



Lanmac (NSW-ACT) Pty Limited v Andrew Bruce Wallace & Ors [2010] NSWSC976

FACTS:

The plaintiff sought orders that:

- a. the third defendant, a contractor with an adjudication determination made in its favour against the plaintiff pursuant to the *Building and Construction Industry Security of Payment Act 1999* (“the Act”), be restrained from making a request to the authorised nominating authority to provide an adjudication certificate;
- b. the first and second defendants, authorised nominating authority and the adjudicator be restrained from providing an adjudication certificate; and
- c. the third defendant be restrained from filing any adjudication certificate.

ISSUE:

Whether the plaintiff was obliged to put the money into the court pursuant to section 25(4) of the Act if the plaintiff was going to challenge the determination.

FINDING:

The Court found that the plaintiff’s application be resolved and ordered the proceedings be stayed until the payment into the Court by the plaintiff of the adjudicated amount, or alternatively the provision of a bank guarantee.

QUOTE:

Einstein J at 12:

[referring with approval to Bergin J in paragraph 18 of *Tombleson v Dancorell Constructions Pty Limited* [2007] NSWSC 1169]

“the Court if not only cautious to ensure justice between the parties, but also to ensure that the legislation under which this application is brought is not circumvented.”

[referring to paragraph 25 of *Tombleson v Dancorell Constructions Pty Limited* [2007] NSWSC 1169]

“I am satisfied that the plaintiff’s pleadings seeks to avoid the triggering of s 25(4) of the Act. I am also satisfied that to ensure a just resolution of these proceedings I should exercise my discretion in favour of the defendant to stay the proceedings until the plaintiff provides a bank guarantee or pays money into Court...”

IMPACT:

In applications to set aside adjudicator’s determinations under the Security of Payment legislation, a respondent will generally be required to pay into Court an amount equal to the adjudicator’s determination.

This decision highlights the Court’s emphasis on facilitating the purpose of the Security of Payment legislation, namely to ensure effective cash flow in the construction industry and to secure contractor’s entitlements to payment.

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