

Doo Ree Engineering & Trading Pte Ltd v Taisei Corp
[2009] SGHC 218

Case Number : OS 846/2009
Decision Date : 25 September 2009
Tribunal/Court : High Court
Coram : Nathaniel Khng AR
Counsel Name(s) : Neo Kim Cheng Monica (TSMP Law Corporation) for the applicant; Tan Yeow Hiang (Kelvin Chia Partnership) for the respondent
Parties : Doo Ree Engineering & Trading Pte Ltd — Taisei Corp

Statutory Interpretation

Building and Construction Law

25 September 2009

Nathaniel Khng AR:

Introduction

1 This was an application by Doo Ree Engineering & Trading Pte Ltd (“Doo Ree”) to set aside the adjudication determination dated 28 May 2009 (“the Adjudication Determination”) in SOP AA/56 of 2009, an application for adjudication for a certain payment claim (referred to later as “the March 2009 Claim”; see [\[6\]](#) below) under the Building and Construction Industry Security of Payment Act (Cap 30B, 2006 Rev Ed) (“the SOP Act”). In the Adjudication Determination, the adjudicator concerned (“the Adjudicator”) dismissed the application for adjudication, for which Taisei Corporation (“Taisei”) was the respondent.

2 This application required the consideration of an interesting point of law, *viz*, the permissibility of multiple payment claims in respect of the same progress payment (referred to hereafter as “repeat claims”) under the SOP Act. On 14 September 2009, I dismissed this application with brief grounds provided. The following would be the full grounds for my decision.

Background facts

3 Taisei was, at all material times, the main contractor for the Land Transport Authority’s construction project for several MRT (*ie*, train) stations, including the Botanic Garden station and the Bukit Brown station. By letters of award dated 7 November 2006 and 7 April 2008, Taisei appointed Doo Ree as its sub-contractor for the carrying out of, *inter alia*, reinforced concrete works to the Botanic Garden station and the Bukit Brown station. Doo Ree duly commenced works to the Botanic Garden station and the Bukit Brown station sometime around 11 November 2006 and 14 April 2008 respectively. Sometime on or about 4 October 2008, Taisei terminated Doo Ree’s appointment as its sub-contractor for both the Botanic Garden station and the Bukit Brown station, on the basis that the progress of the works was behind schedule. The present proceedings relate solely to payment claims by Doo Ree for work it had done on the Bukit Brown station.

4 On 29 November 2008, Doo Ree submitted a payment claim to Taisei in respect of the Bukit Brown station for the sum of \$254,257.51 (“the November 2008 Claim”). On 19 December 2008, before a payment response was submitted by Taisei, the November 2008 Claim was submitted for adjudication in SOP AA/87 of 2008. One of the preliminary issues that arose for consideration was

whether the application for adjudication had been prematurely lodged, and, therefore, had to be rejected by virtue of s 16(2)(a) of the SOP Act. In an adjudication determination dated 15 January 2009, the adjudicator concerned determined that the application for adjudication was, indeed, premature, and, on this basis, the application was dismissed without any determination of the substantive issues.

5 On 30 January 2009, Doo Ree submitted a fresh payment claim in respect of the Bukit Brown station for the sum of \$202,349.41 ("the January 2009 Claim"). On 6 February 2009, Taisei submitted its payment response, in which the January 2009 Claim was refuted on, *inter alia*, the basis that it was a repeat claim *vis-à-vis* the November 2008 Claim, which had already been adjudicated upon. Doo Ree did not lodge any application for adjudication thereafter. In his affidavit filed on 24 July 2009, Doo Ree's general manager, Mr Im Byung Wook, explained (at para 20):

