



The Court of Appeal & the Treatment of Upfront Payments: Unpacking the Hynash Constructions v BRP Industries Case

Hynash Constructions Pty Ltd v BRP Industries Pty Ltd [2025] NSWCA 14

Introduction

The case of Hynash Constructions Pty Ltd v BRP Industries Pty Ltd offers a valuable reminder to be clear in contracting payment arrangements and to always provide a payment schedule in response to a payment claim.

Hynash Constructions Pty Ltd (**Hynash**) was the head contractor for the Bathurst Stormwater Harvesting #3198 Project for Bathurst Regional Council.

BRP Industries Pty Ltd (**BRP**) was subcontracted by Hynash to undertake underboring works on the project for a fixed sum to be paid as progress payments. After terminating the subcontract, BRP obtained a court order for Hynash to pay its payment claim totalling \$234,286.80 plus interest.

This case concerns Hynash's appeal of that order.

Executive Summary

The issue for the Court of Appeal was whether Hynash could subtract from the payment claim an upfront payment that it had made to BRP before their contract was terminated.

The Court of Appeal refused the appeal.

What Is a Payment Claim?

A payment claim is essentially an invoice to receive anything that is owed for unpaid construction work under section 13 of the Building and Construction Industry Security of Payment Act 1999 (NSW) (the **Act**).

The respondent to a payment claim must respond by paying the amount stated on the payment claim or by issuing a payment schedule.

BRP served a payment claim on Hynash. Hynash neither paid the payment claim, nor served on BRP a payment schedule.

Court's Findings and Commentaries

The Court of Appeal refused the appeal for several reasons, including:

- 1.1 Whether the upfront payment should be apportioned in reduction of a payment claim requires looking at the construction of the contract. This is prohibited by the Act. Where the respondent to a payment claim has not paid the payment claim nor served a payment schedule, the respondent cannot raise any "defence in relation to matters arising under the construction contract".
- 1.2 There was a lack of indication that the upfront payment was made in a way that deducts from the payment claim.

Takeaways

The case provides two critical reminders for the construction industry:

- 1.3 Contracts should address how payment arrangements will be dealt with. In this case, it would have helped Hynash to have contractually specified how upfront payments would be apportioned in reduction of a payment claim.
- 1.4 A respondent to a payment claim should always provide a payment schedule and, if relevant to the situation, indicate a reason that payment for an amount is not required. Providing a payment schedule allows for any potential dispute to be referred for adjudication.

Heeding these reminders will increase the likelihood that you are protected from being exposed to paying more than is necessary.

More information

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