

SUPREME COURT OF QUEENSLAND

CITATION: *KDV Sport Pty Ltd v Muggeridge Constructions Pty Ltd & Ors*
[2019] QSC 178

PARTIES: **KDV-SPORT PTY LTD ABN 85 149 913 333**
(Applicant)
v
MUGGERIDGE CONSTRUCTIONS PTY LTD ABN 63 130 842 572
(First Respondent)

AND

JENNY PHILLIPS (ADJUDICATION REGISTRAR)
(Second Respondent)

AND

JOHN TUHTAN (ADJUDICATOR J1190798)
(Third Respondent)

FILE NO/S: BS No 13748 of 2018

DIVISION: Trial Division

PROCEEDING: Originating Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 23 July 2019

DELIVERED AT: Brisbane

HEARING DATE: 12 February 2019

JUDGE: Brown J

ORDER: **1. Pursuant to s 10 of the *Civil Proceedings Act 2011* (Qld), it is declared that the adjudication decision dated 3 December 2018 and issued 4 December 2018 of the third respondent (Registered Adjudicator number J1190798) in adjudication application number QBCC 433299 (Adjudication Decision), purportedly made pursuant to the *Building and Construction Industry Payments Act 2004* (Qld), is void for want of jurisdiction.**

2. The Adjudication Decision be set aside.

CATCHWORDS: ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – JURISDICTIONAL MATTERS – where the applicant and

first respondent entered into a contract in relation to the construction of student accommodation – where the first respondent served a payment claim under the *Building and Construction Industry Payments Act 2004* (Qld) on the applicant for construction work done by the first respondent – where the applicant contended the payment claim was invalid but otherwise proposed in response to the payment claim to pay nil – where the first respondent applied for adjudication pursuant to s 21 of the Payments Act – whether the adjudicator’s decision was void for jurisdictional error because the first respondent did not provide a valid payment claim within the meaning of the Payments Act – whether the payment claim identified the construction work to which the claim related in order to satisfy the requirements in s 17(2) of the Payments Act

Building and Construction Industry Payments Act 2004 (Qld), s 17, s 26

Clarence Street Pty Ltd v Isis Projects Pty Ltd [2005] NSWCA 391, considered

Coordinated Construction Co Pty Ltd v Climatech (Canberra) Pty Ltd (2005) 21 BCL 364, cited

Protectavale Pty Ltd v K2K Pty Ltd [2008] FCA 1248, distinguished

Leighton v Arogen [2012] NSWSC 1323, applied

Nepean Engineering Pty Ltd v Total Process Services Pty Ltd (in liq) (2005) 64 NSWLR 462, cited

Neumann Contractors Pty Ltd v Peet Beachton Syndicate Ltd [2011] 1 Qd R 17, applied

Northbuild Constructions Pty Ltd v Central Interior Linings Pty Ltd [2012] 1 Qd R 525, applied

Peter’s of Kensington v Seersucker Pty Ltd [2008] NSWSC 897, distinguished

T & M Buckley P/L v 57 Moss Road P/L [2010] QCA 381, applied

Trysams Pty Ltd v Club Constructions (NSW) Pty Ltd [2007] NSWSC 941, applied

Watkins Contracting Pty Ltd v Hyatt Ground Engineering Pty Ltd [2018] QSC 65, applied

COUNSEL:

M H Hindman QC with M Steele for the applicant

G D Beacham QC with M C Long for the first respondent

SOLICITORS: McInnes Wilson for the applicant
 Holding Redlich for the first respondent

- [1] On about 14 August 2017, KDV Sport Pty Ltd (“**KDV**”) and Muggeridge Constructions Pty Ltd (“**Muggeridge**”) entered into a contract in relation to the construction of student accommodation. The contract was a lump sum contract for \$10.627 million, under which Muggeridge was contracted to carry out the construction work.
- [2] The present dispute relates to a purported payment claim served on KDV by Muggeridge in the amount of \$2,365,432 (including GST) on approximately 20 August 2018. KDV’s solicitors wrote to Muggeridge contending that the purported payment claim was invalid because it did not meet the requirements of s 17(2) of the *Building and Construction Industry Payments Act 2004* (Qld) (“**the Payments Act**”). While reserving its primary position, KDV provided a payment schedule under the Payments Act which largely relied on a certificate provided by the Superintendent of the contract, WT Partners, with some qualifications. The payment schedule proposed by KDV provided for a payment of nil. Subsequently, Muggeridge applied for adjudication pursuant to s 21 of the Payments Act. An adjudication process was carried out with submissions being exchanged. On 4 December 2018, the adjudicator issued a decision, which determined that an amount of \$802,198.59 was payable from 10 September 2018, with an interest rate of 11.96 percent. KDV contends that the adjudicator’s decision is affected by jurisdictional errors which, at least in the case of two of the errors relied upon, justify the conclusion that the decision is void.
- [3] KDV raises three issues for determination for this Court, namely:
- (a) Whether the adjudicator’s decision is void because there was not a valid payment claim for the purposes of the Payments Act, because the claim failed to identify the construction work to which the progress claim related with sufficient particularity to satisfy the requirements in s 17(2) of the Payments Act; (“**Ground 1**”)¹
 - (b) Whether the adjudicator’s decision is void because the adjudicator did not comply with s 26(2) of the Payments Act, failed to provide the required level of natural justice to the parties and failed to set out adequately in his reasons the process by which he came to and justified the valuation of the construction work, as he failed to properly address:
 - (i) The amounts claimed by Muggeridge;
 - (ii) The amount submitted by KDV; and
 - (iii) The submissions of the parties; (“**Ground 3**”) or

¹ In its written submissions, KDV advanced as **Ground 2** that Muggeridge was not a person entitled to a progress payment within the meaning of s 12 of the Payments Act, because work referred to in the purported payment claim did not relate to a reference date within the meaning of the Payments Act. At the hearing, KDV stated that it no longer relied on the error identified in Ground 2.