Although [Doo Ree] does [*sic*] not accept [Taisei's] response amount to [the January 2009 Claim], [Doo Ree] did not lodge any adjudication application in respect of [the January 2009 Claim] because ... [Doo Ree] was concerned about [Taisei's] financial viability as the latter had defaulted in making payment of the adjudicated amount made under [the] Adjudication Determination dated 3 February 2009 in respect of the Botanic Garden [s]tation ("**Botanic Garden Determination**"). At that time, Doo Ree is [*sic*] also facing some cashflow difficulty arising from [Taisei's] wrongful termination and non-payment under the contracts and it could not therefore afford to pursue another fruitless claim against [Taisei]. Accordingly, it decided to put its claim under the Bukit Brown station on hold while pursuing [*sic*] [Taisei's] payment under the Botanic Garden Determination. [bold added in original]

6 On 31 March 2009, Doo Ree submitted another payment claim in respect of the Bukit Brown station, which was also for the sum of \$202,349.41 ("the March 2009 Claim"). No payment response was provided by Taisei. In his affidavit filed on 18 August 2009, Taisei's contracts manager, Mr Lee Chin Lim, explained that Taisei saw no need to provide a payment response, as, *inter alia*, the March 2009 Claim was a repeat claim *vis-à-vis* both the January 2009 Claim and the November 2008 Claim (at para 16). Subsequently, on 7 May 2009, Doo Ree submitted the March 2009 Claim for adjudication in SOP AA/56 of 2009. On 14 May 2009, Taisei provided its adjudication response. In the adjudication response, Taisei contended that the application for adjudication should be dismissed, for, *inter alia*, the reason that the March 2009 Claim was a repeat claim. In this regard, the following was stated (at paras 4-5):

4. The March 2009 [C]laim and the January 2009 [C]laim are substantially similar to the November 2008 [C]laim. In all these [three] claims, [Doo Ree] is claiming for work allegedly done on the Bukit Brown [s]tation from April 2008 onwards up to 6 October 2008 (which is around the time that [Doo Ree's] employment was terminated). It is not in dispute that [Doo Ree] did not carry out any further work after its employment was terminated.

5. The main difference between the March 2009 [C]laim and the November 2008 [C]laim is that [Doo Ree] has revised its overall claim amount downwards by around S\$52,000.00 from S\$254,257.51 to S\$202,349.41. There are two reasons for this downwards revision. First, [Doo Ree] has revised its assessment of the quantity of work done under its sub-contract. Second, [Doo Ree] has, in [the March 2009 Claim], subtracted a sum of S\$23,635.90 (being contra charges) from its overall claim against [Taisei]. Save for these differences, the March 2009 [C]laim is in essence a repetition of the November 2008 [C]laim as the same items of work were done for both these claims and the work was carried out over the same period of time (i.e. from April 2008 up to 6 October 2008).

7 Doo Ree, in its written submissions to the Adjudicator dated 20 May 2009, conceded that the March 2009 Claim was a repeat claim, stating that it did not dispute that "[the March 2009 Claim] and the [January 2009 Claim] are substantially similar to the [November 2008 Claim] and [the March 2009 Claim] is in essence a repetition of [the November 2008 Claim]" (at para 16). Subsequently, on 28 May 2009, the application for adjudication was dismissed by the Adjudicator for the reasons stated in the Adjudication Determination that will be outlined shortly (see [\[8\]](#)–[\[9\]](#) below).

The decision of the Adjudicator

8 In the Adjudication Determination, the Adjudicator held that the March 2009 Claim was a repeat claim, having regard to the admissions of Doo Ree as well as the Adjudicator's own examination of the payment claims (*ie*, the November 2008 Claim, the January 2009 Claim and the March 2009 Claim). The Adjudicator then rejected Doo Ree's submissions on the permissibility of serving repeat claims under the SOP Act, *viz*, that s 10(1) does not preclude a claimant from submitting a repeat claim, that s 10(4) expressly entitles a claimant to submit a repeat claim, and that s 17(5) contemplates a situation where a claimant may submit a payment claim for adjudication for a second time.

