

**Rail Corporation of NSW v Nebax Constructions [2012] NSWSC 6.**

**FACTS**

Nebax lodged a Payment Claim with five invoices, all endorsed as Payment Claims under the Act. Rail Corp provided five Payment Schedules. Nebax then made five Adjudication Applications. Rail Corp objected to the adjudicator's jurisdiction on the basis that Nebax could not bring more than one adjudication application for the one Payment Claim or that it had issued more than one Payment Claim for the one reference date. It had not raised these matters in its Payment Schedules, but the adjudicator decided the five adjudication applications were valid as there were 25 separate contracts as the result of the directions of the contract administrator.

**ISSUE**

Was there only one Payment Claim comprising the five invoices? Were the five adjudication applications valid and complying with 13(5) of the Building and Construction Industry Security of Payment Act 1999 (NSW). In the circumstances, could Rail Corp raise these matters when it had not raised them in its Payment Schedules.

**FINDING**

The Court held that, in the circumstances, there was only one Payment Claim despite the fact that each of the five invoices had been endorsed as Payment Claims, but because there was only one contract the adjudication applications were not valid. The court set aside the determination on the basis that the adjudicator had no jurisdiction and had denied the parties natural justice in reaching his determination as to the number of contracts without allowing the parties to make relevant submissions.

**QUOTE**

McDougall J at [31]:

*... I have no doubt that, in an appropriate case, it is open to a claimant to submit one payment claim, for the purposes of the Act, that comprises several invoices, even though each invoice is separately said to be a payment claim for the purposes of the Act.*

[at 36 to 38]

In Olympia Group (NSW) Pty Ltd v Hansen Yuncken Pty Ltd [2011] NSWSC 165, Ball J said at [11], of a similar argument put to him for consideration, that s 20(2B) prevented the respondent:

*"from raising in its adjudication response, a reason for not making a payment that was not raised in its payment schedule. It did not prevent it from raising grounds on which it was asserted that the adjudicator did not have jurisdiction to make a determination". I agree. The point could not have been taken in the payment schedule.*

## **IMPACT**

The case confirms that arguments that object to the jurisdiction of an adjudicator do not need to be part of a party's Payment Schedule, although it would be wise to include them in the Payment Schedule if they are known before an adjudication application is made. It also highlights the confusion caused by endorsing every invoice as a Payment Claim under the Act and the need for a claimant to carefully plan its payment claim and adjudication application in order to comply with the Act.

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