Overview of WA Cases

Adjudicate Today Course
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Cases

* *Sandvik Mining and Construction Australia Pty Ltd v Fisher [No. 2] [2020] WASC 123 (Sandvik v Fisher)*
* *Salini-Impregilo S.P.A v Francis [2020] WASC 72 (Salini v Francis)*
* *Salini-Impregilo S.P.A. v Floreani [2020] 358 (Salini v Floreani)*

Sandvik v Fisher

* Facts
  * Claimant made two applications for adjudication in relation to one payment claim and certificate
* Issues:
  * Scope of a *'payment claim'* under the Act
* Decision
  * If progress claim contains a number of itemised demands, each is a *'payment claim'*
  * Each item can be the subject of an adjudication application
  * A group of items from a single progress claim can be aggregated as a single application – the group will be a *'payment claim'*

Salini v Francis

* Facts
  * Geodata made three applications for adjudication
    * 11 September 2018 – First Application
    * 1 October 2018 – Second Application
    * 7 November 2018 – Third Application
* Issues:
  * Meaning of '*adjudicate simultaneously*' under section 32(3) of the Act
  * Adjudicator's amendments to the determination
  * Scope of '*costs*' under s34(2)
  * Does adjudication estoppel apply under the Act?

Salini v Francis

* Decision on Adjudicating Simultaneously
  * *'Adjudicate simultaneously'* – adjudicates a dispute during a period which overlaps the period in which the adjudicator is adjudicating another dispute [83]
  * *'Adjudicating'* means – *'evaluating and determining the merits of the dispute'* [88]
  * *'Adjudicating'* begins whether the adjudicator commences *'evaluative work in relation to the merits of the dispute'* [106]
  * *'Adjudicating'* ceases when an adjudicator stops evaluating merits [110]
  * Dismissal under s31(2)(a) is *'something that must occur before an adjudicator is permitted to proceed to determine an application on the merits'* [109]
  * The Act requires the adjudicator to communicate his or her decision within the prescribed time or when he or she has been paid, whichever is the later in time [183]

Salini v Francis

* Decision on Amendments to Determinations
  * Written record required under s36 is not the *'determination'* but rather, *'evidences or records'* the determination [177]
  * Reasons for the determination are not the *'determination'* [191]
  * Amendments to the written record involving fees and costs do not fall within the scope of s41 of the Act [193]

Salini v Francis

* Decision on Scope of Costs under s34(2)
  * S34(2)

    'If an appointed adjudicator is satisfied that a party to a payment dispute incurred costs of the adjudication because of frivolous or vexatious conduct on the part of, or unfounded submissions by, another party, the adjudicator may decide that the other party must pay some or all of those costs.'

  * S34(2) is the broader category – parties' costs includes costs the parties must pay under s44 (being the adjudicator's fees and expenses) [358]
  * *'costs of the adjudication'* in s34(2) includes the adjudicator's fees
  * A decision under s 34(2) that the offending party should pay *all* of the innocent party's costs, requires payment all of the adjudicator's fees [363]

Salini v Francis

* Decision on Issue Estoppel
    * A form of issue estoppel applies under the Act [389]
    * To prevent the re-agitation of an issue that was fundamental to the assessment under s32(2)(b) [389]

Salini v Floreani

* Facts
  * Geodata made an application for adjudication relating to a $219k claim rejected on the basis of a duplicate claim
  * Adjudicator awarded Geodata $219k plus interest
  * Salini argued the decision was unreasonable, or alternatively, illogical or irrational
* Decision:
  * Dismissed application for Judicial Review
  * Unreasonableness test – *'irrational or bizarre'*, *'lacks an evident and intelligible justification'*, *'plainly just, arbitrary, or lacking in common sense'*
  * Adjudicator's decision not manifestly unreasonable, nor illogical or irrational
  * A decision a reasonable decision-maker could have arrived at

Many thanks
Questions?