9 Proceeding on that basis, the Adjudicator dismissed Doo Ree's application for adjudication and declined to determine the other issues that had been raised. In this regard, he made the following conclusions (in the Adjudication Determination at [\[33\]](#)–[\[37\]](#)):

33. ...

I am ... of the view that identical repeat claim [*sic*] should be rejected for adjudication under SOP [*sic*] Act.

34. ...

... [M]y view is that [Doo Ree] is not permitted to submit claim [*sic*] which has been the subject of a previous adjudication, for the present adjudication.

35. ...

... I find that it is unnecessary for me to proceed further to determine [the remaining issues] because of my determinations set out in paragraphs 33 and 34.

36. For reasons given in paragraphs 32 to 34, I determine that the [March 2009 Claim] is an invalid payment claim for this adjudication application because it is a repeat claim which has been subject to a previous adjudication.
37. Based on the evidences [*sic*] before me, and having carefully considered the submissions of the parties, I dismiss the adjudication application because it is based on a payment claim not in compliance with the provisions of the SOP Act.

This application

10 In this application, Doo Ree sought to set aside the Adjudication Determination. Although the Adjudicator had also held that the service of a repeat claim that was a duplicate of a payment claim that had been previously adjudicated upon was not permissible under the SOP Act (see [\[9\]](#) above), Doo Ree's submissions were centred on the issue of the permissibility of repeat claims under the SOP Act *in general*. In essence, it was submitted that having regard to ss 10(1) and s 10(4) of the SOP Act, there was nothing to suggest that a claimant is not entitled to serve a repeat claim. In contradistinction, both the Building and Construction Industry Security of Payment Act 1999 (NSW) ("the NSW Act") and the Building and Construction Industry Payments Act 2004 (Qld) ("the Queensland Act") expressly exclude a claimant's right to serve a repeat claim. If the Singapore legislature had so intended, exclusionary provisions similar to those found in the NSW Act and the Queensland Act could easily have been included in the SOP Act.

11 In the main, Taisei submitted that ss 10(1), 10(2) and 10(3) of the SOP Act indicate that a claimant is not allowed to serve repeat claims under the SOP Act. As for s 10(4) of the SOP Act, this provision, which allows amounts that have been previously claimed to be included in subsequent payment claims, would also not allow for the service of repeat claims. Taisei cited *Shellbridge Pty Ltd v Rider Hunt Sydney Pty Ltd* [2005] NSWSC 1152 ("*Shellbridge*"), *Dualcorp Pty Ltd v Remo Constructions Pty Ltd* [2009] NSWCA 69 ("*Dualcorp*"), and *Doolan v Rubikcon (Qld) Pty Ltd* [2008] 2 Qd R 117 ("*Doolan*") in support of its case.

Preliminary issue

12 Before proceeding further, it would be apposite to observe that the scope of applications to set aside an adjudication determination (such as the present application) was dealt with extensively in *Chip Hup Hup Kee Construction Pte Ltd v Ssangyong Engineering & Construction Co Ltd* [2008] SGHC 159 ("*Chip Hup Hup Kee*") (at [24]–[33]; see, also, *Taisei Corp v Doo Ree Engineering & Trading Pte Ltd* [2009] SGHC 156). In *Chip Hup Hup Kee*, it was observed that applications to set aside adjudication determinations under the SOP Act are not appeals; put simply, the court should restrict itself to considering jurisdictional issues as well as breaches of natural justice. Reference was made to Chow Kok Fong, *Security of Payments and Construction Adjudication* (LexisNexis, 2005) ("*Security of Payments and Construction Adjudication*"), where it was stated (at p 497):

Given that a challenge against an adjudication determination is typically advanced on either jurisdictional grounds or on the allegation of a breach of the principles of natural justice and that a challenge is not an appeal against the decision of the adjudicator, it would follow that the court in determining the case for a challenge does not have to theoretically revisit the matters dealt with by the adjudicator with respect to both questions of fact and of law. This feature, therefore, distinguishes an adjudication review under the Act [*ie*, the SOP Act] from a legal challenge against an adjudication determination. However, in considering whether the adjudicator has exceeded his jurisdiction, it is frequently necessary for the court to launch into a review of those issues of fact and law which pertain to jurisdiction. In these cases, the attention of the court may also be drawn to the approach of the adjudicator in the making of the determination in relation to the application of the principles of natural justice.