(c) The adjudicator failed to take into account submissions as to the requirements imposed on KDV to withhold amounts for subcontractors' charges pursuant to the *Subcontractors' Charges Act 1974* (Qld) and thereby did not comply with s 26(2) of the Payments Act. ("**Ground 4**")

- [4] The Court was advised by KDV that if it found that Ground 1 was made out, it did not need to consider any further grounds as the payment claim would be void. If the Court considered Ground 3 was made out, KDV submitted that the whole of the adjudicated amount would be affected by jurisdictional error and should be set aside, but KDV accepted that it was open for the Court to take the view that there may be jurisdictional error in respect of only some aspects of the decision, in which case the Court would have to consider the question of partial invalidity under s 100(4) of the Payments Act. Ground 4 was limited to affecting interest and, according to KDV, would only need to be considered if the Court did not consider the whole claim was void on the basis of Ground 1 or Ground 3.
- [5] The respondent denies that the adjudicator's decision is affected by any jurisdictional error and contends that none of the errors identified are made out or, if there was any error, that properly characterised it was not a jurisdictional error entitling KDV to the relief sought.
- [6] The factual background to the matter has been agreed between the parties,² as have the applicable general legal principles³ (save in respect of the service of the Quantity Surveyor's report, which is relevant to Ground 3).

Legal Principles

- [7] An adjudication decision may be declared void only if it is affected by jurisdictional error.⁴ The question for the Court is not whether the Court would have come to the same conclusion as the adjudicator; the question is whether the adjudicator performed the functions demanded by the Payments Act, keeping in mind that the legislative intent is that a person with the relevant expertise is selected for the task by an informed body to facilitate the rapid decision making required.⁵ There are many errors of fact and law which might be made by an adjudicator which would not be regarded as going to jurisdiction.
- [8] Under s 26(1) of the Payments Act, an adjudicator is required to decide the amount of the progress payment, if any, to be paid by a respondent to a claimant and the date upon which it becomes due and payable, together with the rate of interest. Section 26(2) limits the matters which the adjudicator is to consider in deciding the adjudication application. Section 26(3) obliges reasons for the decision to be given by the adjudicator.

² Applicant's Submissions, [3]-[10]; Respondent's Submissions, [2].

³ Applicant's Submissions, [11]-[16]; Respondent's Submissions, [2].

⁴ *Watkins Contracting Pty Ltd v Hyatt Ground Engineering Pty Ltd* [2018] QSC 65 at [50]-[51].

⁵ *Northbuild Constructions Pty Ltd v Central Interior Linings Pty Ltd* [2012] 1 Qd R 525 at [96].

- [9] In determining whether an adjudication decision is affected by a jurisdictional error, the application of the relevant principles is not cut and dried. According to Hammerschlag J in *Trysams Pty Ltd v Club Constructions (NSW) Pty Ltd*:⁶

“It is accordingly necessary to consider the nature, gravity and effect of the errors, if any, made by the adjudicator, and to assess, in the context of the purpose and operation of this particular statute, whether the adjudicator breached a basic and essential requirement of the Act by not considering submissions duly made or by failing to make a bona fide attempt to exercise his powers under the Act, or whether the plaintiff was denied natural justice to a degree sufficient to void the adjudication.”

Legal principles – Ground 1

- [10] KDV contends the payment claim did not satisfy the requirements of s 17(2)(a) of the Payments Act, such that there was no payment claim to enliven the jurisdiction of the adjudicator under the adjudication scheme provided for by the Payments Act.

- [11] Section 17(2)(a) of the Payments Act provides:

“(2) A payment claim—

- (a) must identify the construction work or related goods and services to which the progress payment relates; ...”

- [12] There is no jurisdiction for an adjudicator to consider a purported payment claim which does not comply with s 17(2)(a) of the Payments Act.⁷

- [13] In *T & M Buckley P/L v 57 Moss Road P/L*,⁸ Philippides J (as her Honour then was)⁹ stated at [38] that the Judge had erred in adopting the approach that he did and had set too high a bar in respect of what was required by s 17(2)(a) of the Payments Act:

“The issue for determination was not whether the payment claim explained in every respect the means by which a particular claim item had been calculated, but whether the relevant construction work or related goods and services was sufficiently identified as explained above. That is, whether the payment claim reasonably identified the construction work to which it related such that the basis of the claim was reasonably comprehensible to the applicant.”

⁶ [2007] NSWSC 941 at [33].

⁷ *Northbuild Constructions Pty Ltd v Central Interior Linings Pty Ltd* [2012] 1 Qd R 525 at [32], per Chesterman JA.

⁸ [2010] QCA 381.

⁹ With whom Fraser and White JJA agreed.

- [14] Her Honour had regard to the comments of Mason P in *Clarence Street Pty Ltd v Isis Projects Pty Ltd*¹⁰ and to both the judgments of Hodgson and Santow JJA in *Nepean Engineering Pty Ltd v Total Process Services Pty Ltd (in liq)*¹¹ and stated at [36]:

“Santow JA (at [47]-[48]) expressed the view that, in respect of the minimum necessary to satisfy the identification requirement that the payment claim “purport in a reasonable way to identify the work” there must be “sufficient specificity in the payment claim for its recipient actually to be able to identify a ‘payment claim’ for the purpose of determining whether to pay, or to respond by way of a payment schedule indicating the extent of payment, if any.” But having said that, his Honour stated his agreement with what Hodgson JA said in *Climatech Pty Ltd* that what was required was sufficient identification “to enable the respondent to understand the basis of the claim” and disavowed the notion that there was a legal necessity to include any material directed merely to persuading a respondent to accept a payment claim (at [25]).”

- [15] The test to determine whether the payment claim sufficiently identifies the construction work the subject of the claim is an objective one.¹² The assessment is not made only by reference to the terms of the claim itself. As White J commented in *Neumann Contractors Pty Ltd v Peet Beachton Syndicate Ltd*, “[t]he evaluation of the sufficiency of the identification takes into account the background knowledge of each of the parties derived from their past dealings and exchanges of documentation”.¹³ McDougall J in *Leighton v Arogen*¹⁴ relevantly stated that:

“It may be accepted that payment claims and payment schedules are to be understood as the parties to the relevant construction contract would have understood them. Thus, documents which appear to be extremely summary, or to the unformed but not unintelligent observer brief to the point of incomprehensibility, may be sufficiently meaningful to the parties to enable them to know, respectively, the bases on which a particular payment claim is advanced and the bases on which it is opposed.

In this context, it may well be appropriate to take into account, in particular factual circumstances, the background knowledge of the parties (for example) by correspondence passing between them before and at the time the payment claim and payment schedule were exchanged. That material might enable the Court to have a more informed understanding of the way that the parties would have perceived, and understood, the real issues sought to be raised...”

¹⁰ [2005] NSWCA 391 at [36], [38] and [39].

¹¹ (2005) 64 NSWLR 462.

¹² *Neumann Contractors Pty Ltd v Peet Beachton Syndicate Ltd* [2011] 1 Qd R 17 at [25], per White J, referring to *Nepean Engineering Pty Ltd v Total Process Services Pty Ltd (in liq)* (2005) 64 NSWLR 462, per Santow JA.

