JOHN HOLLAND PTY LTD v CHIDAMBARA
DENIAL OF NATURAL JUSTICE AND JURISDICTIONAL ERROR IN ADJUDICATION PROCEEDINGS – A CASE NOTE

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I. INTRODUCTION

The Supreme Court of Western Australia, in *John Holland Pty Ltd v Raj Chidambara and Anor* (*"John Holland v Chidambara"*),[1] quashed an adjudicator's determination under the *Construction Contracts Act* 2004 (WA) ("Act") on the grounds that there had been a substantial denial of natural justice, and that the adjudicator made a jurisdictional error. The Court also ordered repayment of the amount of $6,131,962.27 paid by John Holland Pty Ltd ("John Holland") in accordance with the adjudicator's determination.

The Court's decision was handed down two weeks after the Supreme Court of the Northern Territory's decision in *Inpex Operations Australia Pty Ltd and Ichthys LNG Pty Ltd v JKC Australia LNG Pty Ltd*,[2] in which Kelly J quashed an adjudicator's determination under the *Construction Contracts (Security of Payments)* 2004 (NT) ("NT Act")[3] on natural justice grounds in strikingly similar circumstances. In both cases, the adjudicator implied a term from the respective legislation in circumstances where neither party contended that such a term should be implied.

II. FACTS

The Subcontract

The adjudication under the Act arose out of a subcontract between Schneider Electric Buildings (Australia) Pty Ltd ("SEBA") and John Holland dated 29 May 2013 ("Subcontract") under which SEBA agreed to provide the technology package for the Perth children's hospital project ("Project") in Perth. The Subcontract was subsequently varied by an amendment deed dated 21 January 2016 ("Amendment Deed") by which the parties agreed, without admission of liability, to settle their respective claims relating to delays to the Project, and John Holland's claim for liquidated damages, for a *"Subcontract Sum Adjustment"* of more than $17m greater than the original Subcontract Sum.

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[1] [2017] WASC 179.

[2] [2017] NTSC 45.

[3] The *Construction Contracts Act* 2004 (WA) and the *Construction Contracts (Security of Payments)* 2004 (NT) are in similar terms, and are collectively referred to as the *"West Coast Model"* of security of payment legislation.

The Amendment Deed also contained a number of amendments to the Subcontract, including an amended Date for Completion to 20 April 2016, amendments to three Stage Dates for Completion, including *"All construction works"* by 28 February 2016 ("February Milestone"), *"Commissioning and testing"* by 22 March 2016 ("March Milestone"), *"Building tuning complete"* by 20 April 2016 ("April Milestone"), and for milestones in respect of which payment would be made by John Holland to SEBA.

Special Condition 19 of the Subcontract was amended to include a number of provisions relating to the Subcontract Sum Adjustment, including the addition of clause 19.6, which provided that SEBA was only entitled to any payment in respect of milestones if a threshold of 80% of the relevant milestone was achieved.

The Amendment Deed also added Special Condition 20, entitled *"The Prevention Principle"*, which provided that SEBA was not entitled to any extension of time caused or contributed to by any other subcontractor or consultant engaged by or on behalf of John Holland except where SEBA has notified John Holland in accordance with the Subcontract of the potential delay to the Subcontract works. Special Condition 20 also provided that SEBA shall have no claim, and is barred from making a claim, against John Holland where it has failed to comply with clauses 10.6A, 10.6B, 10.7, 11.2, and 11.8. Special Condition 20 also excluded the application of the prevention principle.

Clause 10.6A required SEBA to give John Holland a notice of delay containing specified information, and for continued delay, notices on a weekly basis. Clause 10.6B provided that, in order to claim an extension of time, SEBA must have given a delay notice for a delay event and, within seven business days after the delay event ceases, must have given notice to John Holland of its claim for an extension of time containing specified information.

Clause 10.7 specified certain conditions precedent to SEBA's entitlement to an extension of time, including having given notices in accordance with clause 10.6A. Clause 10.8 specified John Holland's obligation to extend the Date for Completion if the conditions precedent in clause 10.7 have been satisfied. Clause 13.6 of the Subcontract provided for liquidated damages to be paid by SEBA to John Holland in the event of delay in completion of the works, capped at 15% of the Subcontract Sum, and clause 12.18 entitled John Holland to deduct from any monies due to SEBA any debt or other moneys due from SEBA to John Holland, including liquidated damages.

