

Venture Spirits Pty Ltd v Adjudicate Today Pty Ltd [2024] TASSC 12

FACTS

The case of Venture Spirits Pty Ltd v Adjudicate Today Pty Ltd [2024] TASSC 12 involved a dispute between a company (Venture) and a builder Jayspec Builders Pty Ltd (Jayspec), in respect of \$170,603.03 for construction works performed at Venture's business premises in North Hobart.

The matter was referred to an adjudicator who determined that Jayspec was entitled to payment of the full amount. As per the Building and Construction Industry Security of Payment Act 2009 ("the Act")S27(5), the respondent is required to pay the adjudicated amount pending determination of the Venture's application for prerogative relief on based on alleged jurisdictional error. In response, Jayspec filed an interlocutory application seeking a stay of proceedings until Venture paid the amount owing under the adjudication certificate. Venture asserted financial inconvenience.

ISSUE

Whether a parties' financial inconvenience should be considered in relation to section 27(5) of the Act regarding mandatory payment of the adjudicated amount?

FINDINGS

His Honour, Brett J considered how the exercise of discretion related to the objectives of the Act, whilst acknowledging that each case has its own set of circumstances:

"22. In any event, the mandatory nature of the payment in if s 27(5)(b) is triggered suggests that the weight that should be placed on this consideration as a discretionary factor is limited. The proceedings for prerogative relief are only one step away from setting aside the judgment. If these proceedings are successful, then the setting aside of the judgment will follow as a matter of course. The legislative emphasis is on the mandatory provision of security if there is a challenge to the interlocutory finality of the adjudicator's determination. This is all consistent with the "pay now, argue later" nature of the legislative scheme."

IMPACT

His Honour held that payment in was required, and a respondent should realise that an appeal will not defer payment either to the claimant or into Court.