



Why Your Business Card Could Cost You a SOPA Claim: The Supreme Court decides what Counts as an Oral Agreement.

Case Note: **Kumar v Frankies Cranes Pty Ltd [2025] NSWSC 1264**

Executive Summary

The Supreme Court of NSW in **Kumar v Frankies Cranes Pty Ltd [2025] NSWSC 1264** explains what is required for an oral agreement and service of a payment claim following an alleged breach of agreement.

Facts

Rakesh Kumar (the **Plaintiff**) sought to set aside an adjudication determination (**Determination**) made under the Building and Construction Industry Security of Payment Act 1999 (NSW) (**SOPA**) in favour of Frankies Cranes Pty Ltd (the **Defendant**) for \$142,120. The Plaintiff denied entering into any construction contract with the Defendant, contending there was no agreement and that the subsequent payment claim and s 17(2) notice were never properly served. The Court was asked to set aside the Determination on the basis it is void for jurisdictional error.

Issues to be Determined

The Supreme Court was asked the following questions:

1. Whether there was a construction contract under s 7 SOPA.
2. Whether the payment claim and s 17(2) notice were validly served.
3. Whether the adjudicator had jurisdiction to make the determination, as litigation costs or lacking proof.

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Court of Appeal Decision

The Determination was set aside because the adjudicator did not have jurisdiction.

Legal Reasoning

The existence of a construction contract in accordance with s 7 SOPA is a prerequisite for an adjudicator's jurisdiction.¹ The Court's power to review a determination is not limited to instances where an adjudicator was "capricious, unreasonable, [or] took into account irrelevant matters".

The Court found that no oral agreement existed containing the terms alleged by the Defendant. This finding was supported by the following evidence that:

- the Plaintiff did not own the property in May 2025 as alleged by the Defendant;
- it is unlikely that parties in a commercial context would not have documented their agreement in some way;
- the Plaintiff did not use the crane provided by the Defendant nor engage contractors for works on site;
- it was highly unlikely in the commercial context of the Plaintiff that the Plaintiff would assume personal liability instead of contracting via a corporate entity; and,
- A failure to provide a witness did not assist the Defendant in proving the existence of an alleged oral agreement.

Further, the Court held that the Defendant failed to serve a payment claim to the Plaintiff. Service of a payment claim under s 13(1) and compliance with s 17(2) SOPA are preconditions to an adjudicator's jurisdiction.³ Relevantly, s 31(1)(d) SOPA provides that a document required to be served may be served "by email to an email address specified by the person for the service of documents of

that kind". The Court found that the Plaintiff, in handing over his business card, did not amount to specification of an email for the service of SOPA documents. The Court accepted that because of the non-service of the payment claim, the Defendant failed to comply with the timing regime under ss 14, 15 and 17 of the SOPA and was thus out of time to pursue its claim.

Accordingly, the Determination was set aside, and the appeal was granted with costs.

The decision by the Supreme Court affirms that in adjudication disputes, the party asserting an oral construction contract bears the burden of proving its existence. Furthermore, the existence of a construction contract and valid service under SOPA are jurisdictional facts, and any defect in either renders an adjudication determination invalid.

Key Takeaways

For contractors alleging the existence of an oral contract, the burden of proof is strict and often reliant on written evidence affirming the terms of any agreement.

For developers facing payment claims, an adjudication determination founded on a non-existent contract or invalid service is void and handing over a business card with an email address does not constitute "specification" for service.

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