The Payment Claim

On 31 August 2016, SEBA submitted its payment claim to John Holland for the sum of $6,642,642 (plus GST), which included claims for the March Milestone and April Milestone works. On 21 September 2016, John Holland sent SEBA its payment schedule assessing the sum payable as minus $6,907,085.12. John Holland assessed the amount claimed by SEBA as $817,914.88, and deducted

liquidated damages claimed by John Holland of $7,725,000, resulting in a net sum of minus $6,907,085.12.

The Adjudication Application and Response

On 4 October 2016, SEBA lodged an adjudication application pursuant to section 25 of the Act ("Application"), and on 18 October 2016, John Holland lodged its response to the Application pursuant to section 27 of the Act. ("Response").

In the Application, SEBA asserted that the construction works to be performed by John Holland were not complete and that delays prevented SEBA's Subcontract works from being completed. SEBA asserted that John Holland had no entitlement to set off any amounts against SEBA's payment claim, including in relation to liquidated damages. SEBA's reasons in respect of liquidated damages included:

(1) John Holland had failed, refused and/or neglected properly to assess SEBA's entitlement to extensions of time;

(2) Proplan, SEBA's appointed delay expert, concluded in its report that SEBA is entitled to an extension of time of at least 154 calendar days;

(3) the Subcontract works are ongoing and remain the subject of ongoing delays caused by John Holland, for which claims for extensions of time cannot be made because the Subcontract requires these claims to be made when the delay ceases; and

(4) it would be inappropriate and premature for John Holland to deduct liquidated damages at this stage of the Subcontract works, and thereby deny SEBA payment for having completed the works under the Subcontract.

SEBA also addressed the milestone works completed, asserting that the March Milestone was 92% complete, but elected only to claim for 80%, supported by an independent report by Aquenta. SEBA similarly asserted that the April Milestone was 92% complete, but elected to claim for 80%. SEBA also addressed variations for door rectification works.

John Holland, in its Response, submitted it was not entitled to pay SEBA any amount for the August payment claim because it was entitled to set-off liquidated damages payable under the Subcontract. With respect to the milestone works, John Holland submitted that SEBA had failed to complete at least 80% of each of the March and April Milestones, the threshold for payment. With respect to SEBA's claimed variation works, John Holland submitted that these works were either within SEBA's original scope of works or were claims barred by the Amendment Deed.

With respect to its claimed entitlement to liquidated damages, John Holland submitted:

(1) each of SEBA's extension of time claims failed to meet the conditions precedent for such claims under the Subcontract, and in any event, were without merit;

(2) based on an independent expert report obtained by John Holland, it had extended the date for completion by 22 days to 12 May 2016, and granted extensions of time to other relevant Stage Dates for Completion;

(3) there are no conditions to payment of liquidated damages so that its entitlement to payment is triggered as soon as SEBA fails to complete the works or a stage by the relevant Date for Completion; and

(4) John Holland's entitlement to liquidated damages exceeds the cap amount under clause 13.6(b) of $7,725,000, and clause 12.18 provided a mechanism for the recovery of liquidated damages by way of set-off from moneys due to SEBA.

With respect to SEBA's progress claims for the March and April Milestones, John Holland relied on an independent report by TBH, which assessed SEBA's progress for the March Milestone at 72.17% and the April Milestone at 70.73%, and on this basis, asserted that SEBA was not entitled to any payment under clause 19.6.

John Holland also relied on TBH's assessment of Aquenta's report, submitted by SEBA, including that the expert used an incorrect baseline programme, and that the expert's assessment of overall percentage complete had not been carried out in accordance with the Subcontract.

With respect to SEBA's door rectification claims, John Holland disputed these on the basis that SEBA had failed to provide adequate evidence substantiating its entitlement to be paid these amounts, and that SEBA had claimed excessive hours.

The Adjudicator's Determination

The adjudicator ("Adjudicator") delivered his determination ("Determination") on 1 November 2016. With respect to SEBA's claims for milestone works ("Milestone Claim Issue"), the Adjudicator noted the differences between the parties on the percentages complete of the March and April Milestones, and also noted that the parties had used different procedures to assess the percentages complete. He then stated that because both parties adopted different procedures, and have provided their respective opinions, *"that there was no agreed procedure between the parties for assessing the completion milestones"*, concluding that *"clause 19.6 leads to a disagreement or manifests a disagreement between the parties."*

On the basis that *"clause 19.6 is a disagreement"*, the Adjudicator concluded that the Subcontract did not contain *"a proper provision"* by which SEBA's entitlement to progress payments can be

calculated, and in those circumstances, section 15 of the Act was applicable. Section 15 provides for the implication of terms where a construction contract does not have a written provision about whether or not the contractor is able to make a claim to the principal for a progress payment, as follows:

> "The provisions in Schedule 1 Division 3 are implied in a construction contract that does not have a written provision about whether or not the contractor is able to make a claim to the principal for a progress payment for the obligations the contractor has performed."