¹³ [2011] 1 Qd R 17 at [25].

¹⁴ [2012] NSWSC 1323 at [69]-[70].

- [16] The focus must remain on the objective circumstances, not on the subjective intentions of the parties, although it is not wrong to examine the issue from the vantage point of the parties to the particular contract.¹⁵
- [17] The test for whether the payment claim complies with s 17(2) of the Payments Act does not direct the inquiry to whether or not, in hindsight, there has been a successful articulation of the work in the claim: “a document ...does not fail to be a payment claim, within the meaning of the Act, merely because it can be seen, after a full investigation of all the facts and circumstances, not to successfully identify all the construction work for which payment is claimed.”¹⁶ As was stated by the Court of Appeal in *T & M Buckley*, the test is whether “the claim purports in a reasonable way to identify the particular work in respect of which the claim is made”.¹⁷ Errors or inaccuracies in the payment claim will rarely, if ever, provide a basis for concluding that it is not made in accordance with s 17(2)(a) of the Payments Act.
- [18] The above approach accords with the overall purpose of the Act, which was said by Basten JA in *Coordinated Construction Co Pty Ltd v Climatech (Canberra) Pty Ltd*¹⁸ to be:
- “...to provide a speedy and effective means of ensuring that progress payments are made during the course of the administration of a construction contract, without undue formality or resort to the law.”

¹⁵ *Clarence Street Pty Ltd v Isis Projects Pty Ltd* (2005) 64 NSWLR 448 at [39], per Mason P.

¹⁶ *Neumann Contractors Pty Ltd v Peet Beachton Syndicate Ltd* [2011] 1 Qd R 17 at 23-24.

¹⁷ Referring to White J in *Neumann Contractors Pty Ltd v Peet Beachton Syndicate Ltd* [2011] 1 Qd R 17, referring to *Nepean Engineering Pty Ltd v Total Process Services Pty Ltd (in liq)* [2005] NSWCA 409 at [36], per Hodgson JA.

¹⁸ (2005) 21 BCL 364; [2005] NSWCA 229 at [45].

Was the payment claim valid under s 17(2)(a) of the Payments Act?

- [19] The purported payment claim submitted by Mugeridge used the categories contained in the Trade Breakdown Schedule, which was required to be submitted as part of the tender to provide a breakdown of the contract sum, albeit that it was a lump sum contract. The Trade Breakdown Schedule, along with other documents, formed part of the contract. The Trade Breakdown Schedule set out the various categories of work required under the contract and attributed a part of the contract price to each category.

Contentions

- [20] KDV contends that the purported payment claim does not sufficiently identify the work for which the payment is claimed in order to satisfy the requirements of the Payments Act. It contends that for the 51 items referred to as the “trade breakdown” in the first half of the one page claim, of which 26 items are claimed for in the progress claim,¹⁹ the only descriptions provided are extremely general and offer no meaningful information about the actual work performed from time to time. Similarly, KDV submits that in relation to the amounts sought under the headings of “Variations”, the first 11 variations listed and variation #22 refer to variation order numbers but, do not, on the face of the document, identify the actual work to which they relate. Even for those variations where a description is provided, namely variations 12-21 and 32-33, KDV contends that only the barest description has been given, such that it is not possible to identify from the face of the document what work those variations relate to. It contends the variations listed as variations 28, 29 and 30 of the purported payment claim do not identify any work at all to which the claims relate.
- [21] KDV accepts that if the Court is satisfied that the payment claim meets the requirements of the Payments Act in respect of the principal claim, its argument as to variations will also not succeed.
- [22] KDV submits that the information provided in the purported payment claim is insufficient to offer any guidance to KDV about what the actual work was for the amounts claimed. It says that is evident on the face of the document. KDV also refers to the evidence of Ms Shtengelova, the General Manager of KDV, as well as the evidence of Mr Noonan, the Superintendent’s Quantity Surveyor, to demonstrate that the background information known by KDV was not sufficient to shed light on the information set out in the purported payment claim, such that the construction work for which the claim was made was reasonably comprehensible. KDV also states that view is further supported by the evidence of Mr Isaac, the National Director of WT Partners and Superintendent.
- [23] KDV further contends that the information for each trade item in terms of the amount of the claim suffers from a number of errors and inconsistencies, which further contributes to the claim not being reasonably comprehensible and not assisting KDV to identify the construction work to which the progress claim relates. It does not suggest that mathematical errors of themselves could invalidate the payment claim but that the errors further detract from the comprehensibility of the claim, making it more opaque.

¹⁹ Affidavit of Ho, CFI 2, Exhibit DCH-03, p 222.

- [24] Muggeridge submits that the complaints made by KDV are matters that go to the interpretation of the payment claim and its scope and nature, which are to be resolved through the adjudication process and do not bear upon whether the payment claim satisfies the requirements of s 17(2)(a) of the Payments Act. According to Muggeridge, the exercise in which KDV is engaged seeks to impugn the payment claim by engaging in a hindsight critique of the payment claim, contrary to the approach set out in the authorities, and applies too rigid an approach which accords with neither the intention of the Payments Act nor the authorities.
- [25] Muggeridge submits that, by reference to each item number and description in the Trade Breakdown Schedule, the payment claim stated:
- (a) The total amount payable, expressed in dollars;
 - (b) The total amount paid to date, expressed in dollars;
 - (c) The total claim to date, expressed as a percentage and as a dollar amount; and
 - (d) The amount comprising “This Claim”, being “Progress Claim 13”.

That, according to Muggeridge, is sufficient.

