



**RICHARD SHORTEN & ANOR –V- DAVID HURST CONSTRUCTIONS PTY LTD
LIMITED & ANOR; DAVID HURST CONSTRUCTIONS –V- RICHARD WILLIAM
SHORTEN & ANOR [2008] NSWSC 546**

Supreme Court of New South Wales 5 June 2008

FACTS:

These proceedings involved a challenge to two adjudication determinations by the plaintiffs, Mr and Mrs Shorten, against the adjudicator, the second defendant, and the builder as the first defendant. The challenge of the adjudication applications may be based on an argument that a denial of natural justice occurred where a full complete copy of the adjudication application had not been served.

The contract between the builder and the plaintiffs related to the construction of a residential building of 10 apartment in Wagga Wagga, New South Wales.

ISSUES:

The case revolved around whether the builder failed to prove that a full copy of the adjudication application (comprised of extensive submissions and supporting documents) was properly served, and whether that failure contributed to a denial of natural justice.

FINDING:

That the service of an incomplete adjudication application, did amount to a denial of natural justice so far so as to nullify the adjudicator’s determination [at 74].

The Court was not satisfied that a complete copy of the adjudication application had been served as the voluminous documents had not been checked properly prior to service.

The onus and proof of proper service, was on the builder, and if it could not prove proper service then he could not take advantage of the adjudication result obtained by his failure to properly inform the owner of the adjudication application.

The service of an incomplete adjudication application may amount to a denial of natural justice which in its effect could deny a respondent from an opportunity to properly respond to the application made against it and there are very limited circumstances where a denial of natural justice doesn’t vitiate the decision.

QUOTE:

Einstein J [at 66]

“...No man can take advantage of his own wrong...”

IMPACT:

The case illustrates the need for careful precision in proving proper service of documents in the adjudication process, and also the fundamental proposition that no man can take advantage of his own wrong.

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