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SHELLBRIDGE PTY LTD V RIDER HUNT SYDNEY PTY LTD [2005] NSWSC 1152

Supreme Court of New South Wales – 14 November 2005

FACTS

Shellbridge Pty Ltd ("Shellbridge") and Rider Hunt Sydney Pty Ltd ("Rider Hunt") entered into a construction contract whereby Rider Hunt was to provide quantity surveying services.

Rider Hunt submitted three Payment Claims under the Building and Construction Industry Security of Payment Act 1999 (NSW) ("the Act") in the sum of $11,220, in the sum of $2,805 and an aggregate claim in the sum of $14,025.

Shellbridge responded with Payment Schedules indicating its intention to make no payment. The third Payment Claim was referred to Adjudication and determined in favour of Rider Hunt. During the course of the Adjudication, the Adjudicator requested submissions on the "arrangement" between the parties.

Shellbridge then appealed to the Supreme Court, contending that the Adjudication was void on the basis that the Adjudicator failure to consider its submissions which resulted in a substantial denial of natural justice required by the Act.

ISSUES

Whether there was a substantial denial of natural justice.

FINDING

The Court found that the Adjudicator did not fail to consider the content of the submissions as he summarised the most pertinent aspects and included passages in the determination which demonstrated that he gave active consideration to the Shellbridge's submissions.

QUOTE

Barrett J at paragraphs 13, 14 and 15 commented, after considering section 22(2) of the Act:

[13] "Among the matters to be considered are "all submissions (including relevant documentation)" made by the claimant in support of the payment claim and the respondent in support of the payment schedule. If, as happened in this case (with respect to the matter that became the subject of the no-contract submissions), the adjudicator acts under s.21(4)(a) to request further written submissions from a party, it must follow that any such further submissions and any comments thereon by the other party (as allowed by s.21(4)(a)) are among the matters to be considered in conformity with s.22(2). These statutory provisions delineate the "measure of natural justice that the Act requires to be given.

[14] ... so far as natural justice is concerned, the relevant question is whether there has been a failure to receive and consider submissions in a way that entails inconsistency with the statutory provisions.

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[15] Another important indicator of the extent of "the measure of natural justice that the Act requires to be given" comes from s.21(3). That section requires an adjudicator to determine an adjudication application "as expeditiously as possible" and, in any event, within 10 business days after his or her notification of acceptance of the application (or any longer period the parties agree). There is thus a statutory intention that an adjudicator should work quickly. That may militate against the standards of thoroughness and detail that are to be expected where no externally imposed time pressure applies. It cannot be intended that an adjudicator working to the tight statutory timetable will be as painstaking as a judge who has reserved judgment in a case involving the same claims under the same construction contract."

IMPACT

In order to discharge his or her functions under the Act, an Adjudicator should ensure that he considers further submissions in an active manner, that is, by summarising the pertinent aspects and including where appropriate passages of the submissions, but an adjudicator will not be held to the usual high standards of judicial analysis.

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