

Ventia Australia Pty Ltd v BSA Advanced Property Solutions (Fire) Pty Ltd [2021] NSWSC

FACTS

Ventia Australia Pty Ltd (**Ventia**) sub-contracted with BSA Advanced Property Solutions (Fire) Pty Ltd (**BSA**) for construction works under a periodic subcontract which allowed for the issue of work orders by Ventia to BSA for the provision of specific works, which were to be governed by the terms of the periodic subcontract.

After disputes arose, a payment claim was made for payments under a number of work orders and confirmed by an adjudication award. Ventia then applied to the NSW Supreme Court to have the adjudicated award overturned on the basis that the progress claim was made under more than one contract.

Ventia argued that each work order constituted a separate contract for the purposes of the *Building and Construction Industry Security of Payment Act 1999* (NSW) (**SOPA**) and BSA argued that there was only one contract between the parties, being the original periodic subcontract.

ISSUES

The court considered that the application of the so called ‘One Contract Rule’ would make the payment claim invalid and upheld the rule.

If the work had been done under the periodic subcontract, the challenge would be defeated, and if the work orders resulted in the creation of multiple contracts, individual claims would have to be made in respect of each contract.

FINDING

Rees J found that each work order created a new contract between the parties on the basis that the contract explicitly stated that each work order created a new contract, and the subcontract did not provide a description of the work which was covered by the periodic subcontract, but rather that work orders were generated on an ongoing basis for this purpose.

Rees J held (at para 83):

“BSA was only entitled to perform and claim payment for “Services” in response to a “Work Order” issued by Ventia, where the “Services” included Category A Works and Category B Works. The Subcontract provided that a separate agreement came into existence each time Ventia issued a Work Order. It was not in dispute that the total amount claimed in the payment claim was made up of amounts referable to multiple work orders issued under the Subcontract. The Payment Claim therefore consisted of claims made under numerous construction contracts. As such, the payment claim was invalid and any decision by an adjudicator upholding it is void.”

IMPACT

This case should serve as a caution for companies of the implications of periodic contractual structures allowing for the creation of individual contracts every time a work order is made.

© Doyles Construction Lawyers 2021

This publication is intended to be a report on recent cases in the construction, development and engineering 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.

Jim Doyle
1800 888 783

jdoyle@doylesconstructionlawyers.com
www.doylesconstructionlawyers.com