- [26] Muggeridge further contends that if the background knowledge of each of the parties is taken into account and the Trade Breakdown Schedule is used as the basis for the payment claim, the question of whether the payment claim sufficiently identifies the construction work the subject of the claim, according to the objective test, is answered in the affirmative.
- [27] As to the variations referred to in the payment claim, Muggeridge submits that the variations had a variation number associated with them because Muggeridge had already made variation claims for that work, and those claims would have set out the work which was the subject of the claim. Muggeridge submits the information in those prior claims was known to the parties to the contract and can and should be taken into account in considering whether the payment claim identifies the work. In any event, Muggeridge contends that the matters raised regarding variations again go to the scope and nature of the payment claim, namely whether it includes those variation claims and their meaning, which are within the adjudicator’s jurisdiction to determine and do not bear upon the validity of the payment claim.
- [28] Counsel for Muggeridge submits that the evidence of Ms Shtengelova, Mr Noonan and Mr Isaac is irrelevant to the question of whether the payment claim is valid, on the basis that the subjective views of parties are not relevant. It is rather the objective circumstances which are relevant.²⁰
- [29] As set out above, the evaluation of whether the payment claim sufficiently identifies the construction work the subject of the claim takes into account the background knowledge of each of the parties derived from their past dealings and exchanges of documentation. To the extent the evidence provided by KDV demonstrates the parties’ background knowledge or lack of such background knowledge, it may be relevant. Given the question of the validity of the payment claim is answered by applying an objective test, the subjective intentions and

²⁰ *Clarence Street Pty Ltd v Isis Projects Pty Ltd* (2005) 64 NSWLR 448 at 457, [39].

perceptions of parties involved are not. In any event, in the present case, little turns on that evidence.

[30] Finally, Muggeridge contends that KDV's criticisms of the computation of items in the payment claim seek to direct the inquiry impermissibly to whether or not the payment claim is invalid because it contains "computational errors" or inaccuracies, which are irrelevant to the validity of the claim.

[31] Counsel for both KDV and Muggeridge made well-argued submissions which assisted the Court.

Consideration

[32] As stated above, the factual background to the dispute is uncontentious. The contract was a lump sum contract for approximately \$10.6 million. The work the subject of the contract related to student accommodation, consisting of the construction of a three storey accommodation complex and outdoor facilities. 50 trade packages had been the subject of the tender and formed part of the contract, as did the breakdown of the lump sum contained in the tender submission.²¹ The contract price did not, however, contain separate sums for the different trade packages. The contract was for a single lump sum. Notwithstanding that, the different categories of the trade packages were used by the Superintendent when providing a certificate of its response to the progress claim in question.²² That certificate was adopted by KDV as its payment schedule, save it modified its response in relation to some matters, if its primary position that the payment claim was invalid was unsuccessful.²³

[33] The Superintendent of the contract at the relevant time was WT Partners. Under clause 37.2 of the contract, the Superintendent was to independently assess progress claims submitted under clause 37.1. It did not do so as agent of KDV.

[34] KDV's primary submission to the adjudicator was that the payment claim was invalid and therefore there was no jurisdiction to adjudicate the claim under the Payments Act. It is uncontentious that if the payment claim did not satisfy s 17(2)(a) of the Payments Act, the claimant would not have satisfied a basic and essential requirement of the Payments Act and there would be no payment claim to enliven the adjudicator's jurisdiction under the scheme. Even though the adjudicator had to consider the question of jurisdiction and did so in the present case, finding that there was jurisdiction, the Court must decide for itself whether the payment claim was compliant with s 17(2)(a) of the Payments Act.²⁴

²¹ Affidavit of Ho, CFI 2, DCH-02 clause 1(e) and 1(d).

²² Affidavit of Ho, CFI 2, DCH-04, p 242.

²³ Affidavit of Ho, CFI 2, DCH-04, from p223, particularly 227-228.

²⁴ The adjudicator determining the payment claim did identify the construction work and was valid in accordance with the requirements of s 24(3)(a) of the Payments Act: Affidavit of Ho, CFI 2, DCH-01, p 14-16.

[35] The payment claim submitted by Muggeridge consisted of a one page document.²⁵ It contained 6 columns. The first was headed “trade breakdown”, the second “Total Amount”, the third “Total Paid to Date”, the fourth “Total Claim % to Date”, the fifth “Total Claimed Trade to Date” and the sixth “Progress Claim”. An extract of the payment claim submitted, highlighting particular items which have been the subject of submissions, is as follows:

²⁵ Affidavit of Ho, CFI 2, DCH-03, p 222.

WUC– Site Project Student Accommodation Big 18 Chisholm Road Carrara QLD		Prior Payment	Total Claim to Date		This Claim
Trade Breakdown	Total Amount	Total Paid to Date	Total claim to date	Total Claimed % Trade to date	Progress Claim 13
...					
8 CONCRETE SUPPLY	\$229,454	\$217,981	100%	\$229,454	\$4,589
...					
19 ALUMINIUM WINDOWS & DOORS	\$811,840	\$32,474	67%	\$543,933	\$97,421
...					
23 BATHROOM POD – COMPLETE SUPPLY AND INSTALL	\$659,231	\$560,346	98%	\$646,046	\$52,738
...					
39 ELECTRICAL	\$783,827	\$470,296	78%	\$611,385	\$101,898
40 MECHANICAL	\$920,220	\$690,165	82%	\$754,580	\$36,809
...					
49 BUILDERS PRELIMIINARIES	\$820,407	\$672,734	100%	\$820,407	\$123,061
...					
Contract Works Subtotal excl GST					\$817,586
GST					\$81,759

Contract Works Subtotal incl GST					\$899,345
Variations	Submitted Claim	Prior Payment	Total Claim To Date		This Claim
		Total Paid to Date \$	Total claim % to date	Total Claimed Trade to date	Progress Claim 13
Variation #1 VO 003	\$1,925	\$ -	100%	\$1,925	\$ -
...					
Variation #5 VO 008	\$54,075	\$15,373	100%	\$54,075	\$38,702
...					
Variation #12 VO 016 – Fire rating upgrade	\$10,095	\$ -	100%	\$10,095	\$10,095
Variation #13 VO 017 – Structural design JN designers	\$726	\$ -	100%	\$726	\$726
...					
Variation 029	\$21,606	\$ -	100%	\$21,606	\$21,606
Variation 030	\$9,507	\$ -	100%	\$9,507	\$9,507
Variation 031	\$82,806	\$ -	100%	\$82,806	\$82,806
Contract Works Subtotal excl GST					\$1,466,087
GST					\$146,609
Contract Works Subtotal incl GST					\$1,612,696
Total Progress Claim					\$2,283,673
GST					\$81,759

