

SUPREME COURT OF QUEENSLAND

CITATION: *Sierra Property Qld Pty Ltd v National Construction Management Pty Ltd & Ors (No 2)* [2016] QSC 125

PARTIES: **SIERRA PROPERTY QLD PTY LTD ACN 097 523 272**
(applicant)

v

NATIONAL CONSTRUCTION MANAGEMENT PTY LTD ACN 118 395 752
(first respondent)

and

JONATHAN SIVE
(second respondent)

and

THE ADJUDICATION REGISTRAR (QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION)
(third respondent)

FILE NO: BS11244/15

DIVISION: Trial Division

PROCEEDING: Application for orders and costs

DELIVERED ON: 10 June 2016

DELIVERED AT: Brisbane

HEARING DATE: Written submissions received 1-2 June 2016

JUDGE: Jackson J

ORDERS: **The order of the court is that:**

- 1. The first respondent is to pay to the applicant:**
 - (a) \$129,833 in respect of the contract works claim in the adjudicated amount;**
 - (b) the sum of \$4,228.43 interest upon the contract works claim in the adjudicated amount;**
 - (c) \$8,937.50 in respect of the adjudicators fees; and**
 - (d) interest (on the total sum of \$142,998.93) under s 58 of the *Civil Proceedings Act 2011 (Qld)* from 8 December 2015 until the date of this order totalling \$4,361.84.**

2. The first respondent is to pay the applicant's costs of the proceeding.

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – where the applicant was partially successful and partially unsuccessful on its application that an adjudication decision was affected by jurisdictional error – whether the applicant should pay the adjudicator's fees in full as originally ordered by the adjudicator

Civil Proceedings Act 2011 (Qld), s 58

COUNSEL: M Hindman for the applicant
A Harding for the first respondent

SOLICITORS: Thomson Geer for the applicant
Garland Haddington for the first respondent

- [1] **Jackson J:** The orders made by the court on 18 May 2016¹ included a direction that the parties provide written submissions as to the further orders to be made having regard to the declaration made that part of the adjudication decision of the second respondent was affected by jurisdictional error.
- [2] The parties have provided further submissions because they were unable to agree as to the orders.
- [3] They are agreed that the first respondent should be ordered to pay to the applicant:
- (a) \$129,833 in respect of the contract works claim in the adjudicated amount;
 - (b) the sum of \$4,228.43 interest upon the contract works claim in the adjudicated amount;
 - (c) \$8,937.50 in respect of the adjudicators fees; and
 - (d) interest under s 58 of the *Civil Proceedings Act 2011 (Qld)* from 8 December 2015 until the date of this order on the sum of (a), (b) and (c) above.
- [4] The remaining dispute concerns whether the amount in par (c) should be increased by the further sum of \$8,937.50. The adjudicator's fees in total were \$17,875. The adjudicator ordered the applicant to pay that amount in full. The difference between the parties is that the applicant seeks an order that will have the effect that the whole amount of the adjudicator's fees is repaid to it. The respondent seeks an order that would have the effect that the adjudicator's fees are paid as to 50 percent by the applicant and 50 percent by the respondent.
- [5] In my view, the respondent's submission should be accepted. An adjudicator's decision may be liable to be set aside. But it does not follow as a result thereof that one party or the other should wholly bear the loss. This case is an example of circumstances where

¹ *Sierra Property Qld Pty Ltd v National Construction Management Pty Ltd & Ors* [2016] QSC 108.

the error is one made by the adjudicator, not by either of the parties. Accordingly, in my view, there is no reason on the face of it why the respondent should, in effect, pay all the adjudicator's fees, or that the respondent should indemnify the applicant for the adjudicator's fees.

- [6] Because the applicant sought an opportunity to be heard further on costs I will hear the parties on costs but I decline to give any further opportunity for written submissions as sought by the applicant. The argument on costs will proceed orally.