

ADJUDICATE TODAY

Annual Seminar 2021

Review of QLD Court Decisions

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NEW JURISDICTIONAL ISSUES

WHETHER A DOCUMENT IS A PAYMENT SCHEDULE IS A JURISDICTIONAL FACT

- *Melaleuca View v Sutton Constructions* [2019] QSC 226 (Brown J)
- *ACP Properties (Townsville) v Rodrigues Construction Group* [2021] QSC 45 (Bradley J)
- *Kangaroo Point Developments v RHG Construction Fitout and Maintenance* [2021] QSC 30 (Dalton J) (Appeal commenced)

SERVICE OF ADJUDICATION APPLICATION IS A JURISDICTIONAL FACT

- *Niclin Constructions v S.H.A. Premier Constructions* [2019] QSC 91 (Ryan J)
- *National Management Group v Biriell Industries* [2019] QSC 219 (Wilson J)
- *McCarthy v TKM Builders* [2020] QSC 301 (Martin J)

LATE DECISIONS ARE OUTSIDE OF JURISDICTION

- *Galaxy Developments v Civil Contractors (Aust)* [2020] QSC 51 (Dalton J)
- *Civil Contractors (Aust) v Galaxy Developments* [2021] QCA 10 (Fraser and McMurdo JJA and Jackson J)

APPLICATION OF EXISTING CASELAW

JURISDICTION EXPLAINED, MATTERS FOR THE ADJUDICATOR TO DETERMINE

- *Acciona Agua Australia v Monadelphous Engineering* [2020] QSC 133 (*Bond J*)
- *S.H.A. Premier Constructions v Niclin Constructions* [2020] QSC 307 (*Bond J*)
- *Civmec v Southern Cross* [2019] QSC 300 (*Mullins J*)
- *Prime Constructions (Qld) v HPS (Qld)* [2019] QSC 301 (*Flanagan J*)

SEPARATE CONTRACTS OR VARIATIONS

- *Auspile v Bothar Boring* [2021] QSC 39 (*Wilson J*)
- *S.H.A. Premier Constructions v Lanskey Constructions* [2019] QSC 81 (*Boddice J*)

RETENTION

- *EHome Construction v GCB Constructions* [2020] QSC 291 (*Bond J*)
 - A claim for retention return is a claim for construction work

WHETHER A DOCUMENT IS A PAYMENT SCHEDULE IS A JURISDICTIONAL FACT

Melaleuca View v Sutton Constructions [2019] QSC 226 (Brown J)

- Claimant asserted no payment schedule, Respondent relied on particular correspondence as payment schedule and submitted an adjudication response
- Adjudicator disagreed, did not consider adjudication response
- Court decided that **whether or not a document is a payment schedule is a jurisdictional fact** and should be subject to judicial review
- Court agreed with the adjudicator that document was not a payment schedule

Payment Claim	15 February 2019	\$235,980
Due Date	1 March 2018	
Adjudication Determination	6 May 2019	\$214,751
Hearing	4 September 2019	
Judgement	10 September 2019	

WHETHER A DOCUMENT IS A PAYMENT SCHEDULE IS A JURISDICTIONAL FACT

ACP Properties (Townsville) v Rodrigues Construction Group [2021] QSC 45 (Bradley J)

- Claimant asserted no payment schedule, Respondent relied on two emails as both being payment schedules, submitted an adjudication response
- Adjudicator disagreed on both, did not consider adjudication response
- Court decided both emails amounted to payment schedules
- Claimant submitted this is an error within jurisdiction
- Court **relied on *Melaleuca View***, decision void for lack of jurisdiction

Payment Claim	4 September 2020	\$237,574
Due Date	18 September 2020	
Adjudication Determination	6 November 2020	\$237,574
Hearing	26 February 2021	
Judgement	26 February 2021	

WHETHER A DOCUMENT IS A PAYMENT SCHEDULE IS A JURISDICTIONAL FACT

Kangaroo Point Developments v RHG Construction Fitout and Maintenance [2021] QSC 30 (Dalton J) (Appeal commenced)