Total Value of Claim #12	\$2,365,432
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- [36] Ms Hindman QC submits that each item under the heading “trade breakdown” does not provide anything more than a description of the category of work in the Trade Breakdown Schedule, rather identifying the actual construction work done to which the claim relates. That is evident on the face of the payment claim. Mr Beacham QC, however, states that no individual description of the work done is required and the Trade Breakdown Schedule is part of the contract and a matter which KDV has background knowledge of, which assists it to be able to identify the completed construction work the subject of the payment claim. While it may be accepted, as Muggeridge contends, that KDV is aware of the content of the Trade Breakdown Schedule, where there are some 51 categories of work in a sizeable contract with a number of components in the work to be undertaken, merely referring to the category of work does not identify the construction work itself to which the claim relates. The Court was not directed to anything contained in the trade breakdown from which the parties with background knowledge of the Trade Breakdown Schedule could identify the actual construction work which is the subject of the claim, save that it was submitted that common sense would indicate the order in which work occurred. However, many factors other than common sense can affect the order in which work is undertaken, such as the availability of materials, particular tradesmen or the weather. I am unpersuaded by that submission.
- [37] I accept KDV’s submission that providing the percentage of work carried out in total is insufficient to reasonably identify the construction work in respect of the claim. Even assuming, as one would in the present case, that KDV knew the content of the trade breakdown in terms of the work to be carried out in a particular category, if previous claims have been made for an item and say 20 percent has been paid, and the claim then states that 50 percent of the works are done, then unless the trade breakdown set out benchmarks of work done representing a particular percentage, it is uncertain what was the 30 percent of construction work done in a particular category. It may be possible to identify the work done where the claim is working off a zero base,²⁶ but otherwise there is nothing to identify the construction work done representing that 30 percent. However, in the present case it is unclear what the percentages actually mean, given the fact that the figures for a number of items cannot be reconciled. The following examples demonstrate the points made by KDV:
- (a) Item 19, which consists of “Aluminium Windows & Doors”, is said to be 67 percent complete, for which the balance that is claimed in the progress claim is \$97,421. Nothing in the payment claim identifies what the construction work is that constitutes the 67 percent or the construction work that is the subject of the claim. The uncertainty of what the construction work is that constitutes the claim is increased by the fact that the amount claimed, of \$97,421, cannot be reconciled with the total amount of the work, \$811,840, and the amount claimed to date, said to be \$543,933. Based on the amount claimed the construction work is about 12 per cent of the total amount payable, but what that 12 per cent is referable to or how it has been calculated cannot be determined with any certainty. If it was 67 per cent, the claim should be approximately \$268,000;

²⁶ Which appears to be the case for items including item 14, 27, 45 and 48.

- (b) Item 23 is a payment claim with respect to “Bathroom Pod- Complete Supply and Install”. The amount claimed as the progress claim is \$52,738. The percentage claimed to date is said to be 98%, however the amount claimed is less than the difference between the total claim to date, of \$646,046, and the prior payment of \$560,346. If the amount was in addition to the total claimed trade to date it should only be 2% of the total amount (\$659,231) and approximately \$13,185. Neither the description nor the information set out in the columns enables the construction work to be identified;
- (c) Item 39, a claim with respect to “electrical”, claims an amount of \$101,898. The total percentage of work claimed to date is 78 percent. “Electrical” is a broad category that could cover a wide range of construction work. While KDV may be in a position to know what the constituent parts of the Trade Breakdown for electricals consist of, that does not serve to identify what “construction work” is the subject of the claim or what work done with respect to electricals constitutes the 78 percent. The description of work does not identify the actual work that is the subject of the claim, nor do the amount claimed and the figures and percentages set out said to support the claim allow the construction work that is the subject of the claim to be identified with any certainty. This is also the case in respect of the claims for item 39, “Mechanical”, and item 42, “Hydraulics”;
- (d) Item 49, a claim with respect to “Builder’s Preliminaries”, claims an amount of \$123,061. Again, there is nothing in the description by which to identify the actual work being claimed, the description only being of the category of work. The total claim to date is said to be 100 per cent. Given that the total amount claimed is said to be 100 percent, one would expect the amount of the claim to be the difference between the total amount claimed to date for that category less the amount total paid to date, however, the difference in fact is \$147,673. That suggests 100 per cent of the work has not been performed. Again, the work to which the claim is referable cannot be determined with any certainty.

[38] There are further items set out in KDV’s submissions where similarly the amount claimed cannot be reconciled with other columns on the face of the document: items 8, 9, 13, 19, 23, 25, 32, 39-43 and 49-51. There is no description of the work done, the reference only being to the category of work. The figures set out do not reconcile so as to assist in identifying the construction work which relates to the amount claimed. The lack of description of the work and the inability to reconcile the figures to the amount claimed support the fact that the construction work which is subject to the claim cannot be identified with any certainty and the claim does not purport in a reasonable way to identify the work. This is particularly so given that other items such as item 17, which is a claim for “Waterproofing”, are reconcilable, and the amount claimed of \$9,421 is the difference between the total amount claimed to date and the total amount paid to date. That fact that some items can be reconciled on the figures used in the payment claim and some 15 out of the 26 items in the trade breakdown cannot be reconciled supports the view that, objectively, the payment claim does not as a whole purport to identify the construction work in a reasonable way. While errors in individual items are not generally sufficient to justify a finding of invalidity, the lack of description, the provision of a percentage together with the fact that the number of items that cannot be reconciled on the figures provided demonstrates that the schedule is not reasonably comprehensible to a reasonable principal.

- [39] Mr Beacham QC, however, states that KDV's approach is too prescriptive and rigid and s 17(2) the Payments Act does not require a description of the work done for each item to satisfy the requirements of the Act. He states that the approach adopted by Muggeridge in formulating the payment claim was to identify the total amount of construction work done on a percentage basis, credit what had been paid and identify the balance owing, which was the subject of the claim. Thus, the claim identifies the construction work by virtue of the total percentage completed and credits the amount that has already been paid. According to Mr Beacham QC, s 17 only requires the identification of work to which the payment claim relates. The claim is for the total percentage of the work that has been undertaken at that time, rather than identifying a particular part of the work done in the period to which the payment claim relates. Mr Beacham QC submits that this approach accords with the operation of the Payments Act and accommodates the fact that a claim will not always relate to new construction work each time. The Payments Act does not prevent a party claiming an amount if it has been made in the previous payment claim in particular circumstances. In that regard, Muggeridge submits that a Superintendent may not provide reasons for why part of a claim is allowed, unless that is a requirement under the contract, in which case the claimant is left in the invidious position of wanting to advance a claim for the part that was unpaid but not being able to identify the construction work to which it relates. Thus, it contends the approach which KDV states should be used to identify work is too rigid and does not take into account how payment claims may be made under the Payments Act.
- [40] Counsel for KDV, however accepts that there are a number of ways that a payment claim could satisfy the Act and acknowledges that under the Payments Act, a payment claim could be for new work, for work the subject of a previous claim or for a combination of the two. However, she submits that s 17(2) of the Payments Act requires the construction work to which the payment claim relates to be identified, whatever the combination of work that is the subject of the claim. That is clearly the case given the terms of the legislation.
- [41] Ms Hindman QC submits that, in principle, a claim could be made in the way described by counsel for Muggeridge, as long as it described the construction work for which it was claiming, because under that approach the claim is for all the work done with deductions for amounts already paid. However, Ms Hindman QC submits that this payment claim does not accord with Muggeridge's approach and was not a claim for all construction work carried out to the date of the claim. While there is a column in the claim under the heading "Total Claim to Date", which Muggeridge states is correct, the claimed amount is the amount in the column headed "This Claim". Under the latter heading, Ms Hindman QC submits that the claim identifies line items of categories or work and claims for work in respect of just those items. On Muggeridge's approach, KDV would have had to respond to the column headed "Total Claim to Date", not "This Claim". It is not, according to KDV, evident on the face of the document²⁷ that that was the approach adopted by Muggeridge to which it had to respond. I accept that that is correct.
- [42] By way of example, Ms Hindman QC points to the fact that in item 2 in support of her contention, "Detailed excavation", the total amount claimed is said to be 100 per cent but