Division 3 of Schedule 1 referred to in section 15 deals with claims for progress payments and is in the following terms:

> "3. Entitlement to claim progress payments
>
> The contractor is entitled to make one or more claims for a progress payment in relation to those of the contractor's obligations that the contractor has performed and for which it has not been paid by the principal
>
> 4. When claims for progress payments can be made
>
> (1) A claim by the contractor for a progress payment can be made at any time after the contractor has performed any of its obligations.
>
> (2) The making of a claim for a progress payment does not prevent the contractor from making any other claim for moneys payable to the contractor under or in connection with this contract."

The Adjudicator consequently concluded that, pursuant clauses 3 and 4 of Division 3 of Schedule 1, SEBA was entitled to make progress claims in relation to milestone works, and could make those claims at any time after performing any of its obligations. He therefore concluded that SEBA was entitled to make a claim for payment of the March and April Milestone works even if the threshold percentage of 80% stipulated in clause 19.6 had not been achieved.

The Adjudicator, in assessing the percentages complete for the March and April Milestone works, referred to the Inspection and Test Reports signed by representatives of SEBA, John Holland, Norman Disney & Young, and the State of Western Australia. He noted that these four representatives met frequently at the site to assess progress of the works, and thereby placed more weight on this evidence because the State of Western Australia was the ultimate user of the Project, and Norman Disney & Young was a third party to the Subcontract. The Adjudicator concluded that this evidence showed the

April and March Milestone works to be at least 80% complete, a finding which the Court noted was not challenged.[4]

Turning to John Holland's claim for liquidated damages ("Liquidated Damages Issue"), the Adjudicator stated that *"three examples are noticeable in the submissions; these examples confirm that the parties, by conduct, abandoned the stage dates for completion"* (emphasis added). The first example related to the *"Gait Analysis Room, Additional Services"*, where the Adjudicator noted that a direction in a document dated 19 June 2016 showed as a completion date *"as directed on site by John Holland"*, the effect of which he concluded was that the parties intended to complete the work on a *"reasonable date"*.

The second example related to additional data points. The Adjudicator noted that the original scope of work included 500 data points, but that John Holland did not ask for 500 points to be completed by 28 February 2016, and proceeded on a *"piecemeal basis"*, leading to the conclusion that the *"Date for Completion, 28 Feb 2016"* was *"abandoned"*.

The third example was door rectification. The Adjudicator noted that the door rectification works were done as a variation, and it was only when the doors were rectified that SEBA could complete the field device fit off and panel termination. He also noted that the direction to complete this works was expressed as *"as directed by John Holland representatives on site"*, and based on the practice of progressing with the works *"day after day"*, concluded that the parties *"abandoned all of the target dates for completion of the works (28 Feb 2016), commissioning and texting (22 Mar 2016) and tuning (20 April 2016);"* The Adjudicator concluded that John Holland's claim for liquidated damages *"must be dismissed"*, since, by the parties' conduct, they had *"abandoned the Date for Completion"*.

In light of his reasoning, the Adjudicator determined that John Holland was obliged to pay SEBA the amount $6,131,962.27.

III. THE COURT'S REASONING

As noted in the introduction, Chaney J quashed the Determination on the grounds that there had been a substantial denial of natural justice, and jurisdictional error. John Holland submitted two grounds in relation to the Liquidated Damages Issue, and one ground in relation to the Milestone Claim Issue. With respect to the former, John Holland submitted:

(1) the Adjudicator failed to afford John Holland procedural fairness by finding that its set-off claim for liquidated damages must be rejected because the parties had abandoned any Date for Completion; and

[4] [2017] WASC 179, [42].

(2) the Adjudicator's finding that John Holland's set-off claim for liquidated damages must be rejected because the parties had abandoned any Date for Completion was a jurisdictional error.

With respect to the Milestone Payment Issue, John Holland submitted that the Adjudicator's finding that the Subcontract did not have a written provision about whether or not SEBA was able to make a claim for a progress payment, and therefore the terms set out in Schedule 1 Division 5 of the Act should be implied into the Subcontract, was a failure to afford John Holland procedural fairness.

