



Bezzina Developers P/L v. Deemah Stone (Qld) P/L [2007] QSC 286 Queensland Supreme Court 8 October 2007

FACTS:

Bezzina Developers Pty Ltd (“Bezzina”) are builder/developers who contracted with Deemah Stone (Qld) Pty Ltd (“Deemah”) for the provision of certain materials for their development.

During the course of the works Deemah provided Bezzina with 13 progress claims all but the last two of which were paid. Deemah pursued Bezzina for the outstanding monies under progress claim 12 by way of adjudication application under the *Building and Construction Industry Payments Act 2004 (QLD)* (“BCIP Act”).

A further adjudication application was sought by Deemah in respect of progress claim 13. Bezzina challenged the second adjudicator’s decision in favour of Deemah, on the basis that the second adjudicator had did not value the construction work pursuant to section 14 of the BCIP Act at the value given by the first adjudicator as he was unaware of it.

Bezzina sought to an application for statutory order of review of the second adjudicator’s decision but it was out of time under section 26 of the *Judicial Review Act 1991* (“JR Act”) to make such an application.

ISSUES:

Was the error such to give the Court jurisdiction to review the adjudicators’ decision and should the Court grant an extension of time for the making of an application for a statutory order of review?

FINDING:

The Court held that it did have jurisdiction because of the error of law and that it should grant an extension of time to Bezzina.

QUOTE:

Douglas J at [37]...

...That failure to comply with the statutory procedure involved an error of law sufficient to allow me to exercise jurisdiction under s.20(2)(f) of the JR Act.

[at 40] ...The seriousness of the consequences of this error to Bezzina, its explanation for its delay in bringing the application for a statutory order of review because of its ignorance of the time limits under the JR Act for such relief, its payment into Court of the money in dispute and the absence of significant evidence of prejudice to Deemah unassociated with the merits of the dispute, encourage me to grant any necessary extension of time under s.26 of the JR Act for the making of a statutory order of review.

IMPACT:

The case illustrates the importance of the claimant assisting the adjudicator by ensuring all relevant evidence is included in the adjudication application, in order to avoid later challenge in Courts.

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