

ISIS PROJECTS PTY LTD v CLARENCE STREET PTY LTD
[2004] NSWSC 714
Supreme Court of New South Wales - 13 August 2004

FACTS

Isis Projects Pty Ltd ('Isis') and Clarence Street Pty Ltd ('Clarence') entered into a construction contract for the refurbishment and fit out of an office building at 50 Clarence Street, Sydney. Isis served a number of progress claims on Clarence. Clarence paid only part of the amount claimed in progress claim 12 and nothing claimed by progress claim 13. Both progress claims consisted of a cover sheet and a "Lump Sum Tax Invoice" that described the work by a number of one line items and showing for each the original contract value, the amount of previous claims, the value of work to date and the percentage completed. For each variation, it gave a reference, a short description of the work, the amount approved, the amount previously claimed, the value of work to date and percentage claimed. The tax invoice concluded with a summary of contents, concluding with a calculation of the "total now due".

Isis contended that these progress claims were Payment Claims pursuant to section 13 of the *Building and Construction Industry Security of Payment Act 1999* (NSW) ('the Act') and that Clarence Street did not serve Payment Schedules in response to either progress claim, within the time limited by the Act. Isis sought to recover as a debt the unpaid portion of progress claim 12 and the amount claimed by progress claim 13.

ISSUE

Do the progress claims identify the construction work to which they relate?

FINDING

The approach to be taken is that described by Palmer J in *Multiplex Constructions Pty Ltd v Luikens & Anor* [2003] NSWSC 1140. That is, whether a payment claim or a payment schedule contained sufficient detail, it was necessary to bear in mind that they were given and received by people experienced in the building industry and familiar with the particular contract, the history of construction work on the project and the broad issues underlying the dispute. The previous conduct of the parties (when apparently, there was no dispute) supports the conclusion that progress claims 12 and 13 do sufficiently identify the construction work to which their respective progress payments claimed relate.

QUOTE

McDougall J stated: "[37] In principle, I think, the requirement in s 13(2)(a) that a payment claim must identify the construction work to which the progress payment relates is capable of being satisfied where:

- (1) The payment claim gives an item reference which, in the absence of evidence to the contrary, is to be taken as referring to the contractual or other identification of the work;
- (2) That reference is supplemented by a single line item description of the work;
- (3) Particulars are given of the amount previously completed and claimed and the amount now said to be complete;
- (4) There is a summary that pulls all the details together and states the amount claimed.

[38] Where payment claims in that format have been used, apparently without objection, on 11 previous occasions, it is very difficult to understand how the use of the same format on the 12th and 13th occasions could be said not to comply with the requirements of s 13(2)(a). If payments claims in that format had sufficiently identified the construction work to which the progress payment claimed related on 11 previous occasions, I find it hard to understand how they would lose that character on the 12th and 13th occasion."

IMPACT

The sufficiency of a payment claim depends upon the conduct of the parties, history of the construction work and the broad issues underlying the dispute but the Court seems to be adopting a liberal approach.

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