Ground 1 – Liquidated Damages Issue

Chaney J noted at the outset that the Court is to apply a beneficial construction to the Adjudicator's reasons, in the context of the informal nature of the adjudication process, referring to Pritchard J's observation in *Cape Range Electrical Contractors Pty Ltd v Austral Construction Pty Ltd*,[5] that *"it would be entirely inapt to engage in a "line by line" scrutiny of a determination"*, thereby risking *"descending into a merits review of an adjudicator's determination"*.[6]

Chaney J found that the Adjudicator's use of expressions such as *"the parties abandoned the date for completion"* served to confuse his reasoning process. His Honour noted that the parties were in dispute as to the application of the Subcontract terms, not their continued operation.[7]

His Honour noted that SEBA's contentions were not that the Date for Completion had been abandoned, but that (a) it could not be ascertained until its extensions of time were dealt with, being at such time as the causes of delay had ceased, and (b) ongoing delays were caused by John Holland, and, in those circumstances, it was *"not appropriate"* for John Holland to deduct liquidated damages.

Chaney J rejected SEBA's submission that the Adjudicator substantially accepted its contention that, in effect, John Holland by conduct implicitly extended the Date for Completion by a reasonable time, and that the Adjudicator's reference to the Date for Completion being *"abandoned"* or *"not existing"* should be interpreted in that sense. Chaney J considered that SEBA's contentions in the adjudication proceedings were to the effect that it was inappropriate for John Holland to apply liquidated damages until such time as the contractual mechanism for extensions of time had run its course. Chaney J considered this to be a different proposition than the parties had *"abandoned"* any Stage Dates for

[5] [2012] WASC 304, [58].
[6] [2017] WASC 179, [51]. Chaney J noted that this has been the approach in decisions of the Court, including *Red Ink Home Pty Ltd v Court* [2014] WASC 52, [91], and *Re: Ellis; Ex parte Triple M Mechanical Services Pty Ltd [No 2]* [2013] WASC 161, [84] and [88].
[7] [2017] WASC 179, [55].

Completion, or the Date for Completion itself, and were proceeding on the basis of some *"arrangement"* in which Dates for Completion had no role.[8]

Chaney J noted that the Adjudicator did not address questions of SEBA's extension of time claims and John Holland's treatment of them, but rather proceeded on the basis that that aspect of the parties' dispute was of no relevance, since the contractual provisions relating to Dates for Completion had been *"abandoned"*.[9]

John Holland contended that the Adjudicator had effectively invoked the prevention principle as a consequence of his conclusion that the Date for Completion had been abandoned, and therefore, John Holland would have had the opportunity to draw to the attention of the Adjudicator Special Provision 20 which excluded the prevention principle.

Chaney J noted that apart from the application of Special Condition 20, John Holland was deprived of the opportunity of addressing the concept of *"abandonment"* as the expression is used in a contractual sense.[10] He concluded that he was not satisfied that John Holland had an opportunity to address these issues with the Adjudicator, resulting in a substantial denial of natural justice, with the consequence that the Determination should be set aside.[11]

His Honour then turned to Ground 1A, that is, that the adjudication was unreasonable and irrational, and involved the Adjudicator ignoring the provisions of the Subcontract and misunderstanding his proper function under the Act. He referred to the Western Australia Supreme Court Court of Appeal's decision in *Laing O'Rourke Australia Construction Pty Ltd v Samsung C & T Corporation* (*"Laing O'Rourke v Samsung"*)[12] as setting out the criteria for jurisdiction error, in which Martin CJ drew a distinction between an adjudicator misconstruing the contract or making an error in the application of its terms to the facts, and the following circumstances (emphasis added):[13]

> "At the other end of the spectrum, it can also be concluded with confidence that an adjudicator who expressly excluded from considering the construction contract in respect of which the payment dispute arose, or who took no account whatever of that contract, would exceed the jurisdiction conferred by the Act to determine a payment dispute arising under a construction contract.

