



## **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 made five Adjudication Applications. Rail Corp objected to 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.

### **ISSUES:**

Was there only one Payment Claim comprising the five invoices? 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. The Act prevents a party from raising in an adjudication application any reason for non payment that is not in its Payment Schedule. An objection to jurisdiction is not a reason for non payment. It can therefore be raised in an adjudication response even though it is not in a party's Payment Schedule.

### **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 likely to arise. An objection to jurisdiction can only arise when the Claimant makes an objectionable adjudication application. It also highlights the dangers of endorsing every invoice as a Payment Claim under the Act. The Court only held that, in an appropriate circumstance, the invoices would comprise one Payment Claim. It may not always be the case.