

**STATE OF QUEENSLAND V EPOCA CONSTRUCTIONS PTY LTD AND ANOR
[2006] QSC 324
Supreme Court of Queensland – 31 October 2006**

FACTS

The State of Queensland, acting through the Department of Main Roads (“DMR”) entered into a contract with Epoca Constructions Pty Ltd (“Epoca”) for the construction of the western arterial bikeway from Fig Tree Pocket Rd to the Brisbane River. The contract was terminated early by DMR. Following the termination, Epoca served a Payment Claim pursuant to the *Building and Construction Industry Payments Act 2004 (QLD)* (“the BCIPA”) in the sum of \$1,698,379.21. DMR denied in its payment schedule that it was obliged to make any payment to Epoca, and the matter was then referred to adjudication.

The Adjudicator, Mr Phillip Davenport, determined that Epoca was entitled to a progress payment in the sum of \$738,293.39.

ISSUES

Is an Adjudicator’s decision under the BCIPA subject to review by the Supreme Court pursuant to the *Judicial Review Act 1991 (QLD)* (“the JRA”), and what degree of error will lead the Court to set aside all or part of the determination?

FINDING

The Court confirmed that the NSW decision in *Brodyn* which held that judicial review is not available in the context of the NSW Act did not apply in Queensland where the JRA operates unless it is specifically excluded by the legislation.

The Adjudicator’s decision was reviewed by the Court, who held that the Adjudicator’s decision involved errors with respect to an allowance for Site Facilities and three set offs claimed by DMR where the Adjudicator had made clear errors of law in interpreting the contract. The Court set aside the decision to the extent of those errors.

The Court declined to set aside the Adjudicator’s decision with respect to claims where the Adjudicator had decided that DMR had not provided sufficient materials to justify withholding payment and it was open to him to take that view, or where DMR had not raised the issues to the adjudicator in its payment schedule.

QUOTE

Philippides J held at [22] that:

While Brodyn considered the extent of judicial review available, in particular in the nature of certiorari, in respect of an adjudicator’s decision under the NSW Act, it is not of assistance to the distinct issue of whether the BCIPA is excluded from the ambit of the JRA. The decision in Brodyn was made in the context of there being no corresponding JRA. I do not consider that the reasoning in Brodyn can be applied to the interaction of the two pieces of legislation under consideration in the present case. In this regard, Epoca’s submissions face an insurmountable obstacle.

Philippides held at [49] that:

The statement of Mackenzie J in *Roadtek, Department of Main Roads v Philip Davenport* with which I respectfully agree is relevant here, that it that “[Nor, in principle,] should it be permissible to raise, in judicial review proceedings, an issue of law affecting the value of the claim which could have been raised in the way contemplated by the Act, but was not, even if the adjudicator is arguably wrong”.

Philippides held at [57] that:

The adjudicator was clearly not prepared on the basis of the material to determine the issues as to conformity against Epoca and to reduce the claim in the manner contended for by DMR. It was open to the adjudicator to take that view.

IMPACT

The Court confirmed that judicial review of Adjudicator’s decisions is available in Queensland, but in reviewing a decision, the Court must be satisfied that there is a clear error of law before it will set aside all or part of the determination.

© Doyles Construction Lawyers 2006

This publication is intended to be a topical report on recent cases in the construction, development and project industries. This publication is not intended to be a substitute for professional advice, and no liability is accepted. This publication may be reproduced with full acknowledgement.

NSW

Jim Doyle

P: 02 9283 5388

E: jdoyle@doylesconstructionlawyers.com

QLD

Frank Nardone

P: 07 3034 3333

E: fnardone@doylesconstructionlawyers.com

VIC

Vinodhini Krisnan

P: 03 9620 0322

E: vkrisnan@doylesconstructionlawyers.com