Chaney J held Ground 1A to have been made out. He noted that an adjudicator's function under section 25 of the Act is to determine a payment dispute *"under a construction contract"*, being the Subcontract. He found that the Adjudicator had made his decision on the basis of some different or at

[8] [2017] WASC 179, [58].
[9] [2017] WASC 179, [59].
[10] [2017] WASC 179, [61].
[11] [2017] WASC 179, [61].
[12] [2016] WASCA 130.
[13] [2016] WASCA 130, [101].

least varied contract, which he considered to be at the end of the spectrum which renders the decision in excess of jurisdiction.[14]

Ground 2 – Milestone Payment Issue

With respect to the Milestone Payment Issue, Chaney J referred to section 15 of the Act as allowing the implication into the Subcontract of the clauses in Division 3 of the Act where a construction contract does not have a written provision concerning the payment of progress payments. However, he noted that clause 19.6 of the Subcontract is clearly a provision of that description. His Honour stated that what the Adjudicator had in mind by the expression *"disagreement"* in relation to clause 19.6 is a *"mystery"*, but that it was not a proposition advanced by either party, nor one which could have been readily anticipated.[15]

Chaney J concluded that the Adjudicator, in reaching a conclusion on the basis not contended by either party, and without providing the parties with notice of the proposed conclusion, amounted to a failure to afford John Holland procedural fairness.[16] However, Chaney J stated that he would not have quashed the adjudication on the basis of the Milestone Payment Issue alone because the Adjudicator had concluded, applying clauses 3 and 4 of Division 3 of Schedule 1, that SEBA had completed at least 80% of the Subcontract Works, the threshold criteria for payment under clause 19.6 of the Subcontract, and therefore the Adjudicator's error did not affect the outcome of the adjudication.[17]

Order for Repayment

Chaney J ordered SEBA to repay John Holland the amount of amount $6,131,962.27 paid by John Holland in accordance with the Determination. Chaney J rejected SEBA's submission that John Holland's application for repayment is, in substance, an application for summary judgment against SEBA on a cause of action for restitution for unjust enrichment, and therefore the same degree of care is required on an application for repayment as is required for an application for summary judgment. Chaney J stated that SEBA's submission ignores the interim nature of the adjudication process, preserving a right to litigate or arbitrate substantive areas of dispute, referring to section 45 of the Act, and that the Act simply has the effect of determining who should hold funds pending final resolution of the parties' dispute.[18]

[14] [2017] WASC 179, [64].
[15] [2017] WASC 179. [66].
[16] [2017] WASC 179 [66].
[17] [2017] WASC 179, [67].
[18] [2017] WASC 179, [78].

IV. DISCUSSION

Denial of Procedural Fairness

Chaney J's decision on procedural fairness is strikingly similar to the decision of the Supreme Court of the Northern Territory in *Inpex v JKC*, in which Kelly J quashed an adjudicator's determination under the NT Act on the grounds that there had been a substantial denial of natural justice.

The adjudicator in that case, contrary to the submissions of both parties, determined that section 20 of the NT Act operated to imply into the contract the terms set out in Division 5 of the Schedule, specifically, the implied term in clause 6(2) which sets out provisions for a party to respond to a payment claim. Applying clause 6(2), the adjudicator determined that Inpex was liable to pay JKC the amount of US$83,933,837.00. Kelly J held that the adjudicator was obliged to give the parties proper notice that he intended to imply clause 6(2), and a proper opportunity to make submissions on the same, and therefore quashed the determination.

The decision in *John Holland v Chidambara* is similar, except that the Adjudicator implied clauses 3 and 4 of Division 3 of Schedule 1 of the Act relating to claims for progress payments into the Subcontract in circumstances where neither party contented that these provisions should be implied, the effect of which was that the threshold for payment of 80% of the March and April Milestones stipulated in clause 19.6 no longer applied.

The author submits that the decision in *John Holland v Chidambara* is a clearer case of breach of procedural fairness, since in *Inpex v JKC*, the adjudicator in that case at least referred the parties to the question arising as to *"whether the provisions implied into deficient construction contracts by section 20 of the Act should or should not be imported into the EPC Contract to cure the uncertainty?"*, and it was therefore arguable that Inpex should have anticipated that the adjudicator intended to imply clause 6(2) of the Division 5 of the Schedule into the contract. In contrast, the Adjudicator in *John Holland v Chidambara* made no mention to the parties as to whether clauses 3 and 4 of Division 3 of Schedule 1 of the Act should be implied into the Contract.

Content of Procedural Fairness under the Act

Chaney J, similar to Kelly J in *Inpex v JKC* in the context of the NT Act, referred to the Act as not making provision for a reply by an applicant to the respondent's response, which he stated *"might be thought to limit procedural fairness"*. However, he also noted that if the application and response are *"insufficient for the adjudicator to make a determination, additional submissions and information can be called for under s 32(2)."*[19]

[19] [2017] WASC 179, [53].

