

**Piastrino v Seascope Constructions Pty Ltd [2022] VSC 202**

**FACTS**

The case of *Piastrino v Seascope Constructions Pty Ltd [2022] VSC 202* concerned a jurisdictional challenge to an adjudication application to a construction dispute. The construction dispute involved a mixed-use development, which the first defendant (**Seascope**) constructed for the plaintiff (**Piastrino**) pursuant to a contract made in or about October 2017.

In or about 2021, the respondent sought and obtained an adjudication determination pursuant to s23 of the Building and Construction Industry Security of Payment Act 2002 (Vic) (**SOP Act**).

The plaintiffs brought an action (the current matter) seeking an order of certiorari against the adjudication determination, on the basis that the adjudicator would not have jurisdiction to decide the dispute as the exception pursuant to the section 7(2)(b) SOP Act exception as below should apply:

*“a construction contract which is a domestic building contract within the meaning of the Domestic Building Contracts Act 1995 between a builder and a building owner ..., for the carrying out of domestic building work... other than a contract where the building owner is in the business of building residences and the contract is entered into in the course of, or in connection with, that business”*

**ISSUE**

1. Whether the section 7(2)(b) of the SOP Act exception would apply to a mixed-use development?
2. Whether the Owners were constructing the building as a part of a business per section 7(2)(b) of the SOP act?

**FINDING**

The Justice Delany J refused to grant the order of certiorari, stating in respect of the second question:

250 *“It is plain that Mrs and Mr Piastrino were in the business of building residences when they entered into the Contract.”*

However, Her Honour also stated the following in respect of the first question

7 *“Whether such a contract falls within the s 7(2)(b) exception has not previously been considered by this Court..”*

18 *“Where a construction contract distinguishes between domestic building work and other work, as required by s 12 of the DBC Act, it will only be the domestic building work component of the contract which is exempt under s 7(2)(b) of the SOP Act. Where a construction contract is a single contract that does not distinguish between domestic building work and other work (and as such fails to comply with s 12 of the DBC Act), if the dominant character of the work the subject of the contract is domestic building work, the exemption in s 7(2)(b) will apply to the contract as a whole.”*

**IMPACT**

This decision provides for partial exception in Victoria to the adjudication dispute resolution pathway in certain instances involving mixed-purpose developments particularly where the contract does not distinguish between domestic and commercial work.

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