

SUPREME COURT OF QUEENSLAND

File No of 200

BETWEEN:

MERIDIEN PTY LTD

Applicant

AND:

CEIPO AUSTASIA PTY LTD

Respondent

MOYNIHAN J – REASONS FOR JUDGMENT

CITATION: *Meridien Pty Ltd v CEIPO Austasia* [2003] QSC 049

PARTIES: **Meridien Pty Ltd**
(Applicant)
v
CEIPO Austasia Pty Ltd
(Second Respondent)

FILE NO/S: SC7642 of 2002

DIVISION: Trial Division

PROCEEDING: Originating Application

ORIGINATING COURT: Supreme Court

DELIVERED ON: 13 March 2003

DELIVERED AT: Brisbane

HEARING DATE: 9 September 2002

JUDGE: Moynihan J

ORDER: **The statutory notice is to be set aside.**

CATCHWORDS: BUILDING CONTRACTS - Performance of Work – Remuneration - Where statutory demand sought to be set aside – Whether there is a genuine dispute - Where dispute as to existence and amount of debt exists.
Queensland Building Services Authority Act 1991 (Qld)
Spencer Constructions Pty Ltd v G & M Aldridge Pty Ltd (1997) 147 ALR 454

COUNSEL: Mr LR Smith for the Applicant

Mr PA Looney for the Respondent

SOLICITORS: Hopgood Ganim Lawyers for the Applicant

James Conomos Lawyers for the Respondent

- [1] Meridien Pty Ltd (Meridien) seeks to set aside a statutory demand made by CEIPO Austasia Pty Ltd (CEIPO) on the basis that there is a genuine dispute as to the existence and amount of the debt the subject of the statutory demand.
- [2] The demand is for \$2,115.20, the final balance outstanding in relation to a contract for roof tiling for a house being constructed for David John Roberts and his wife Marion Therese Roberts. Roberts is a Director of Meridien which is in the business of property development and construction
- [3] Meridien says there is a genuine dispute which has three aspects; first that CEIPO's contract was not with Meridien but rather with the Roberts'. Secondly there is a dispute as to the quality of the workmanship and the completion of the work. Thirdly, it is said that CEIPO was an unlicensed builder and so cannot recover any balance under the contract.
- [4] A genuine dispute is *bona fide* dispute "truly" existing on grounds which are real, not spurious, hypothetical, illusory or misconceived. On the other hand in determining such an application such as this the Court will not decide contested issues of fact or law when there is a substantial basis for the dispute; *Spencer Constructions Pty Ltd v G & M Aldridge Pty Ltd* (1997) 147 ALR 454.
- [5] There is no issue that Meridien entered into a contract to carry out the roof tiling at the Roberts residence. Roberts swears that the contract was between CEIPO, him and his wife. The tile contract of 30 May 2001 is issued under Meridien's letterhead and makes no reference to parties other than Meridien and CEIPO. The work was invoiced to Meridien and payments were made without demure. A facsimile from Meridien's project manager signed on behalf of Meridien states that "Meridien" proposed to hold 2.5% of the contract sum. In my view the material does not sustain a conclusion that there is a genuine dispute as to the parties to the contract, it was between Meridien and CEIPO.
- [6] It is not in issue that the adjusted contract sum was \$54,914.20 and that the full value of the invoices was paid part other than the outstanding amount of \$2,115.20. This is apparently retained against defective workmanship. A list of work alleged to be defective is in evidence. Thus Meridien's claim is of an offsetting claim pursuant to s. 459H(1)(b).
- [7] As mentioned Meridien proposed to hold 2.5% of the contract sale on account of defects referred to in fax of 25 January 2002. In a fax of 11 July 2002 it was stated that rectification had been carried out by a roofing contractor who also completed the works. It appears that this roofing contractor was employed by Hutchinson Builders who at some stage had taken over the contract for the construction of the Roberts' house from the initial contractor.
- [8] Meridien apparently contends that there is additional rectification work. This is the subject of a quote from Hutchinson Builders of 16 August 2002. The quote was

apparently obtained by Hutchinson Builders from what is described as an independent roof contractor.

- [9] Roberts deposes that at the time of his affidavit he was unable to determine what component of the money paid Hutchinson Builders related to the rectification of the roof work.
- [10] It appears that there is a genuine dispute in respect of defective workmanship and the cost of rectification and that the offsetting claim is sufficient to reduce the balance admittedly owing “below \$2,000.00”.
- [11] Finally Meridien alleges that CEIPO is precluded from suing by s. 42 of the *Queensland Building Services Authority Act* 1991. Section 42(3) provides that subject to sub s. 4 a person who carries out building work in contravention of the section is not entitled to any monetary or other consideration for doing so. CEIPO’s claim is not a claim in terms of sub s. 4. S. 42(1) provides that a person is not to carry out or undertake to carry out building work unless that person has a contractors licence of the appropriate class. Section 42(2) provides that for the purposes of the section a person carries out building work by personally directing it or indirectly causing it to be carried out or by entering into a contract to carry it out.
- [12] In the present case it appears that CEIPO was not licensed but sub contracted the work to a licensed holder. Roberts deposes that he would not have entered into the contract with CEIPO and that it would not have been allowed to carry out work at the site had he known so. It is not necessary to determine the issue although I am sceptical of it. As I have already indicated CEIPO’s contract was with Meridien which was obviously an experienced property developer which might be taken as knowing of the licensing requirements and it entered into the contract with CEIPO.
- [13] The view is open that the point taken is not particularly meritorious and was only taken consequent upon the issue of a statutory notice. It is nevertheless open and it is not appropriate to determine it here.
- [14] The considerations being those to which I have referred the statutory notice should be set aside.