

COOPER v VEGHELYI & ORS
[2005] NSWSC 602
Supreme Court of New South Wales – 28 June 2005

FACTS

Home Productions Pty Ltd ('Home') submitted a Payment Claim under the *Building and Construction Industry Security of Payment Act 1999* (NSW) ('the Act') to Margaret Anne Cooper ('Cooper'). The matter proceeded to Adjudication and the Adjudicator made a determination in favour of Cooper in the sum of \$7,636.50 which became due and payable. Home was granted a certificate of judgment in the Parramatta Local Court and ordered that the amount be paid into Court 30 days until further order. Cooper did not comply with the order.

Cooper filed an application in Consumer Trade and Tenancy Tribunal ('CTTT') seeking a sum of \$3,950 and an order that \$7,500 was not due or owing and costs. These proceedings are still on foot.

Cooper then filed a summons in the Supreme Court seeking a declaration that the Adjudication was null and void on the grounds that she had been denied natural justice because she was not served and/or had no knowledge of the Adjudication Application until after the Adjudication was determined.

Further, Cooper sought to set aside the Local Court order on the grounds that the Adjudicator had no grounds to hear or determine the matter as the Adjudicator fell within the meaning of "court" under the CTTT Act.

The Supreme Court held that section 25(4)(a) of the Act applied and that Cooper was required to pay into court, as security, the Adjudicated Amount pending the final determination of the proceedings. Cooper then sought to set aside the order that the judgment be set aside.

ISSUE

Whether the judgment of the Supreme Court should be set aside.

FINDING

The Court found that there the Supreme Court correctly concluded that the obligation imposed upon Cooper to pay the judgment debt in the Local Court continues and, the amount is to be paid into court and be held pending the outcome of these proceedings.

QUOTE

At paragraph 23 Patten AJ commented:

"...in my opinion, there is little or no utility in these proceedings. In my opinion, they arise out the misconstruction of what the Tribunal said in relation to the adjudication in its reason for decision on the jurisdiction issue. In my opinion, there can be no doubt, in light of the terms of the statute and the decisions upon it, that the Tribunal has full power to determine all issues between the parties and that it should be given the opportunity to do so, unless the parties can otherwise resolve their differences. The operation of s32 of the Act, particularly s3, will ensure that Ms Cooper receives appropriate credit for any amount paid by her into the Local Court at Parramatta. In the context of a dispute involving relatively small amounts of money, it is difficult to see the benefit which Ms Cooper would derive from a declaration or order invalidating the adjudication. However, that is a matter for her and her advisors."

IMPACT

This case confirms that a respondent is required to pay into the court as security the unpaid portion pending the final determination of those proceedings. Further, this case highlights the interim nature of the Act and that pursuant to operation of section 32 of the Act a respondent is entitled to an appropriate credit for the Adjudicated Amount under the Contract.

© Doyles Construction Lawyers 2005

This publication is intended to be a topical report on recent cases in the construction, development and project industries. This publication is not intended to be a substitute for professional advice, and no liability is accepted. This publication may be reproduced with full acknowledgement.

NSW

Jim Doyle
P: 02 9283 5388

E: jdoyle@doylesconstructionlawyers.com

QLD

Frank Nardone
P: 07 3221 2970

E: fnardone@doylesconstructionlawyers.com

VIC

Vinodhini Krisnan
P: 03 9620 0322

E: vkrisnan@doylesconstructionlawyers.com