- Superintendent issued payment schedule, so did lawyers for the Respondent, and the Superintendent's document was annexed to and formed the bulk of the lawyer's document
- Claimant submitted that the Superintendent's document was the payment schedule, Adjudicator agreed because it was submitted within time nominated in contract (10 days) and the contract stated the Superintendent's document is a deemed payment schedule under the Act
- Court disagreed because the Superintendent's document was a recommendation and therefore not a payment schedule, and lawyers document was within time under the Act (15 days)
- Court noted that the adjudication application form had nominated the Superintendent's payment schedule, **agreed with *Melaleuca View* that this is jurisdictional**, so adjudicator had no jurisdiction to decide a matter based on the wrong payment schedule

Payment Claim	27 July 2020	\$2,013,528
Due Date	17 August 2020	
Adjudication Determination	4 December 2020	\$788,439
Hearing	18 February 2021	
Judgement	26 February 2021	

SERVICE OF ADJUDICATION APPLICATION IS A JURISDICTIONAL FACT

Niclin Constructions v SHA Premier Constructions [2019] QSC 91 (Ryan J)

Niclin Constructions v SHA Premier Constructions [2019] QCA 177 (Gotterson and Philippides JJA and Applegarth J)

- Three adjudications, Claimant served the Respondent with each of the adjudication application submissions without the “approved adjudication application form”.
- Adjudicator decided no jurisdiction in each matter
- Court agreed that **service of adjudication application form on the Respondent is necessary to confer jurisdiction on the adjudicator**, and it must be service as soon as possible
- Court considered that all parties have a right to know where they stand, so Claimant does not have latitude to delay service and thereby delay the process
- Court of Appeal agreed unanimously

Payment Claims	31 October 2018	\$284,691, \$388,392, \$640,7289
Due Date	Not stated	
Adjudication Determination	18 January 2019	No Jurisdiction
Hearing	11 February 2019	
Judgement	18 February 2019	

SERVICE OF ADJUDICATION APPLICATION IS A JURISDICTIONAL FACT

National Management Group v Birieli Industries [2019] QSC 219 (Wilson J)

- No payment schedule, Claimant advised the adjudicator that the application had been served
- Respondent complained after the date for any potential adjudication response had passed that it had not been served, Adjudicator sought further submissions and decided was served
- Court **agreed with *Niclin*** that service of the application is a jurisdictional issue
- After a detailed review of affidavits and evidence, court decided that service had been effective.

Payment Claim	7 January 2019	\$26,702
Due Date	24 January 2019	
Adjudication Determination	7 March 2019	\$26,702
Hearing	29 May 2019	
Judgement	9 September 2019	

SERVICE OF ADJUDICATION APPLICATION IS A JURISDICTIONAL FACT

McCarthy v TKM Builders [2020] QSC 301 (Martin J)

- Claimant noted that part of the application was on Dropbox that it did not access, so it had not been served until after the adjudication response submitted
- Adjudicator noted that it was demonstrated that the Respondent had those documents (without stating how it was demonstrated)
- Court **relied on *National Management*** (also cited *Niclin*) that service is jurisdictional
- Court accepted the submissions that dropbox was not accessed until after the adjudication response had been submitted, so application had not been served and adjudicator did not have jurisdiction

Payment Claims	24 April 2020	\$33,272
Due Date	31 May 2020	
Adjudication Determination	15 July 2020	\$33,272
Hearing	31 August 2020	
Judgement	7 October 2020	

LATE DECISION IS OUTSIDE JURISDICTION

Galaxy Developments v Civil Contractors [2020] QSC 51 (*Dalton J*)

Civil Contractors (Aust) v Galaxy Developments [2021] QCA 10 (*Fraser and McMurdo JJA and Jackson J*)

- Distinguished the conclusions and reasoning in NSW and Victorian court decisions because of the different provisions in the other Acts
- Concluded an intention that an adjudicator's jurisdiction ends when the timeframe under the Act, as properly extended, has expired
- A decision made after that jurisdictional timeframe is not a decision at all, so the adjudicator has failed to make a decision and is not entitled to fees
- Implies that a decision made on the last day must be made available to the parties early the next day, with corrections under the slip rule to follow