

BAULDERSTONE HORNIBROOK PTY LIMITED V QUEENSLAND INVESTMENT CORPORATION [2006] NSWSC 522
Supreme Court of New South Wales – 7 June 2006

FACTS

Baulderstone Hornibrook Pty Limited (“BHPL”) entered into a contract with Queensland Investment Corporation (“QIC”) whereby BHPL agreed to design and construct the Westpoint Shopping Centre Redevelopment at Blacktown. BHPL served a Payment Claim on QIC, said to be made in accordance with clause 42 of the contract and under the *Building and Construction Industry Security of Payment Act 1999* (NSW), in the sum of \$105,411,474.00. QIC provided BHPL with eight folders of documents in response, including a document said to be a Payment Schedule under the Act, and a document said to be a progress payment certificate under the contract.

BHPL denied that a valid Payment Schedule had been provided by QIC, on the basis that the covering letter accompanying the folders only referred to the Progress Certificate and not the Payment Schedule, and the Payment Schedule itself was signed only by the Respondent’s solicitors. BHPL, having taken this position, then purported to give notice to QIC under section 15(2)(b) of the Act of its intention to suspend carrying out work, and applied to the Supreme Court for judgment in the sum of \$105,411,474.00.

ISSUE

Whether a valid Payment Schedule was provided to BHPL by QIC?

FINDING

The Court rejected BHPL’s arguments as to the invalidity of QIC’s Payment Schedule, finding that when looked at as a whole, there could be no doubt that the document provided to BHPL by QIC was a Payment Schedule. The Court made orders that the Payment Schedule complied with the Act, and declared that the section 15(2)(b) notice served on QIC by BHPL was invalid.

QUOTE

Einstein J at paragraph 23 endorsed QIC’s submission that:

Given that there is no requirement under s.14 of the Act that an endorsement be included to the effect that the payment schedule is *made under the Act*, it is immaterial that the accompanying letter made no reference to the Act, and did not use the phrase “*payment schedule*”.

Einstein J found, at paragraph 36, that:

- i. There are no requirements in s.14 of the Act that in order for a document to be a “*payment schedule*” it must be signed in a particular manner or by a particular person.
- ii. Indeed, there are no requirements that the payment schedule be signed at all.
- iii. The only relevant requirement is that the payment schedule be provided by the respondent [being the person on whom the payment claim has been served] to the claimant (s.14(1));
- iv. The question as to whether the payment schedule has been provided to the claimant by the respondent is a question of fact;
- v. That question of fact is answered in the affirmative on the evidence before the Court.

IMPACT

The Court will consider whether a document is a Payment Schedule by reference to the provisions of the Act. In doing so, the Court tends to avoid being overly technical, but care should still be taken when preparing a Payment Schedule to ensure that no doubt is left as to whether the document is a Payment Schedule under the Act and that the requirements of the Act are met.