



## Skinner v Timms & Anor [2009] QSC 46 (10 March 2009)

### FACTS:

The Applicant (Skinner) is a builder who subcontracted the Respondent (Timms) for painting works. On 29 October 2008, the Respondent served a payment claim under the *Building and Construction Industry Payment Act 2004 (Qld)* ("the Act"). The Applicant responded with an email on 30 October 2008; and the Respondent served an adjudication application on 13 November 2008 which was not responded to by the Applicant and was subsequently determined by the adjudicator in favour of the Respondent.

Section 12 of the Act provides that a claimant is entitled to a progress payment "from each reference date"; and the applicable reference date defined in schedule 2 of the Act is "the last day of each later named month". The Respondent last carried out construction work referred in the payment claim on 21 October 2008.

### ISSUE:

Whether the Respondent was entitled to a progress payment under the Act prior to the contractual reference date, and whether the Applicant's email was a valid payment schedule.

### FINDING:

The Court found that the reference date for the work claimed was 30 October 2008 and therefore the Respondent had no right to progress payment as at 29 October 2008, which effectively invalidated the payment claim.

The Court further found that the correspondence from the Applicant was merely an email in rather vituperative terms, and did not comply with the requirement of a payment schedule under the Act. The Respondent should have notified the Applicant of its intention to proceed to adjudication, and the Respondent was required to provide the Applicant with 2 days to serve a second chance payment schedule.

### QUOTE:

Wilson J at 13 and 18:

[at 13]

*"...Mr Timms last carried out construction work referred to in the tax invoice on 21 October 2008, so that the reference date for the work claimed was 30 October 2008. In other words, Mr Timms had no right to serve a payment claim as at 29 October 2008."*

[at 18] Wilson J said that because Mr Timms did not comply with the requirements under section 21(2) of the Act,

*"...thereby depriving Mr Skinner of notice of his intention to make an adjudication application and of a second chance to respond to the payment claim by serving a payment schedule. In the circumstances he had no entitlement to bring an adjudication application, and the application he purported to bring did not enliven the jurisdiction of the adjudicator."*

### IMPACT:

This case demonstrates that in order to avoid problems in proceeding under the security of payment legislation, all of the procedures and time limits under the Act an applicant should strictly comply with all legislative requirements.

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