²⁷ Or by reference to any other information provided by Muggeridge.

there is no amount in the column "This Claim", notwithstanding that the total amount for that item is \$111,825 and the total paid to date is said to be \$106,234.

- [43] As to the complaint of KDV that figures cannot be reconciled, Mr Beacham QC submits that mathematical errors of themselves are insufficient to invalidate a payment claim and are matters which are the subject of the adjudication process. That is of course correct, unless the errors are of a nature whereby they contribute to the overall incomprehensibility of the claim such that the claim does not purport in a reasonable way to identify the construction work to which it relates. In particular, he emphasises that there was no inaccuracy in the percentages referred to as the "Total Claim % to Date" and the "Total Claimed Trade to Date". Mr Beacham QC points out that the mathematical errors lay in the fact that the wrong amount was being claimed as the "Total Paid to Date" and that could be ascertained from the Superintendent's certificate. In addition, it would be reasonably expected that KDV would be in a position to know what has been paid. However, Muggeridge's submissions are made from the point of view of the party who knows what the payment claim was intended to convey. It does not follow that a reasonable principal would be able to comprehend that intended meaning or the approach adopted by Muggeridge, said to be claiming the total percentage of work completed. I do not consider the approach used and the error made as to "Total Paid to Date" or its significance could have been identified by KDV even utilising its background knowledge.
- [44] Mr Beacham QC relied upon statements of Hodgson JA in *Nepean Engineering*²⁸ that if a respondent is unable to identify some of the work in respect of which a payment claim is made, it can in the payment schedule say it does not propose to make any payment in respect of that work because it cannot identify that work, suggesting that such an item would not invalidate the payment claim. That statement must, however, be seen in the context of the requirement that the claim must reasonably purport to identify the work the subject of the claim. It may be accepted that in some cases, if there were some items which were affected by mathematical errors such as those pointed out by KDV, that would not be sufficient to invalidate the payment claim under s 17(2)(a) of the Payments Act. However, where such errors affect some 15 items, such that the amounts claimed cannot be reconciled with the amount referred to in the other claims, and there is further no substantive description of the work done, the mathematical errors and inability to reconcile the figures do impact on whether the claim reasonably identifies the construction work to which it relates. They also serve to further confuse the bases upon which the payment claim is advanced, given Muggeridge's stated approach of claiming the entire percentage of work done. While Hodgson JA's observation may well be correct in relation to an item of construction work claimed, it does not mean that a claim is valid where the errors contribute to the claim not reasonably identifying the construction work to which it relates, such that the basis of the claim is not reasonably comprehensible to its principal.²⁹
- [45] Muggeridge, however, raised a number of further arguments to support the validity of the claim which I consider below.

²⁸ (2005) 64 NSWLR 462 at [35].

²⁹ Adopting the test in *T & M Buckley* at [38].

- [46] Mr Beacham QC points to the fact that the Superintendent was able to respond to the payment claim³⁰ as demonstrating the submission that the payment claim was reasonably comprehensible to KDV. The adjudicator also determined the matter on a percentage basis.
- [47] That does not, in my view, assist Muggerridge's argument. The Superintendent is obliged to make an assessment under the contractual mechanism of clause 37 of the contract, whereas the Payments Act provides for the principal to make such an assessment. The Superintendent is not the agent of the principal, KDV. KDV therefore makes such an assessment under the Payments Act and needs to be informed in a way which allows it to make an assessment of what the work being claimed for is, in order for it to respond in the short timeframe provided under the Payments Act. A party may or may not adopt the assessment made by the Superintendent in whole or in part. In the present case, while KDV's primary position was that the payment claim was invalid, it did adopt the Superintendent's assessment, save in the respects identified, so that it had provided a payment schedule if the claim was valid within the time required. The submission that the fact that the Superintendent was able to carry out an assessment demonstrates that the payment claim was one which identified the construction work to which the claim relates, and to which KDV could respond, is also not supported by the evidence. While the Superintendent did carry out an assessment, the evidence of the quantity surveyor, Mr Noonan, who was employed by the Superintendent, shows that the payment claim was not readily comprehensible to him and that various investigations were carried out in respect of the claim.³¹ It is however true, as was submitted by Muggerridge,³² that KDV was able to respond to the payment claim, at least to the extent of asserting different percentages were applicable for item 19. I am unpersuaded that including those qualifications demonstrates that the payment claim overall identified the construction work in a reasonable way.
- [48] Muggerridge further relies on the fact that the background knowledge of each party is relevant in assessing the reasonable comprehensibility of the claim,³³ and that KDV must have known what work was within each of the items in the trade breakdown, because it was its Trade Breakdown Schedule which was required to be provided as part of the tender.
- [49] As I stated above, given the approach adopted by Muggerridge in its claim, the fact that KDV has knowledge of the work that relates to each of the 51 categories of the trade breakdown only serves to demonstrate that it has knowledge overall of the work to be done in each category. It does not, however, serve to demonstrate that KDV was able to identify the construction work the subject of the claim. While KDV may have been able to reconstruct all the previous claims to try to determine what had been paid for and the work done, so as to identify the balance of the work which was the subject of the claim, that would require an

³⁰ Affidavit of Ho, CFI 2, Exh DC-04, p 242.

³¹ See, for example: Affidavit of Ho, CFI 2, Exh DC-13, [11], [12] and [24]-[26].

³² T1/38-27-34.

