



## **Civil Contractors (Aust) Pty Ltd v Galaxy Developments Pty Ltd & Ors; Jones v Galaxy Developments Ltd & Ors [2021] QCA 10**

Queensland Court of Appeal confirms late adjudication decisions are void and broadens work not subject to QBCC licence  
- Implications for adjudicators and contractors

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### **Facts of the Case & Decision**

This appeal concerned a decision of the Supreme Court of Queensland declaring an adjudicator's determination void due to it exceeding the maximum period contained in the *Building Industry Fairness (Security of Payment) Act 2017 (Qld)* ('the Act'). Additionally, the decision determined that Civil Contractors (Aust) Pty Ltd (CCA) did not hold the requisite Queensland Building and Construction Commission building license to carry out two aspects of the contracted work (namely, relocation of a bike rack and metal seat on a footpath at a bus stop), the consequence being that the building contract under which CCA claimed to be paid was void, and for that reason the adjudicator's decision was also void.

The Queensland Court of Appeal confirmed that an adjudicator's jurisdiction is defined by the relevant time limit, in that their powers cease once the time limit has passed. A decision delivered after the maximum period is therefore void. However, in respect of the Building Licence Question, the Court of Appeal reversed the primary judge's decision and determined that the work was excluded from the definition of building work by Schedule 1 of the QBCC Regulation (and therefore did not require a licence).

### **What is the position in different states regarding the validity of an adjudicator's decision made out of time?**

In respect of the Late Decision Question, although the Act does not expressly state that a late decision will have no legal effect, sections 85, 86, and 94 provide a well-defined and coherent scheme for the delivery of a decision, indicative that time limits are to be complied with. This conclusion was supported by the Court's additional policy reasons: enforcing strict time limits incentivises adjudicators to decide per the required time frames and guarantees commercial certainty in the security of payment regime.

The decision at first instance that the adjudicator was not entitled to fees due to the late decision was upheld by the Court of Appeal. However, McMurdo JA reversed the findings of bad faith against the adjudicator (on application by the adjudicator via his separate appeal, heard together with CCA's appeal).

The Court of Appeal held that the Queensland Act provisions do not have analogous counterparts in other jurisdictions. Under the relevant Victorian and New South Wales legislation<sup>1</sup>, and as upheld by the respective courts,<sup>2</sup> an adjudicator's late decision is still binding. However, as was reasoned by the Court, the Queensland Act is sufficiently different due to (amongst other things) the interstate legislation not containing an equivalent to section 86, and the Victorian Act's sections 23(2B) and 28(2)(a) having no equivalent in the Queensland Act.<sup>3</sup>

Ultimately, there are no applicable regulations or case law from other jurisdictions, and this case is a landmark interpretation of obligations owed in Queensland.

### **What was the significance of the Building License Question?**

The Queensland Building and Construction Commission Act 1991 (QBCC Act) and QBCC Regulations provide for categories of trade contractor licenses under which a defined scope of building work is permitted to be carried out. A person must not carry out building work unless they hold the appropriate licence. Schedule 1 of the QBCC Regulations sets out categories of work that are not building work for the purposes of the Act, and therefore do not require a licence.

At first instance, the primary judge rejected CCA's argument that the work, which related to the construction of a bus stop, was work which fell under the exception in Item 14 Work on Roads and Tunnels. The Building License Question was resolved by the Court of Appeal based

<sup>1</sup> *Victorian Building and Construction Industry Security of Payment Act 2002 (VIC)*; *Building and Construction Industry Security of Payment Act 1999 (NSW)*.

<sup>2</sup> *Ian Street Developer Pty Ltd v Arrow International Pty Ltd & Anor* [2018] VSCA 294; *MPM Constructions Pty Ltd v Trepcha Constructions Pty Ltd* [2004] NSWSC 103; *Cranbrook School v JA Bradshaw Civil Contracting* [2013] NSWSC 430; *Mt Lewis Estate Pty Ltd v Metricon Homes Pty Ltd* [2017] NSWSC 1121.

<sup>3</sup> *Victorian Building and Construction Industry Security of Payment Act 2002 (VIC)*, Section 23 (2)(a) and (2B).

on a close literal analysis of Items 14 and 15 of Schedule 1 of the *QBCC Regulations*, and found that the works fell within the exception in item 14. However, because the Court of Appeal upheld the Supreme Court's decision on The Late Decision Question, this question's reversal had no material impact on the case's outcome.

### What are the implications for adjudicators and contractors?

For adjudicators, this case demonstrates the strict need to comply with the prescribed time for a decision. Failure to do so will result in the decision being void, and there is no entitlement for payment of fees concerning the matter. McMurdo's reversal of the bad faith conclusion confirms that a high standard exists for arguing that an adjudicator has acted in bad faith.

Importantly for contractors, there are material differences between the Queensland security payments regime and other states' counterparts. An awareness of an interstate regime and its obligations will not strictly correspond in the Queensland context. Therefore, contractors must familiarise themselves with the Queensland Act. Importantly, contractors must be aware of the rigid timeframes outlined in the Act, impacting the claimant's right to payment. Secondly, contractors must also be aware of the scope of their building licenses and the categories of work that are excluded from the definition of building work for the purpose of the QBCC Act. In the present case, the Court found in favour of CCA, resulting in a clarification of the scope of exclusions. However, the appeal clarifies that if work conducted falls outside the scope of a contractor's licence, then no right to payment under the Act accrues, and there is no jurisdiction for an adjudicator to determine the right to a progress payment.



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