



Examining Procedural Fairness and Jurisdictional Errors in Adjudication

Case Note: AM Darlinghurst Investment Pty Ltd as trustee for AM Darlinghurst Investment Trust v Growthbuilt Pty Limited [2024] NSWSC 825

Overview

The recent case of AM Darlinghurst Investment Pty Ltd v Growthbuilt Pty Limited is significant for the construction industry, especially concerning adjudication and procedural fairness. This case provides key insights into the adjudication process, handling extension of time (EOT) claims, and dealing with liquidated damages disputes.

Case Background

AM Darlinghurst (the plaintiff) and Growthbuilt (the defendant) were involved in a construction contract that led to a dispute over project delays, EOTs, and liquidated damages. AM Darlinghurst challenged an adjudication determination, claiming the Adjudicator failed to consider key evidence, relied on arguments not presented by Growthbuilt, and denied procedural fairness.

Issues Discussed

Consideration of Evidence:

Issue: AM Darlinghurst argued the Adjudicator ignored Mr. Shahady's report.

Court's Finding: The Adjudicator had reviewed the report but decided not to give it weight due to its impractical content. This was within the Adjudicator's discretion.

Insights

Failure to Refer to Specific Evidence:

Issue: AM Darlinghurst claimed the Adjudicator overlooked Mr. Lyle's evidence on delays.

Court's Finding: The court noted the Adjudicator discussed Mr. Lyle's evidence in other parts of the determination, suggesting it was considered even if not explicitly mentioned for each claim.

Reliance on Grounds Not Advanced:

Issue: AM Darlinghurst alleged the Adjudicator relied on arguments not presented by Growthbuilt, denying procedural fairness.

Court's Finding: Growthbuilt had indeed advanced the argument regarding EOT claims affecting liquidated damages. The Adjudicator's decision was consistent with Growthbuilt's submissions, maintaining procedural fairness.

EOT and Liquidated Damages:

Issue: Whether Growthbuilt's entitlement to EOTs nullified AM Darlinghurst's claim for liquidated damages.

Court's Finding: The Adjudicator determined that Growthbuilt's entitlement to EOTs nullified AM Darlinghurst's claim for liquidated damages, which was within the Adjudicator's jurisdiction. The court affirmed this decision.

What This Means for Developers and Builders

Adhere to Procedural Fairness: Ensure all relevant evidence and arguments are thoroughly presented and considered during adjudication to avoid claims of procedural unfairness.

Detailed Submissions: Provide comprehensive and well-documented submissions to support claims and defences. Clear documentation can help prevent disputes and support your case if issues arise.

Understand Jurisdictional Limits: Recognise the scope and limits of an adjudicator's authority. Understanding these limits can help in preparing your case and avoiding jurisdictional errors.

Manage EOT and Liquidated Damages Claims: Be meticulous in documenting delays and justifying EOT claims. Clear communication and documentation can protect against liquidated damages claims.

Conclusion

The AM Darlinghurst v Growthbuilt case emphasises the importance of procedural fairness and detailed documentation in construction disputes. Developers and builders should ensure their submissions are thorough and well-founded to avoid adverse outcomes in adjudication. This case serves as a reminder of the critical role of procedural compliance and comprehensive evidence in resolving construction disputes effectively.

More information

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