³³ *Neumann Contractors Pty Ltd v Peet Beachton Syndicate Ltd* [2011] 1 Qd R 17 at [25].

exercise to be carried out of a similar nature³⁴ to that described by White J in *Neumann Contractors Pty Ltd*. In that case, the offending part of the claim was said to be “a claim for all work for which Neumann has previously claimed save for the work for which it has been paid”. Her Honour concluded that:³⁵

“Requiring a respondent to a payment claim to undertake that kind of research which would be subject to error and within the time constraint of 10 days under the *Payments Act* leads me to conclude that the payment claim does not identify the construction work to which that claim relates and does not fulfil the requirements of s 17(2) of the *Payments Act*.” (footnotes omitted)

[50] Further, Muggeridge relies on the fact that s 17(2)(a) of the *Payments Act* requires a claim to identify the construction work to which the progress claim relates, not the construction work to which each item in the payment claim relates. While that is correct, the payment claim purports to identify the construction work to which it relates by reference to categories of work from the Trade Breakdown Schedule. An applicant is not required to explain in every detail the means by which a particular item has been calculated.³⁶ Whatever the approach used, the payment claim must reasonably purport to identify the work done.

[51] The task required is not an onerous one that requires particularity or precision, but it does require some description which identifies the work done.

[52] To be a valid claim, a payment claim must reasonably identify the construction work to which it relates, such that the basis of the claim is reasonably comprehensible to the applicant,³⁷ or to “enable the recipient to understand the basis of the claim”.³⁸ The reason this is so was succinctly identified by Finkelstein J in *Protectavale Pty Ltd v K2K Pty Ltd*³⁹ in relation to the similar legislation in Victoria, where he stated:

“...a payment claim must be sufficiently detailed to enable the principal to understand the basis of the claim. If a reasonable principal is unable to ascertain with sufficient certainty the work to which the claim relates, he will not be able to provide a meaningful payment schedule. ...”

[53] In the present case, I consider that KDV could not ascertain with sufficient certainty the work to which the claim relates and it has not been identified in a reasonable way for the reasons

³⁴ Although the work was described more broadly it did provide schedules exhibited to the summary which set out the work undertaken of some 25 pages which then needed to be married up to the amounts paid on the progress certificates to arrive at the outstanding items.

³⁵ At [29].

³⁶ *T & M Buckley P/L v 57 Moss Road P/L* [2010] QCA 381 at [38].

³⁷ *T & M Buckley P/L v 57 Moss Road P/L* [2010] QCA 381 at [38].

³⁸ *T & M Buckley P/L v 57 Moss Road P/L* [2010] QCA 381 at [36], referring to Santow JA in *Nepean Engineering* at [47]-[48], referring to Hodgson JA in *Climatech Pty Ltd* at [25].

³⁹ [2008] FCA 1248 at [12], referred to in *Neumann Contractors* at [28].

outlined above. Mr Beacham QC, however, submits that to reach such a conclusion means two authorities cited with approval must be wrong.

[54] Mr Beacham QC submits that the form of claim is on all fours with the payment claim that was found to be valid in *Clarence Street Pty Ltd v Isis Projects Pty Ltd*.⁴⁰

[55] Mason P (with whom other members of the Court agreed) in *Clarence Street Pty Ltd v Isis Projects Pty Ltd*,⁴¹ approved statements made by McDougall J at first instance,⁴² including the following:

“[37] In principle, I think, the requirement in s 13(2)(a) that a payment claim must identify the construction work to which the progress payment relates is capable of being satisfied where:

- (1) The payment claim gives an item reference which, in the absence of evidence to the contrary, is to be taken as referring to the contractual or other identification of the work;
- (2) That reference is supplemented by a single line item description of the work;
- (3) Particulars are given of the amount previously completed and claimed and the amount now said to be complete;
- (4) There is a summary that pulls all the details together and states the amount of the claim.”

[56] Mason P referred to the following statement of McDougall J:⁴³

“Where payment claims in that format have been used, apparently without objection, on 11 previous occasions, it is very difficult to understand how the use of the same format on the 12th and 13th occasions could be said not to comply with the requirements of s 13(2)(a). If payments claims in that format had sufficiently identified the construction work to which the progress payment claimed related on 11 previous occasions, I find it hard to understand how they would lose that character on the 12th and 13th occasion.”

[57] While background knowledge from the use of the Trade Breakdown Schedule is relied upon by Muggerridge, there is no reliance on any prior course of dealings.

[58] However, the payment claim in the present case has two distinguishing features from the payment claim considered in *Clarence Street*. The first is that there is no single line item description of the work, which is said to have been contained in the payment claim in that

⁴⁰ (2005) 64 NSWLR 448 at [42].

⁴¹ (2005) 64 NSWLR 448 at [33].

⁴² At [33], citing *Isis Projects Pty Ltd v Clarence Street Pty Ltd* [2004] NSWSC 714 at [37].

⁴³ At [33], citing *Isis Projects Pty Ltd v Clarence Street Pty Ltd* [2004] NSWSC 714 at [38].

case. The payment claim in the present case only describes the category of work. While Mr Beacham QC submitted that describing it according to the category of work derived from the Trade Breakdown Schedule, which was part of the contract, should be regarded in the same way as the single line description of work said to be derived from the contract in the claim in *Clarence Street* (“progress claim no 12”),⁴⁴ there is no suggestion that the single line description in that case did not identify the work done. Indeed, the first of the four matters identified by Mason P as enabling a payment claim to be capable of satisfying the requirement that a payment claim must identify the construction work to which the progress claim relates is “an item reference which, in the absence of evidence to the contrary, is taken to be referring to the contractual or other identification of other work”.⁴⁵ That would appear to be similar to the item derived from the Trade Breakdown Schedule. His Honour, however, stated “[t]hat reference is supplemented by a single line item description of work”,⁴⁶ suggesting the description is additional to the first matter. That is absent in this case. Further, progress claim no 12 was said to consist firstly of a cover sheet and a list of documents attached, as well as:⁴⁷

“(2) A six page document described as “Lumpsum [sic] Tax Invoice” that described the work by a number of one line items (referring, I infer, to their descriptions in some contractual document) and showing for each the original contract value, the amount of previous claims, the value of work to date and the percentage completed. The tax invoice also described, in one line items, a large number of variations. For each variation, it gave a reference (in each case prefaced by the letter “V” and, I infer, referring to a previous claim for the variation bearing that reference), a short description of the work, the amount approved, the amount previously claimed, the value of work to date and the percentage complete. The tax invoice concluded (leaving aside formal matters and signature) with a summary of its contents, concluding with a calculation of the “total now due”.

