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BAULDERSTONE HORNIBROOK PTY LTD V HBO & DC PTY LTD

[2001] NSWSC 821

Supreme Court of New South Wales – 14 September 2001

FACTS

HBO & DC Pty Ltd. ('HBO') entered into a contract with Baulderstone Hornibrook Pty Ltd. ('Baulderstone'). HBO served a Payment Claim pursuant to the Building and Construction Industry Security of Payment Act 1999 ('the Act'). Baulderstone did not respond with a Payment Schedule under the Act within the prescribed time and failed or refused to pay the adjudicated amount. HBO then sought to enter summary judgment. Baulderstone indicated that it would argue that HBO was not entitled to an order for summary judgment for reasons which include that the Payment Claim was not a claim within the meaning of the Act.

ISSUES

When can summary judgment be entertained?

FINDING

The Court noted that the default provisions of the Act provide that judgment in favour of a Claimant is not to be entered unless the Court is satisfied that:

- the Respondent has failed to serve a payment schedule within the prescribed time and the Respondent has failed to pay the whole or any part of the amount claimed; or
- the Respondent provides a payment schedule indicating an amount that the Respondent proposes to pay and the Respondent fails to pay the whole or any part of the scheduled amount on or before the due date for the progress payment to which the payment claim relates; or
- the claim proceeds to adjudication and the Respondent fails to pay the adjudicated amount or fails to give security for payment of the whole or any part of the adjudicated amount.

In the present case the Court found that important issues raised in relation to the Act would need to be decided and it was not satisfied that entertaining a summary judgment application separately was consistent with the just, quick and cheap resolution of the proceeding. Those issues could be determined at a final hearing.

QUOTE

"The overriding purpose of these rules, in their application to civil proceedings, is to facilitate the just, quick and cheap resolution of the real issues in such proceedings."

IMPACT

The NSW Act has since been amended so that the case would now be decided differently. Under the amendments act, there is no need to make a summary judgment application to enforce payment of an adjudicated amount. Instead, the claimant now simply applies to the authorised nominating authority for an "adjudication certificate" which the claimant can then file as a judgment of the court.

The new Queensland Act incorporates these "adjudicate certificate" provisions.

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