



**The University of Sydney v Cadence Australia Pty Limited
& Anor [2009] NSWSC 635
New South Wales Supreme Court 15 July 2009**

FACTS:

Cadence Australia Pty Ltd (“Defendant”) undertook certain construction work for the University of Sydney (“Plaintiff”). In respect of that construction work, the defendant issued a statutory payment claim dated 10 March 2009 (“the first payment claim”), which was subsequently determined by an adjudicator.

The defendant then proceeded to issue a further statutory payment claim dated 18 June 2009 (“the second payment claim”). It was contended that the second payment claim was repetitious to the first payment claim.

On that basis the plaintiff approached the Court seeking relief by way of an injunction seeking to prevent the defendant from seeking adjudication of the second payment claim as an abuse of process.

ISSUES:

Whether the Dualcorp principle that you cannot resubmit an earlier statutory payment claim for adjudication if it has already been determined, extends to circumstances where only part of a previous statutory payment claim is incorporated into a new statutory payment claim?

FINDING:

The Court found that a party cannot include in a second statutory payment claim, any part of a first statutory payment claim, where that first claim has been rejected.

QUOTE:

Hammerschlag J [at 5]...

I have concluded that the second claim cannot be legitimately agitated using the procedures under the Act because: (a) even though it is not exactly the same as the earlier claim, a substantial and unseverable part of it has already been adjudicated, and the first defendant has exhausted its statutory entitlement to adjudication in respect of that part; and (b) the repetitious use of the Act is an abuse of process.”

IMPACT:

The case illustrates the Court’s attempt to manage the adjudication process and broaden the application of Dualcorp to the extent that a party cannot resubmit even a substantial part of a claim, which has previously been rejected.

Drafters of statutory payment claims should therefore exercise due care and diligence in drafting their first progress claims to ensure that all claims are included with all appropriate supporting material can support and substantiate the claimed amount.

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