(3) A number of supporting documents.”

[59] It is evident that the payment claim in that case therefore contained more detail than the present payment claim. While details of the contract are not disclosed in the judgment, progress claim no 12 was for approximately \$1.7 million, which is slightly less than this progress claim and not a significantly larger claim. The four matters referred to by his Honour at paragraph [33] must be interpreted by reference to what was provided by the claimant in

⁴⁴ *Clarence Street Pty Ltd v Isis Projects Pty Ltd* (2005) 64 NSWLR 448 at [8]; T1-40/8-11.

⁴⁵ *Clarence Street Pty Ltd v Isis Projects Pty Ltd* (2005) 64 NSWLR 448 at [33], referring to *Multiplex Construction Pty Ltd v Luikens* [2003] NSWSC 1140 at [37], per McDougall J.

⁴⁶ *Clarence Street Pty Ltd v Isis Projects Pty Ltd* (2005) 64 NSWLR 448 at [33], referring to *Multiplex Construction Pty Ltd v Luikens* [2003] NSWSC 1140 at [37], per McDougall J.

⁴⁷ At [8]. His Honour at [34] noted that the progress claims were the same in form and substance and no suggestion had been made that the earlier progress claims did not adequately identify the work to which they were related or that they were not capable of assessment without a substantial investigation.

Clarence Street. I do not consider that the present payment claim is on all fours with that considered by the Court in *Clarence Street*.

- [60] Mr Beacham QC also relied upon *Peter's of Kensington v Seersucker Pty Ltd*.⁴⁸ The payment claim in that case is described at [44]-[46] of the judgment. He contended the description in that case was less than the present case. I cannot agree. The payment claim described the stage of work with a description, for example, "Carpark", and then for that stage itemised matters such as "Design Development" and "Contract Documents", for which claims were made with a rate and a percentage to which the work was compete. It then described what was meant by "Design Development" and "Contract Documents". That description provides greater detail than the description of the items in the payment claim here. In determining that the payment claim complied with the Act, the Court also took into account prior dealings between the parties.⁴⁹ The Court found that the payment claim conveyed sufficient information to enable the other party who was familiar with the project to understand and respond and was therefore valid.⁵⁰
- [61] I do not consider that the present payment claim can be said to have provided the same or more detail than the claims considered in *Clarence Street* or *Peter's of Kensington* and should therefore be found to be sufficient to satisfy the Payments Act on the basis of those authorities.
- [62] As to the payment claim in respect of variations, while no description of work is provided, a number of the variations referenced by numbers have supporting paperwork which can be used as a reference point and is relevant to background knowledge. However, according to the Superintendent, no variations had been received for variations 12-16 and 19 at the time the payment claim was made.⁵¹ The payment claim fails to identify the construction work at least in relation to the variations which had not been received by 20 August 2018 and in relation to variations 28-30. Further, in the case of three variations there is simply no description at all.

Conclusion

- [63] The matters identified by KDV do not simply relate to the interpretation of the payment claim and its scope and nature, as contended by Muggeridge, but rather its comprehensibility. There is no description of the work which is the subject of the claim. References to the total percentages of work claimed to date and the amount the subject of the claim does not sufficiently identify the work done. It is possible that KDV may have been able to determine what part of the work is being claimed out of the percentage by engaging in a process of reconstruction based on previous claims and amounts paid. However, as White J stated in *Neumann Contractors*, a payment claim which requires such an exercise would be contrary to the Payments Act, in circumstances where the payment schedule is required to be provided

⁴⁸ [2008] NSWSC 897.

⁴⁹ At [72] and [73].

⁵⁰ At [73].

⁵¹ Affidavit of Ho, CFI 2, Exh DCH-04, p 245.

within 10 days of receipt of the payment claim under s 18. In that case, her Honour found a payment claim which referred to “Add previously claimed & unpaid” was not a valid payment claim, because it required the principal to engage in a careful analysis of the schedule exhibited to the summary setting out the work which was undertaken and marry that work with the amounts payable on the progress certificates to arrive at the outstanding items.⁵²

- [64] The mathematical errors create further uncertainty as to the identification of the work done, given the figures cannot be reconciled in the case of more than half of the items and the bases for the percentages claimed are uncertain. Further, if Muggeridge’s approach was to claim for all the work done represented on a percentage basis and to credit the amounts paid, that approach was not reasonably comprehensible to a reasonable principal by the terms of this payment claim. The payment claim failed to identify all of the work for which it was claiming and only claimed the amount in “This Claim”, which is a different basis from that contended for by Muggeridge. Whatever form of claim a claimant chooses to adopt, it must identify in a reasonable way the construction work to which the claim relates. While the purpose of the scheme is to permit the quick resolution of payment claims, the claimant must at least be reasonably comprehensible, to permit the respondent to respond within the time frame provided under the Act. The payment claim in this case has failed to do so.
- [65] I do not consider the payment claim meets the relatively undemanding test to satisfy s 17(2)(a) of the Payments Act and reasonably purports to identify the work done which is the subject of the claim.
- [66] Both parties agreed that if s 17(2)(a) of the Payments Act was not satisfied, then in truth there is no payment claim that enlivens the jurisdiction of the scheme. The consequence is that the adjudicator’s decision needs to be declared void in its entirety.
- [67] Given I have found that the applicant, KDV, has succeeded in establishing Ground 1, it is unnecessary for me to determine Grounds 3 and 4.
- [68] KDV has been successful in establishing a jurisdictional error on the basis that there was not a valid payment claim for the purposes of the Payments Act, because the payment claim failed to identify the construction work to which the progress claim related so as to satisfy the requirements in s 17(2) of the Payments Act. It is appropriate to make a declaration in terms of paragraph 1 of the Originating Application and order that the adjudication be set aside.
- [69] I will hear the parties as to whether paragraph 3 of the relief sought is necessary and as to costs on a date to be fixed.

Orders made

- [70] The orders of the Court will be that:
- (1) Pursuant to s 10 of the *Civil Proceedings Act 2011* (Qld), it is declared that the adjudication decision dated 3 December 2018 and issued 4 December 2018 of the third respondent (Registered Adjudicator number J1190798) in adjudication application

⁵² At [29].

number QBCC 433299 (Adjudication Decision), purportedly made pursuant to the *Building and Construction Industry Payments Act 2004* (Qld), is void for want of jurisdiction.

- (2) The Adjudication Decision be set aside.