

LUCAS STUART PTY LIMITED v COUNCIL OF THE CITY OF SYDNEY
[2005] NSWSC 840
Supreme Court of New South Wales – 23 August 2005

FACTS

Lucas Street Pty Ltd (“Lucas”) entered into a construction contract with the Council of the City of Sydney (“the Council”) for the reconstruction of the Customs House.

Lucas served a Payment Claim under the *Building and Construction Industry Security of Payment Act 1999* (NSW) (“the Act”) in the sum of \$3,952,474 for variations and alleged unpaid contract sum amounts. The Council failed to issue a Payment Schedule under section 14 of the Act within the 10 business days after service of the Payment Claim. Following the service of the Payment Claim, the due date for payment passed and Lucas did not receive any payment from the Council.

Lucas then sought summary judgment for the Payment Claim in the Supreme Court on the basis of section 15(2)(a) of the Act, which provides that “a claimant...may recover the unpaid portion of the claimed amount from the respondent, as a debt due to the claimant, in any court of competent jurisdiction...” The Council, by way of defence, sought to contend that Lucas engaged in conduct that was misleading and deceptive concerning the service of the Payment Claim and, further, that Lucas should be estopped so as to prevent Lucas from relying on the documents provided forming the Payment Claim as Lucas had allegedly foreshadowed the provision of a number of contractual claims that awaited resolution, rather than a Payment Claim.

ISSUE

Whether Lucas was entitled to summary judgment.

FINDING

The Court found that notwithstanding the claims for estoppel and misleading and deceptive conduct, the proper analysis was that Lucas was entitled to summary judgment for the total amount claimed.

QUOTE

Einstein J held at paragraphs 19 and 21:

[19] This legislative scheme is concerned and concerned only with strict compliance by each party with every parameter of the letter of the legislation. Hodgson JA in *Brodyn Pty Ltd v Davenport* used the words “*the strong legal effect provided by the Act*” (at [52]), also endorsing the proposition that the Act discloses a legislative intention to give an entitlement to progress payments, and to provide a mechanism to ensure that disputes concerning the amount of such payments are resolved with the minimum opportunity for court involvement.

[21] It seems to me that in those circumstances [and notwithstanding the pleaded equitable estoppel and Trade Practices Act/Fair Trading Act issues] the Court may comfortably be satisfied that [subject to the second sum issue] the Council has become “*liable to pay the claimed amount under section 14(4) as a consequence of having failed to provide a payment schedule to the claimant within the time allowed by that section*”, within the meaning of these words as found in s 15(1)(a). The critical words are “*has become liable to payment the claimed amount under section 14(4)*”. These words create what may be described as a strictly mechanical scheme. Whilst ever the environment concerns the engagement of the fast track interim provisions of the Act [as opposed to the parties retained curial rights to have a final determination of their dispute on a later occasion] there is simply not room for moving outside of this scheme.

IMPACT

This case confirms the proposition that the Act is a strict liability scheme and that cross-claims for estoppel and misleading and deceptive conduct, in the context of summary judgment, are outside the scheme of the Act and unlikely to be entertained by the Courts.

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