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

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Executive Summary (One Minute Read)

Rogers Construction Group Pty Ltd v Mirage Interiors & Construction Pty Ltd (NSWSC) - Court rejected judicial review application where an adjudicator under the *Building and Construction Industry Security of Payment Act 1999* (NSW) found there was an oral contract that superseded an earlier written contract

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Summaries With Link (Five Minute Read)

Rogers Construction Group Pty Ltd v Mirage Interiors & Construction Pty Ltd [2024] NSWSC 1344

Supreme Court of New South Wales
Stevenson J

Security of payments - Rogers Construction engaged Mirage to provide services involving the supply and installation of walls, ceilings and partitions at the Busby Fire Station under a lump sum contract - Mirage contended there was a further oral contract, which Rogers denied - Mirage served a payment claim under the *Building and Construction Industry Security of Payment Act 1999* (NSW) for an amount it said was owing under the oral contract which was on a costs plus basis - an adjudicator under that Act found that there was an oral contract as alleged by Mirage, and that contract was separate and distinct from the earlier lump sum contract, and there was no overlapping scope of work - Rogers applied for judicial review of the adjudication decision, on the basis of lack of procedural fairness in that the adjudicator decided the matter on a basis not advocated by either party and which neither party, particularly Rogers, could reasonably have contemplated - held: there will rarely be a basis for quashing an adjudication determination for want of procedural fairness - the adjudicator had found that the agreement was that all work done from a particular date was to be on a cost plus basis and under the oral contract - this is what Mirage had contended - Rogers' adjudication response showed that it was alive to the "scope overlap" point, and had made a submission about it - the adjudicator appeared to have included, perhaps as an alternative finding, that the oral contract constituted a variation of the original contract, which neither party had contended - however, Rogers had anticipated such an argument in its adjudication response - the challenge to the adjudication decision failed.

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