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“PAY NOW, ARGUE LATER?” – THE CORRECT PROCESS UNDER THE CONSTRUCTION CONTRACTS ACT

The principle underpinning the Construction Contracts Act (“CCA”) is “**pay now, argue later**”.

Cash flow is the lifeline of the construction industry and the CCA assists in providing a mechanism for dispute resolution, without delay of money changing hands.

If you use the CCA to enforce payment, you need to be aware that a recent High court decision (***Bussell Construction Limited v Manchester Industrial Holdings Limited [2015]***) has highlighted that payment claims must to be issued with sufficient detail.

In this case a building company (“the builder”) issued five progress payments for renovation works. These were paid in full by the defendant developer. A dispute emerged when the Builder issued a sixth progress claim, vague in detail, with work descriptions that appeared not to match the works performed.

The developer raised a dispute and sought further detail from the builder. It asked for further particulars and copies of invoices referred to, in order to prepare a payment schedule.

The Builder did not respond for a year, and eventually issued a payment claim for the same work in the sum of \$40,648.15.

The defendant replied by email:

“The matters raised in our correspondence last year have not been addressed. The claim under

the CCA is not accepted. The payment schedule is zero.”

The builder took the matter to adjudication, where it was held that the Builder’s payment claim was valid. The builder then issued proceedings to liquidate the development company in the High court.

The High court held:

- Payment claims must clearly identify the work undertaken. Mere identification for individual workmen, hourly rates, and hours worked will not be sufficient for identifying particular construction work.
- If there is no valid payment claim, the “pay now, argue later” principle cannot apply.
- The case serves as a timely reminder that to avoid a major cash flow disaster, and to obtain a remedy under the CCA, you must have the correct paperwork sorted.

If you are experiencing a construction issue and you think we could help, please feel free to contact Hannah Nimot and Eugene Collins for some advice and assistance.

20 MINUTE FREE

WANT to review your Family Trust structure? THEN call us and take advantage of our 20 Minute Free interview