



**Hansen Yuncken Pty Ltd v Ian James Ericson trading as Flea's Concreting &
Anor (No.2) [2010] QSC 457
Queensland Supreme Court 6 December 2010**

FACTS:

Flea's Concreting ("the Respondent") was subcontracted by Hansen Yuncken ("the Applicant") to perform certain construction works.

The Respondent issued a statutory payment claim pursuant to the *Building and Construction Industry Security of Payment Act 2004* ("the Act"), which was subsequently determined in favour of the Respondent in the full amount of the Payment Claim plus interest pursuant to the *Queensland Building Services Authority Act 1991* ("the QBSA Act").

The Applicant then obtained an injunction pending a substantive hearing on the condition that it pay into Court an amount securing the determined amount.

The Respondent in this application before the Court now seeks additional security to be paid into Court pursuant to the QBSA prior to the hearing of the substantive hearing.

ISSUES:

Whether the Applicant should provide the additional security sought on the basis that it is in a strong financial position and that the proceedings have been delayed by the Respondent.

FINDING:

Per McMurdo J [at 8]...

"The Payments Act has an evident purpose of securing for a builder the expeditious payment of progress claims where they have been upheld by an adjudicator. In particular, s 31(4) provides that if an adjudication certificate has been obtained and filed as a judgement, and the defendant commences proceedings to have that judgement set aside, the defendant is required to pay into court as security the unpaid portion of the adjudicated amount pending the final decision in those proceedings. Accordingly to restrain a successful claimant from enforcing his rights from an adjudicator's decision, and from obtaining an adjudication certification, is not light matter... As there is not said to be any significant detriment for the applicant in providing that additional security, in my view the balance of convenience favours the order sought, so that any risk to Mr Ericson can be avoided."

IMPACT:

This case illustrates that notwithstanding the financial strength of a party who wishes to injunct an adjudication determination pending a substantive hearing, that that party will generally be required to pay into Court an amount equal to the determined amount and also an additional amount in respect of interest to be accrued up to the hearing of the substantive case.

Claimants under the Act should ensure that any application by a Respondent under the Act to have an adjudicator's determination set aside, should be met with an application for payment into Court of the adjudication amount plus any interest entitlements which a claimant may have.

© Doyle's Construction Lawyers 2011

This publication is intended to be a topical report on recent cases in the construction, development and engineering 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.

Jim Doyle

1800 888 783

jdoyle@doylesconstructionlawyers.com

www.doylesconstructionlawyers.com