13 Turning to the context of the present proceedings, the Adjudicator had dismissed the application for adjudication without a determination of the substantive issues, as the March 2009 Claim was a repeat claim, and also, more specifically, a repeat claim that was a duplicate of a payment claim that had been previously adjudicated upon (see [9] above). His rationale for dismissing the adjudication application was the fact that the March 2009 Claim was such a claim, and he refused to give an opinion on the substantive issues that had been raised (see [9] above). Accordingly, the issue of whether the SOP Act permits the service of repeat claims (both in a general sense and in the more specific context of a duplicate of a payment claim that had been previously adjudicated upon) clearly was jurisdictional in nature. It was a jurisdictional issue of law, which the Adjudicator had decided in favour of Taisei, and, accordingly, if he had erred, a jurisdictional error of law would have been committed.

Background to the SOP Act

14 Before proceeding further, it would also be apposite to set out a skeletal background to the SOP Act. The enactment of the SOP Act was for the main purpose of establishing a fast and low cost adjudication system for the resolving of payment disputes, so as to ensure that parties carrying out construction work, or providing related goods or services, would be able to promptly recover progress payments (see *Singapore Parliamentary Debates, Official Report* (16 November 2004) vol 78 at col 1112 (The Minister of State for National Development, Mr Cedric Foo Chee Keng)). The SOP Act was modelled on similar legislation in other jurisdictions such as Australia, the United Kingdom and New Zealand, and, in particular, the legislation of New South Wales (*ie*, the NSW Act) (see *Tiong Seng Contractors (Pte) Ltd v Chuan Lim Construction Pte Ltd* [2007] 4 SLR 364 at [12]; see, also, Christopher Chuah *et al*, *Annotated Guide to the Building and Construction Industry Security of Payment Act 2004* (Sweet & Maxwell Asia, 2004) at para 1.3). In this regard, *Security of Payments and Construction Adjudication* ([12] *supra*) states (at p 8):

The Singapore Act [*ie*, the SOP Act] was drafted following a careful review of the preceding models in the United Kingdom, Australia, and New Zealand. In substance and structure, the legislation is closest to the NSW Act and the Victoria Act [*ie*, the Building and Construction Industry Security of Payment Act 2002 (Vic)] although it also borrowed concepts and approaches from the legislation in the other jurisdictions.

Permissibility of repeat claims under the SOP Act

15 The principle provisions that had been raised for consideration by Doo Ree in this application were ss 10(1) and 10(4) of the SOP Act. Doo Ree submitted that these provisions, on no account,

prohibit the service of repeat claims by a claimant. Taisei, on the other hand, submitted that a proper construction of s 10 would clearly indicate that the service of repeat claims is not permitted under the SOP Act. Parenthetically, it should be observed, at this juncture, that if, on a proper construction, the SOP Act does *not* permit the service of repeat claims, then there would be no need to consider the permissibility of serving a repeat claim that is a duplicate of a payment claim that had been previously adjudicated upon. That said, for convenience, s 10, in full, is set out as follows:

Payment claims

10.—(1) A claimant may serve one payment claim in respect of a progress payment on —

- (a) one or more other persons who, under the contract concerned, is or may be liable to make the payment; or
- (b) such other person as specified in or identified in accordance with the terms of the contract for this purpose

(2) A payment claim shall be served —

- (a) at such time as specified in or determined in accordance with the terms of the contract; or
- (b) where the contract does not contain such provision, at such time as may be prescribed.

(3) A payment claim —

- (a) shall state the claimed amount, calculated by reference to the period to which the payment claim relates; and
- (b) shall be made in such form and manner, and contain such other information or be accompanied by such documents, as may be prescribed.

