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Taringa Property Group Pty Ltd v Kenik Pty Ltd [2024] QSC 327

FACTS
Taringa Property Group Pty Ltd (Taringa) and Kenik Pty Ltd (Kenik) were involved in a dispute regarding a construction contract. Taringa sought to apply for a stay of proceedings in order to delay payment and the enforcement of an adjudication determination in its favour for $4m.

The issue arose because Taringa had not been placed into liquidation, nor had it admitted to insolvency, raising the question of whether a stay should be granted.

ISSUE
Whether a stay should be granted in Queensland for the first time where the claimant is not in liquidation or admitted insolvency.

FINDING
Justice Hindman ruled in favour of granting the stay albeit on strict conditions. He emphasized the policy behind the Building Industry Fairness (BIF) Act of "pay now and argue later" in the construction industry.

. Justice Hindman further remarked:

"Each case will, of course, be determined on its own merits. The policy of the BIF Act of pay now and argue later is strong, and it is only ever going to be a small number of cases in which a stay might properly be granted. Principals who apply for stays without a proper basis can be appropriately discouraged from making stay applications in the nature of a fishing exercise into solvency by the appropriate use of indemnity costs orders. That consideration therefore does not compel a different result here, in my opinion." (para. 15)

IMPACT

This decision underscores the importance of timely claims for smaller amounts.

Contract managers should ensure that claims are made early and often. Waiting until the end of a project and seeking a larger payment increases the likelihood of a stay being granted as the financial strength of the Applicant to repay is more easily challenged.

Jim Doyle
1800 888 783
doyles@doylesconstructionlawyers.com
www.doylesconstructionlawyers.com