

**WOODING v EASTOE**  
**[2006] NSWSC 277**  
**Supreme Court of New South Wales – 27 February 2006**

**FACTS**

Maitland Fabrications Pty Ltd (“Maitland”) entered into a contract with a Mr Gary Wooding or, alternatively, a company controlled by Mr Wooding, Bryshan Pty Ltd (“Bryshan”), whereby Maitland undertook to supply, fabricate and erect structural steel for a project at 10 Enterprise Drive, Beresfield. Maitland submitted a Payment Claim to Mr Wooding under the *Building and Construction Industry Security of Payment Act 1999* (NSW) (“the Act”) which was referred to an Adjudicator. The Adjudicator, Mr Brian Eastoe, found that Mr Wooding was liable to pay Maitland the sum of \$82,334.15.

Mr Wooding applied to the Supreme Court to have the Adjudication Determination declared void on the basis that the Adjudicator had wrongly determined one of the basic and essential requirements, namely, the existence of a construction contract between the claimant and the respondent. Mr Wooding’s submission was that there had been an equitable assignment of the contract from himself to Bryshan, with the effect that he was no longer a party to the contract.

**ISSUE**

Will an error in determining who the parties to the contract are invalidate the determination and can an Adjudicator consider an equitable assignment of the contract?

**FINDING**

The Court held that while the existence of a construction contract between the parties is a basic and essential requirement of the Act, it was for the Adjudicator to decide, as a question of fact, who the parties to the contract were. The Court found that the Adjudicator had made a bona fide attempt to address the question, and even if he were wrong, it would have been no more than mistake of fact incapable of invalidating the determination.

The Court rejected Mr Wooding’s argument that there had been an equitable assignment of the contract, stating that an Adjudicator does not have jurisdiction to consider questions of equity falling outside the contract. Mr Wooding’s application to have the determination declared void was accordingly dismissed.

**QUOTE**

Young CJ held at paragraph 16:

“In the instant case a matter for the adjudicator to decide was who were the parties to the contract under which the second defendant did its work. The adjudicator made a bona fide attempt to deal with those issues. He made a decision and I do not consider that there is anything in **Brodyn** which would make me say that if an adjudicator decides a question of fact which is one of the essential matters to his jurisdiction, after a bona fide inquiry into the fact, there is anything more than a mistake of fact and no error which would vitiate his judgment.”

Young CJ also stated at paragraph 29 that:

“...it must be remembered that what is meant by an equitable assignment is that equity will compel the assignor to lend his or her name to proceedings to enforce the obligation. At law the assignor still is the person who must sue. In the case of an adjudicator under this Act, there is no jurisdiction to consider questions of equity forcing an assignor to have his or her name used by an assignee. All that the adjudicator can look at is the contract between the alleged assignor, Mr Wooding, and the second defendant.”

**IMPACT**

It is for the Adjudicator to decide who the parties to a construction contract are. Although falling within one of the basic and essential requirements of the Act, it is a question of fact and a mistake in determining the question by the Adjudicator will not necessarily invalidate the determination.

Of course, an Adjudicator is not a court of equity.

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