

John Holland Pty Ltd v Coastal Dredging & Construction Pty Ltd & Ors [2012] QCA 150 (8 June 2012)

FACTS

John Holland Pty Ltd ('John Holland') contracted Coastal Dredging & Construction Pty Ltd ('Coastal Dredging') to provide dredging in Gladstone Harbour.

Coastal Dredging issued a payment claim under the Building and Construction Industry Payments Act 2004 (the BCIPA). John Holland served a payment schedule under the BCIPA for a nil amount. Coastal Dredging had not satisfied the preconditions in the contract in order to establish a valid reference date.

Coastal Dredging lodged an adjudication application under the BCIPA. The adjudicator found in Coastal Dredging's favour. John Holland appealed the adjudicator's decision claiming that the adjudication was void as the contractual preconditions for a reference date had not been met

ISSUE

Can parties to a contract qualify the statutory entitlements of the BCIPA by including preconditions in the contract?

FINDINGS

Justice Fraser (with whom Justices White and Lyon agreed). found that the preconditions contained within the contract were inconsistent with the 'No contracting out' provisions of s99 of the BCIPA. The BCIPA gives a subcontractor a statutory entitlement to a progress payment for each reference period. Contractual provisions can be used to determine on which date a reference date arises. However, the contract cannot be used as a mechanism for denying a subcontractor's rights to make a progress claim or require that they meet preconditions prior to establishing an entitlement to a progress payment.

QUOTE

Fraser JA held that:

"...the contractual provisions to which reference may be made for the purpose of ascertaining the "reference date" are those which state, or provide for the working out of, the date on which a progress payment 'may be made'". The later expression refers to an entitlement to make a progress claim. It does not comprehend reference to warranties which concern the form and content of the progress claims or the consequences of breaching warranties about the form and content of progress claims".

IMPACT

The right to a progress claim is established by the BCIPA. Court are likely to hold conditions precedent to the issuing of a payment claim, void. A contractual mechanism can be used to determine the date on which a reference date falls but cannot be used to impose preconditions to a reference date.

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Jim Doyle
1800 888 783

jdoyle@doylesconstructionlawyers.com
www.doylesconstructionlawyers.com