ('Hargreaves') whereby Hargreaves agreed to carry out certain work in connection with the redevelopment of the former Gazebo Hotel at Elizabeth Bay.

Hargreaves made a number of what it said were Payment Claims under the Building and Construction Industry Security of Payment Act 1999 (NSW) ('the Act') and proceeded to Adjudication. Coordinated submitted that each determination is void because the Adjudicated Amount included amounts not for construction and thus did not meet what Coordinated said were the "basic and essential requirements ... for the existence of an adjudicator's determination" under the Act as held in the case of *Brodyn v Davenport* [2004] NSWCA 394.

ISSUE

Was the Adjudicator's determination void because the Adjudicator determined that Hargreaves was entitled to be paid an amount for "delay damages" and "interest"?

FINDING

The Court found that the neither delay damages or interest were amounts payable "for" construction work done or undertaken to be done, or related goods or services provided or undertaken to be provided, pursuant to the construction contract.

In any event, the Court held that this would not void Adjudicator's Determinations as an amount claimed "for" construction work is not a basic and essential requirement for the existence of an Adjudicator's Determination.

QUOTE

McDougall J at paragraphs 49 and 50 stated:

[49] ... I cannot see how a claim that is invalid because the amount claimed is not "for" construction work is different in principle to a claim that is invalid because it is grossly overvalued. In each case (and in the case of all the other possible defences to which I have referred) the adjudicator may determine the validity of the claim. That is simply a consequence of the exercise by the adjudicator in the particular case of the powers and duties entrusted to her or him by the Act.

[50] To put it another way, I think that the jurisdiction entrusted by the Act to adjudicators includes the power to determine whether (assuming it to be a relevant consideration) a particular amount claimed is "for" construction work. That is because, in essence, the adjudicator's function is to determine, in respect of the payment claim that is the subject of the adjudication application, the issues raised in it and in the

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Jim Doyle
1800 888 783

jdoyle@doylesconstructionlawyers.com
www.doylesconstructionlawyers.com

payment schedule. Those issues may include those referred to in para [45] above, and no doubt more. All those matters are “within jurisdiction”. They form part of, not preconditions to, the jurisdiction.

IMPACT

This case stands for the proposition that an Adjudicator’s Determination is not void because of the Adjudicated Amount includes an amount “for” construction work including delay damages and interest.

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