

**Equa Building Services Pty Ltd v A&H Floors 2 Doors Australia Pty Ltd [2022] NSWSC**

**152**

**FACTS**

The case of *Equa Building Services Pty Ltd v A&H Floors 2 Doors Australia Pty Ltd [2022] NSWSC 152* involved a dispute over an adjudicator’s decision in a payment dispute between A&H Floors 2 Doors Australia Pty Ltd (AH) and Equa Building Services Pty Ltd (Equa).

On or about 30 June 2021, AH sent an email enclosing a payment claim to an email address under Equa’s “@ardengroup.com.au” domain name belonging to a Mr. Lindsay Green (LG). LG however, was not a director, employee or employee of related entity of Equa. A copy of the progress claim sent by mail was also sent to the wrong address and Equa argued it never received either correspondence.

After the Payment Claim was re-sent by email in August of 2021 by AH, this time cc’ing a senior development manager with the Arden Group, Equa responded with an email denying any liability and attaching a payment schedule.

On or about 30 August 2021, AH made an adjudication application. Equa responded, stating that the progress claim had never been served. The Adjudicator found that service had been effected, remarking on LG as being identified as the entity receiving tax invoices and other various correspondences internally and between the parties.

**ISSUE**

Whether the Adjudicator correctly decided that the email of the progress claim to LG was capable of satisfying the service requirements.

**FINDING**

Hammerschlag J allowed the appeal, finding that no payment claim was served and stating:

38. *“The Adjudicator’s conclusion is manifestly unsupportable.*
40. *The determination does not identify (and nor did AH) any specification by Equa of Lindsay Gregory’s email address for the service of the kind of document which a payment claim is.*
45. *[O]n the material before him and on the uncontested evidence before the Court, Lindsay Gregory was never employed by Equa or any other related entity, and he was not a director.*
47. *In my opinion, the Adjudicator wrongly determined that the jurisdictional fact of the service of the payment claim was present when it was not. He had no jurisdiction to adjudicate the dispute.”*

**IMPACT**

This decision shows the impact a failure to achieve effective service may have on progress claims by subcontractors and serves as a reminder of the care which should be taken to ensure the correct mechanisms for service and document handling are clear, including service of payment claims under the *Building and Construction Industry Security of Payment Act 1999 (NSW)*.

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