



## CASE NOTE:

**Richard Kirk Architect Pty Ltd v. Australian Broadcasting Corporation & Ors [2012] QSC 177**

**Relevant legislation: The Building Construction Industry Payments Act 2004 (Qld)**

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### SUMMARY

Richard Kirk Architect (the Architect) applied to the Supreme Court for a declaration that an adjudication decision concerning architects fees said to be owing, which was made pursuant to the Queensland Building Construction Industry Payments Act 2004 (the Act) was void or liable to be set aside for want of jurisdiction. The Architect was not successful. The Supreme Court of Queensland dismissed the application on 22 June 2012.

### BACKGROUND

In January 2010, the Architect entered into a retainer agreement with the Australian Broadcasting Corporation (the ABC) for the provision of architectural services. In February 2012 the Architect served a payment claim on the ABC pursuant to the Act for consultancy fees. The ABC contended that the payment claim was void or invalid or in the alternative that if the claim was valid, it amounted to \$NIL.

The Architect sought an adjudication of the payment claim. In March 2012 the adjudicator found that the payment claim was valid and amounted to \$NIL. The adjudicator found that the payment claim amount to \$NIL because the Architect had not proven either its entitlement to the claim or the quantum of the amounts claimed. The Architect was not happy with the adjudication decision and applied to the Supreme Court for a declaration that the decision by the adjudicator was void or liable to be set aside on two grounds:

Firstly, the payment claim was deficient and accordingly was incapable of triggering the jurisdiction of the Act for an adjudication to take place and therefore the decision of the adjudicator was without jurisdiction and was

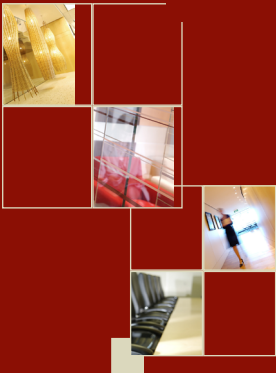


void. The Architect argued that the reason that the payment claim was deficient was because it did not identify the related goods or services for which the amount was claimed as required by s 17(2)(a) of the Act. Section 17(2) (a) provides:

*(2) A payment claim—  
(a) must identify the construction work or related goods and services to which the progress payment relates*

Secondly, the adjudicator erred in rejecting consideration of relevant documentation provided by the Architect to the ABC after delivery of the payment claim which the Architect said formed part of the payment claim. In failing to consider the documents, the adjudicator did not comply with the essential statutory requirements for an adjudication under the Act. Section 26(2) relevantly provides:

*(2) In deciding an adjudication application, matters only—  
(c) the payment claim to which*



*the application relates, together with all submissions, **including relevant documentation**, that have been properly made by the claimant in support of the claim; [our emphasis]*

The Architect sought to invoke the supervisory jurisdiction of the Court, contending, in effect, that the adjudicator's decision did not meet the statutory conditions essential for a valid decision. Adjudications which do not comply with the essential statutory requirements are void and the Court may, when non-compliance has been demonstrated, make declarations and/or grant injunctions to prevent a void adjudication being acted on.

### DAUBNEY J'S DECISION

Daubney J felt that the Architect's complaint that the adjudicator failed to comply with the basic requirements of the Act was hollow.

The adjudicator had found that the inclusion of the Notice of Dispute by the Architect with its payment claim formed part of the payment claim and provided significant detail of what was claimed, thereby satisfying section 17(2)(a) of the Act. Daubney J found that the adjudicator had not committed a jurisdictional error in making this finding.

In relation to the Architect's argument that its payment claim was deficient, Daubney J noted that this objection was raised by the ABC, had been contradicted by the Architect and was rejected by the adjudicator. The Architect, for the purposes of the application to the Supreme Court, then adopted this argument. He also noted that the requirement that the payment claim identify the work is for the benefit of the recipient (in this case the ABC), and it is to be assumed that the Architect knew what its payment claim was for.

The adjudicator found that the documents delivered by the Architect to the ABC eight days after delivery of the payment claim were not a properly made submission and therefore could not be considered by the adjudicator under section 26(2) of the Act. Daubney J found that this was a matter for the adjudicator to decide and that even if the adjudicator had been wrong in his decision that the information was not a properly made submission, this error was not a jurisdictional error.

Daubney J commented that even if he was wrong on the questions of jurisdictional error that he was firmly of the view that this was a case where the discretion of the court to grant declaratory relief ought not to be granted because:

1. The making of the declaration sought by the Architect would add nothing to the position determined as a consequence of the adjudication.
2. If the payment claim was invalid for failure to comply with s 17(2)(a), this was something for which the Architect was solely responsible and the Architect led the adjudicator into error because it submitted to the adjudicator that the payment claim did comply with s 17(2)(a).
3. There was no practical justification for granting the relief sought as the adjudicator's decision had no effect on the Architect's right to pursue the ABC under the dispute resolution process provided for under the contract or by way of court proceedings.

### CONCLUSION

The Supreme Court dismissed the application as the adjudicator had not committed any jurisdictional error.

### IMPLICATIONS

When making a payment claim for professional fees under the Act, ensure that it includes information to prove your entitlement to the amount claimed and the quantum of the claim (ie evidence of the work done, the hours spent, the fees agreed to, the value of the work (as a percentage of the fees), photographs of the relevant work and so forth). In short, you have **to prove** your claim because an adjudicator will make his or her decision based on the evidence submitted as part of the payment claim.