



A stay of adjudication enforcement proceedings for vulnerable homeowners

Black Label Developments Pty Ltd v McMenemy [2025] NSWCA 114

Introduction

In *Black Label Developments Pty Ltd v McMenemy* [2025] NSWCA 114, the Court of Appeal upheld a stay of execution of a judgment debt that arose from the filing of an adjudication certificate under section 25 of the Building and Construction Industry Security of Payment Act 1999 (NSW) (**SOPA**).

Background

Mr McMenemy (McMenemy) engaged Black Label Developments (the Builder) to undertake residential renovations. On the day he and his family were due to return home, the Builder allegedly refused to allow access unless a Deed of Variation was executed by the parties (which substantially increased the contract price), which was signed.

The Builder later served a payment claim under SOPA, obtained an adjudication determination, and registered judgment under section 25 of SOPA. McMenemy commenced separate District Court proceedings alleging duress, undue influence, and unconscionable conduct, ultimately seeking to avoid the Deed.

Simultaneously, McMenemy applied for a stay of execution of the SOPA judgment, which was granted. The decision to grant the stay of execution was appealed by the Builder.

Court's Findings and Commentary

The NSW Court of Appeal dismissed the appeal and upheld the stay.

elnsights

In dismissing the appeal, the Court has confirmed that legislative policy intentions in relation to SOPA do not in disnecessarily confine the inherent judicial power to stay proceedings.

Policy considerations will bear significant weight in the exercise of the Court's discretion to grant a stay. They do not, however, extinguish the Court's power to exercise its discretion. Notably, SOPA implemented two statutory policies being (i) to maintain the flow of money to the contractor, and (ii) as an interim measure to place the risk of insolvency on the principal.

In relation to the first policy, the Court criticised the tendency to overvalue this general policy at the expense of case specific justice. The Court rejected any presumption that a contractor's survival necessarily hinges on immediate payment, demonstrating that SOPA's objectives do not override the Court's obligation to weigh the balance of convenience.

As to the second policy, as an interim measure, that the risk of insolvency was to be borne by the principal was not treated by the Court as an absolute bar to a stay. The Court held it was a proper exercise of the discretion to grant a stay in circumstances where McMenemy (being an owner-occupier and individual, rather than a corporation), would suffer irreparable prejudice in the form of losing his family home. The decision of the Court below, therefore, appropriately weighed the prejudice faced by McMenemy, given that it was a non-commercial and irreparable harm.

Importantly, and despite the recent removal of the SOPA exception for owner-occupier contracts in NSW, the Court considered that the application of SOPA was not necessarily directed to rendering ordinary homeowners (who were consumers) exposed to the various risks which the security of payment regime

imposed on principals that are corporations. The Court cited numerous reasons highlighting that enforcing a section 25 judgment against a homeowner may result in life altering outcomes, such as the forced sale of their home, which cannot be dismissed as mere commercial inconveniences. As a matter of policy, the Court's reasons suggest that SOPA's policy objectives must be readjusted when justice demands it, particularly given that owner-occupiers are now exposed to the regime (without any of the protections that were recommended to Parliament).

Takeaways

For principals and homeowners (particularly in NSW): where an irreparable prejudice is faced by non-commercial parties, the Court may grant a stay of adjudication enforcement proceedings.

For consumers, particularly owner occupiers, the loss of a home due to SOPA enforcement may be catastrophic enough to justify a stay.

For builders and contractors (particularly in NSW): adjudication operates on a "pay now, argue later" basis and is an excellent source of liquidity. However, obtaining an adjudication determination will not protect you from a stay if the underlying claim is challenged.

More Information

Construction Legal has proven expertise in SOPA matters, having successfully secured the first stay of this kind in *Smith v Impero Pacific Group Pty Ltd* [2024] NSWSC 1234. Homeowners exposed to the SOPA regime should contact us if they have received a payment claim or adjudication application.

Have questions or need advice? Contact the team at [Construction Legal](#).