

Article Information

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Adjudication Submissions - Keep Them Simple!

The Supreme Court of New South Wales, in the recent case of *Future Developments Pty Ltd v TJ & RF Fordham Pty Ltd* [2017] NSWSC 232, provides parties to an adjudication with a subtle warning to ensure adjudication submissions are concise and logical. Andrew MacGillivray, Senior Associate discusses.

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Facts

The parties entered into a contract for the construction of roads and drainage works for a residential subdivision (**Contract**).

The claimant submitted a payment claim in the amount of \$691,984.71 (including GST), a portion of which was in respect of 12 variations. The respondent scheduled \$Nil in respect of the variation portion of the claim. The parties proceeded to adjudication, where the adjudicator awarded the claimant close to the entire amount claimed.

In response, the respondent filed a summons seeking to quash the adjudicator's decision.

Review Decision

The respondent argued that the adjudication determination was void for jurisdictional error on the basis that the adjudicator failed to:

1. have proper regard to the respondent's submissions, and/or
2. provide adequate reasons for its findings,

both of which resulted in a denial of procedural fairness to the respondent.

Court's decision

The Court dismissed the respondent's arguments, concluding that the adjudicator had considered the respondent's submissions and provided adequate reasons for its decision.

In considering whether the adjudicator provided adequate reasons for its decision, the Court relevantly observed that the respondent's adjudication response (which was 69 pages long) was:

"lengthy, rambling, difficult-to-follow, complicated and confusing"

This was particularly relevant because the adjudicator had only 10 business days to make a determination in respect of the adjudication.

Lessons learned

It is apparent from this case that the Court will consider the length and clarity of adjudication submission in determining

whether the adjudicator has provided adequate reasons for its decisions.

When drafting adjudication submissions, parties should always ensure that:

1. Adjudication submissions are short and to the point;
2. Submissions are logical and easy to read, particularly where the subject matter of the submissions is technical or heavy on facts; and
3. They use headings, introductions and conclusions to guide the adjudicator through the submissions.

Parties entering a security of payment dispute should also keep in mind that submissions that are lengthy, and “*confusing*” will require an adjudicator to spend more time coming to a conclusion. This will likely result in greater expense for party who is ultimately found responsible for payment of the adjudication fees, and (as in this case) can go against you if an adjudicator gets it wrong.

Therefore, when preparing your adjudication submissions, we recommend seeking legal advice to ensure that they “hit the mark”, and make an adjudicators job easier.