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HAWKINS CONSTRUCTION V MAC'S INDUSTRIAL PIPEWORK [2001] NSWSC 815; & on appeal [2002] NSWCA 136 Supreme Court of New South Wales – 18 September 2001; 9 May 2002

FACTS

Mac's Industrial Pipework ('Mac's'), a subcontractor, initially entered into a subcontract to install plumbing and fire services in the construction of an abattoir and then a second subcontract, which was not signed by one of the parties, to install a hot and cold water reticulation system. The court accepted that the same general terms of the first subcontract were incorporated into the second subcontract. Hawkins Construction ('Hawkins') was the contractor. Mac's claimed a progress payment under the Act for the work performed under the second subcontract. It appears that the payment claim contained the incorrect contract number and abbreviated the name of the Act under which the claim was made, referring to it as the "Building Construction Ind Security of Payments Act 1999". Hawkins did not serve a payment schedule under the Act. Consequently, Mac's served a creditor's statutory demand on Hawkins under the Corporations Law. Hawkins sought a declaration that the Act did not apply to the second subcontract, and also contended that the subcontractor's invoices were not in compliance with the legislation.

ISSUES

- Did the Act apply to sub-contracts when head contracts precede the Act?
- Was the payment claim was a valid payment claim under the Act?

FINDING

The Court held that a head contract pre-dating the commencement of the legislation does not prevent the legislation applying to a post commencement subcontract. The Court rejected Hawkins argument that the second subcontract was a variation upon the first subcontract because there was a separate tendering process involved.

Minor defects in the form of payment claim were not fatal. The Court held a reference to the incorrect contract number and the abbreviation of the title of the Act did not invalidate the claim. The work performed had been identified in the claim.

The Court adjusted the amount of the statutory demand, having regard to cross-claims raised by Hawkins, but allowed the demand to stand for the varied amount.

QUOTE

Davies AJA stated "...ss (2) of s 13 of the Act should not be approached in an unduly technical manner...The terms used by ss (2) of s 13 are well understood words of the English language. They should be given their normal and natural meaning. As the words are used in relation to events occurring in the construction industry, they should be applied in a common sense practical manner."

IMPACT

The Act applies to subcontracts entered into on or after the commencement date of the Act even where the head contract precedes the commencement of the legislation.

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