



NSW Security of Payment Decision on the “One Contract” Rule

BSA Advanced Property Solutions (Fire) Pty Ltd v Ventia Australia Pty Ltd [2022] NSWCA 82

Overview

The NSW Court of Appeal (**COA**), in *BSA Advanced Property Solutions v Ventia Australia*, has recently determined that the ‘one contract rule’ is not a pre-requisite for a valid payment claim under the NSW Security of Payment Act (SOPA).

This decision will now change the long-held industry view that a payment claim must only relate to one construction contract or arrangement to be valid. A claimant may now claim amounts due and payable under multiple contracts where there is a singular reference date for the works performed.

The Dispute

Ventia sub-contracted with BSA to perform periodic construction works under various work orders which were governed by the terms of one subcontract (**Subcontract**).

The terms of the Subcontract stated that each work order formed a separate contract which formed the basis of the work order instructions. Disputes arose and BSA submitted a payment claim for \$2.979 million, which included amounts under various work orders. BSA was successful in obtaining an adjudication determination for \$2.69 million.

Ventia commenced proceedings alleging the adjudication determination was invalid because it referred to multiple work orders, which were each separate contracts. Ventia relied on the ‘one contract rule’, which, under section 13(5), prevents the ‘service of more than one payment claim per contraction contract’.

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Supreme Court's View

The Supreme Court agreed with Ventia, invalidated the adjudicator's determination and stated that because each work order was a separate contract, the payment claim could not include amounts in relation to separate contracts. BSA appealed to the COA.

Court of Appeal's View

The question for the COA was whether the "one contract" rule was a precondition to the validity of a payment claim. Notably, the COA agreed with BSA and determined that there was no such restriction and made the follow key observations:

- SOPA defines a construction contract to include a contract and some arrangement, which refers to the carrying out of work as opposed to particularising the source of an obligation to carry out work and the liability of the respondent to make payment;
- the validity of a payment claim does not include the identification of the source of the obligation to carry out the work or the source of the entitlement to make payment;
- an adjudicator is not constrained by the terms or obligations of the contract but is subject to determining the validity of a payment claim by its reference date;
- although s 8 and 13 provide a payment claim to be made "under a construction contract", this is a 'false sense of acceptability';
- SOPA does not contain a 'pre-condition' of identifying one-contract; a payment claim is valid so as long the claim is referable to one reference date;
- even if a jurisdictional requirement was required under SOPA, it was not demonstrated that the payment claim in issue was not under one-contract;
- the plurality of 'work orders' was inconsistent with the conclusion that each work order required a single payment claim.

Key takeaways

- COA's decision provides there is no one contract requirement under SOPA;
- this case demonstrates the 'one contract rule' had no applicability to the disputed payment claim and adjudication determination;
- service of a payment claim may now include amounts due and payable under multiple contracts where there is a singular reference date for the works performed;
- it was determined that although the work orders created a separate contract, each separate contract was governed by the terms of the Subcontract;
- this decision now supports other challenges to the existence of the one contract rule.

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