



**Reed Construction (Q) Pty Limited v Dellsun Pty Limited [2009] QSC 263  
Queensland Supreme Court  
4 September 2009**

**FACTS:**

The applicant Reed Construction (Q) Pty Ltd (“Applicant”) seeks to set aside a statutory demand served by the respondent, Dellsun Pty Ltd (“Respondent”), on the basis that there is either a genuine dispute to the amount claimed in the creditor’s statutory demand, or there is an offsetting claim to it .

The Respondent served a statutory payment claims under the *Building Construction Industries Payments Act 2004 (QLD)* (“BCIPA”), which was later determined by an adjudicator which determined that while the Respondent is owed a sum of \$39,640.40, the Applicant is entitled to the costs of rectification of the Defendant’s defective work in the amount of \$28,000.00 to \$45,000.00.

The adjudicator finally determined that the Respondent owed the Application a total sum of \$71,823.43. The Respondent then served a creditor’s statutory demand upon the Applicant for various invoices the subject of the adjudicator’s determination.

**ISSUES:**

Whether a creditor’s statutory demand is valid where it is served on the basis of an adjudicator’s determination?

**FINDING:**

The Court found that a creditor’s statutory demand served under those circumstances was not valid on the basis that there may still be a genuine dispute or an offsetting claim to the amount sought under the creditor’s statutory demand.

This is so particularly in light of the fact that an adjudicator’s determination is an interim decision, which is still open to be tested in a court of competent jurisdiction.

**QUOTE:**

Martin J [at 46]...

*“...It is sufficient for the purposes of this decision, to hold that s 100(1)(c), by providing that nothing in Part 3 of BCIPA affects any right that a party to a construction contract may have apart from the Act in relation to anything done or omitted to be done under the contract, is sufficient to allow (if it is otherwise needed) a party to raise a genuine dispute or an offsetting claim under s 459G of the Corporations Act”*

**IMPACT:**

The case illustrates that there are very few (if any) limited circumstances under which a creditor’s statutory demand may be held as being valid where the basis upon which it relies is an interim determination or judgment made under the BCIPA (or its equivalents).