

**NOVAWEST CONTRACTING V TARA NOMINEES (1998) 5374 OF 98**

Supreme Court of Victoria – 30 October 1998

**FACTS**

Novawest was the contractor appointed by Tara Nominees to conduct building work in Melbourne. The contract between the parties was an AS2124-1992 contract and an independent superintendent was appointed by Tara Nominees.

Novawest submitted progress claims to the superintendent and the superintendent determined that a progress payment should be made to Novawest. Tara Nominees refused to pay the progress payments and claimed that it had a claim for faulty work by Novawest.

Novawest sued for the debt owing under two progress payment certificates and obtained summary judgment against Tara Nominees. Tara Nominees made a claim for damages against Novawest and appealed the summary judgment decision.

**ISSUES**

Did the AS2124-1992 contract force Tara Nominees to pay the amounts due under the progress payment certificates issued by the superintendent despite the claims for faulty work.

**FINDING**

The contract provided that progress payment certificates issued by the superintendent had to be paid by the Principal immediately. If the Principal wanted to make a claim for faulty work, it had to make a separate claim against the Contractor and could not deduct its alleged loss from the certified amount.

**QUOTE**

Gillard J said

“The parties have put in place a mechanism which protected their respective interests and required the defendant to pay the plaintiff on any certificate once issued but also enabled the defendant to protect its interest by pursuing a number of avenues to recover the liquidated damages. To permit the defendant in the court proceeding to raise a defence of set-off would be to defeat the common intention of the parties.” - paragraphs 127 and 128

**IMPACT**

The AS2124-1992 contract provides that the Principal must make progress payments as certified by the Superintendent.

© Doyles Construction Lawyers 2015

This publication is intended to be a report on recent cases in the construction, development and engineering industries. This publication is not intended to be a substitute for professional advice, and no liability is accepted. This publication may be reproduced with full acknowledgement.

Jim Doyle  
1800 888 783

[jdoyle@doylesconstructionlawyers.com](mailto:jdoyle@doylesconstructionlawyers.com)  
[www.doylesconstructionlawyers.com](http://www.doylesconstructionlawyers.com)

If the Principal wishes to reduce or not pay the progress payments certified by the Superintendent, then it will have to amend the AS2124-1992 contract. Otherwise it must make the progress payment and make a separate claim against the Contractor.

© Doyles Construction Lawyers 2015

This publication is intended to be a report on recent cases in the construction, development and engineering industries. This publication is not intended to be a substitute for professional advice, and no liability is accepted. This publication may be reproduced with full acknowledgement.

Jim Doyle  
1800 888 783

[jdoyle@doylesconstructionlawyers.com](mailto:jdoyle@doylesconstructionlawyers.com)  
[www.doylesconstructionlawyers.com](http://www.doylesconstructionlawyers.com)