Kelly J referred to the example of the NT Act not making provision for a reply by an applicant to the respondent's response as *"the kind which exists in the interest of facilitating the rapid, interim determination of progress payment disputes the Act is designed to achieve."*[20]

The principle that the content of procedural fairness under the Act is constrained by the legislative regime is well established.[21] However, as the author has respectfully submitted in the case note on the decision in *Inpex v JKC*, Kelly J's dicta (and Chaney J's dicta referred to above) should not be interpreted to the effect that an adjudicator is not obliged to exercise his or her discretion under section 34(2)(a) of the NT Act (or section 32(2) of the Act) to request further submissions, information or documents from the parties arising from the respondent's response to an application under the Act.

Vickery J, in his Supreme Court of Victoria decision in *Grocon Constructors v Planit Cocciardi Joint Venture (No 2)*,[22] discussed these circumstances in the context of the adjudication procedure under the Victorian *Building and Construction Industry Security of Payment Act 2002* (Vic) ("Vic Act"), and concluded that the requirement for a party to be given an opportunity to deal with matters adverse to his or her interests can be accommodated within the process contemplated by the Vic Act, since section 22(5)(a) (the equivalent of section 34(2)(a) of the NT Act and section 32(2)(a) of the Act) enables an adjudicator to request further submissions from either party and to give the other party an opportunity to comment on those submission.[23]

A respondent's response to an application for adjudication under the Act will typically cover three categories of response, first, challenges to the adjudicator's jurisdiction to determine the payment dispute, secondly, challenges to the merits of the payment claim, and thirdly, a counterclaim or set-off defence. Applicants, in preparing their applications under the Act, will often attempt to anticipate a respondent's arguments on these issues. The decision in *John Holland v Chidambara* is an example where SEBA anticipated and addressed at least some of John Holland's defences in its Application.

However, whether the applicant does so or not, there will usually be matters raised by a respondent not dealt with fully or at all by the applicant in its application, and similarly, if a respondent has raised a counterclaim or set-off, it is unlikely that an applicant would have considered such a defence in its application. The author submits that the adjudicator is obliged in these circumstances to exercise his or her discretion under section 32(2)(a) of the Act to request further submissions, information or documents from the applicant, taking account of the limited time constraints under the Act, on both the jurisdiction issues and the counterclaim or set-off defence.

[20] [2017] NTSC 45, [44].
[21] Refer, for example, to the Supreme Court of Western Australia in *Hamersley Iron Pty Ltd v James* [2015] WASC 10, [87], and *Re Graham Anstee-Brook; Ex Parte Karara Mining Ltd [No 2]* [2013] WASC 59,, [29]-[31].
[22] [2009] VSC 426.
[23] [2009] VSC 426, [135].

Jurisdictional Error

Chaney J's decision on the jurisdictional error ground is a further application of the Supreme Court of Western Australia Court of Appeal's decision in *Laing O'Rourke v Samsung*,[24] in which the Court of Appeal made clear that an adjudicator does not fall into jurisdictional error because any error made by the adjudicator was *"an error in the construction or application of the construction contract"*, which the Court considered was *"precisely the kind of departure from contractual and legal precision which the legislature has accepted as part of the 'trade off' for speed and efficiency."*[25]

The Adjudicator's determination on the Milestone Payment Issue, involving expressly excluding from his consideration clause 19.6 of the Subcontract, and implying clauses 3 and 4 of Division 3 of Schedule 1 of the Act, was clearly not simply an error in the application of the Subcontract, but rather, fell within the spectrum described by Martin CJ in *Laing O'Rourke v Samsung* of *"an adjudicator who expressly excluded from considering the construction contract"*.

Content of Adjudicator's Reasoning

Chaney J's starting point in considering each of the grounds contented by John Holland was to determine the content of the Adjudicator's reasons, and clearly, his Honour had some difficulty in making this assessment. Although Chaney J applied a *"beneficial construction"* in the context of the informal nature of the adjudication process under the Act, his decision is a reminder that although adjudicators are not obliged to express their reasons with the same degree of precision and detail as the reasons of a Court, they are obliged to consider the submissions and materials, and provide sufficient explanation for their reasons for all legal and factual issues.

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[24] Following from the application of the Court of Appeal's decision on jurisdictional error by the Supreme Court in *Samsung C&T Corporation v Loots* [2016] WASC 330.
[25] [2016] WASC 130, [107].