



Tuesday, 2 April 2024

Daily Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (One Minute Read)

Nepean Conveyors Pty Ltd v Linkforce Industrial Services Pty Ltd (WASC) - Court declined to grant an interlocutory injunction restraining a contractor from making a second adjudication application regarding a payment claim under the security of payments legislation



Summaries With Link (Five Minute Read)

Nepean Conveyors Pty Ltd v Linkforce Industrial Services Pty Ltd [2024] WASC 71

Supreme Court of Western Australia

Seaward J

Security of payments - the plaintiff entered into a contract with Roy Hill Iron Ore to construct two overland conveyor systems - the plaintiff then entered into a contract with the defendant to construct the two overland conveyor systems the subject of the Roy Hill contract - the defendant submitted progress claim No 20 under the *Construction Contracts (Former Provisions) Act 2004* (WA) in the gross amount of about \$83million claiming a net amount payable of about \$23million - the plaintiff responded that the defendant owed the plaintiff about \$3.7million - the defendant applied for adjudication - the adjudicator determined the plaintiff was required to pay the defendant about \$1.3million - the defendant proposed to lodge a second adjudication application claiming about \$18million - the plaintiff applied for judicial review of the first adjudication decision and a declaration that the contract was not a construction contract for the purposes of the *Construction Contracts (Former Provisions) Act* - the plaintiff also applied for an interlocutory injunction restraining the defendant from commencing the second adjudication application - the Court now dealt with the application for the interlocutory injunction - held: the two main enquiries were whether the plaintiff had made out a prima facie case and whether the balance of convenience favoured the grant of the injunction - the *Construction Contracts (Former Provisions) Act* provides a means for adjudicating payment disputes arising under 'construction contracts', and it achieves this purpose by providing for a party to a 'payment dispute' to apply to have the dispute adjudicated - a determination made by an adjudicator does not finally determine the rights, duties or liabilities of any party to a construction contract - the central subject to which the Act applies is a construction contract, and the Court of Appeal has made it clear that the power of an adjudicator under the Act to determine a payment dispute is conditional upon the objective existence of a construction contract as defined by the Act - the primary basis of the plaintiff's case in both the application for judicial review and the application for a declaration is that the contract was not a construction contract for the purposes of the Act because it concerned construction work falling within the 'mining exception' contained in s4(3)(c) - there was a serious question to be tried in this respect - however, the plaintiff's legal interests and ability to advance its desired legal arguments were adequately protected in the event that the injunction is not granted - further, the grant of an injunction would undermine the objects and purpose of the Act in that it would prevent the defendant from exercising its rights to engage in the very process the Act permits, and for the payment dispute to be resolved on an interim basis in a timely fashion - the balance of convenience was therefore against ordering the injunction - application dismissed.

[Nepean Conveyors Pty Ltd](#)

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