

CANT CONTRACTING PTY LTD V CASELLA AND ANOR
[2006] QCA 538
Court of Appeal of Queensland – 15 December 2006

FACTS

Cant Contracting Pty Ltd (Cant”) entered into a contract with Con and Michelle Lyndsay Casella (“Casella”) to construct five poultry sheds at a cost of \$211,143 per shed. Cant carried out substantial work on the project until the Laidley Shire Council issued a stop work order. At that time, Casella had made payments of \$522,578.95 under the contract.

Cant served a Payment Claim on Casella under the *Building and Construction Industry Payment Act 2004* (QLD) (“the Payment Act”) to recover the balance it claimed was due and owing under the contract. After Casella failed to provide a payment schedule within the time limits allowed by the Payment Act, Cant sought summary judgment in the Supreme Court for the amount claimed.

In Casella’s defence it asserted that Cant did not hold a building license for the work done under the contract, in breach of section 42 of the *Queensland Building Services Authority Act 1991* (QLD) (“the Building Act”). The Building Act provides that an unlicensed builder is not entitled to monetary or other consideration for carrying out building work and may only recover the cost of materials and work provided by others.

The Court at first instance awarded summary judgment in favour of Cant. Casella appealed the decision to the Court of Appeal.

ISSUES

Can a contractor who is prevented from recovering monetary compensation for unlicensed work performed by operation of section 42 of the Building Act recover the money under the Payment Act?

FINDING

The Court held that the Payment Act had to be read as being subject to section 42(3) of the Building Act. The Court found that the effect of the section was that Cant had no legal entitlement to any monetary compensation for work done under the contract, and as such it could not claim entitlement under the Act. The appeal was allowed and summary judgment set aside.

QUOTE

Jerrard JA held at [44] that:

The respondent was not entitled under ss 12 or 13 of the 2004 Act to a progress payment for any building work it had carried out, because s 42(3) of the 1991 Act says so. The progress payment it claimed was a monetary consideration for the building work carried out.

Philip McMurdo J held at [61] that:

This scheme for progress claims and their recovery is evidently unsuitable for the case of unregistered builders, because it operates from a premise of the builder’s entitlement being according to its contract... It is unlikely the Act was intended to benefit builders who cannot enforce the payment provisions of their contracts, especially when the making of such a contract involved an offence by the builder. Ultimately, it far from appears that the Payments Act was intended to override the disentitlement according to s 42; the contrary appears. In my view, the Payments Act operates only when there is a construction contract of which the terms as to payment are enforceable by the builder.

IMPACT

Contractors must ensure that they hold an appropriate licence for work performed. Failure to do so will be a breach of the Building Act, and may prevent the Contractor from recovering monetary compensation for the work either under the Payment Act or otherwise.

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