(4) *Nothing in subsection (1) shall prevent the claimant from including, in a payment claim in which a respondent is named, an amount that was the subject of a previous payment claim served in relation to the same contract which has not been paid by the respondent* if, and only if, the first-mentioned payment claim is served within 6 years after the construction work to which the amount in the second-mentioned payment claim relates was last carried out, or the goods or services to which the amount in the second-mentioned payment claim relates were last supplied, as the case may be.

[emphasis added]

16 On a *plain reading* of the above provisions, it would appear that the service of repeat claims is *not permitted* under the SOP Act. As expressly stated in s 10(1), a claimant can serve “one” payment claim for a particular progress payment. Turning to s 10(4), which allows an amount that was the subject of a previous payment claim to be included in a subsequent payment claim, this provision does not, on its face, allow for the service of repeat claims, as the word “include” would indicate that the

amount that was the subject of a previous payment claim, should form *part*, and *not the whole*, of the subsequent payment claim (see *The Oxford English Dictionary* (J A Simpson & E S C Weiner eds) (Clarendon Press, 2nd Ed, 1989) at vol VII, p 801 where the term “include” is defined as, *inter alia*, “[t]o contain as a member of an aggregate, or a constituent part of a whole”; see, also, *Black’s Law Dictionary* (Bryan A Garner chief ed) (West, 9th Ed, 2009) at p 831 where the term “include” is defined as, *inter alia*, “[t]o contain as part of something”).

17 There is nothing in the records of parliamentary debates to indicate that a plain reading, *viz*, that the service of repeat claims is not permitted, is erroneous. Doo Ree argued that such an interpretation would result in claimants being forced to submit payment claims for adjudication whenever there is a disagreement. However, it is logical that repeat claims should not be allowed to be served without restriction, as this would open up the possibility for abuse of the SOP Act. This, in fact, appears to be the reason for the enactment of similar provisions in the NSW Act (see [\[20\]](#) below), and it is quite plausible that the legislature here recognised the danger of abuse by a claimant if the service of repeat claims were to be generally permissible. That having been said, the plain reading would not appear to be contrary to the legislative intention, having regard to the Explanatory Statement provided for the Building and Construction Industry Security of Payment Bill (Bill 54 of 2004), which states:

Clause 10 [*ie*, s 10] provides that a claimant may serve *a single payment claim in respect of a progress payment* in the form and manner prescribed. The clause clarifies that the claimant can nonetheless *include*, in a subsequent payment claim, an amount in a previous payment claim in relation to the same contract which remains unpaid subject to certain specified conditions. [*emphasis added*]

New South Wales, Victoria and Queensland

18 There is, according to counsel for both Doo Ree and Taisei, no local case law on the service of repeat claims under the SOP Act. As such, it may be useful to consider similar legislation in other jurisdictions and relevant case law (see Philip CF Chan, *Statutory Adjudication in Singapore* (Sweet & Maxwell, 2008) (“*Statutory Adjudication in Singapore*”) at para 2.2.6 and *Security of Payments and Construction Adjudication* ([\[12\]](#) *supra*) at p 16). As mentioned earlier (see [\[14\]](#) above), the SOP Act was modelled on the NSW Act in particular. As regards the NSW Act, Taisei placed emphasis on two provisions, *viz*, ss 13(5) and 13(6) of the NSW Act, which read as follows:

13 Payment claims

...

(5) A claimant cannot serve more than one payment claim in respect of each reference date under the construction contract.

(6) However, subsection (5) does not prevent the claimant from including in a payment claim an amount that has been the subject of a previous claim.

19 At first blush, the material parts of s 10(1) and 10(4) of the SOP Act (which are emphasised at [\[15\]](#) above) could be construed as being similar to ss 13(5) and 13(6) of the NSW Act. That said, the courts of New South Wales have interpreted the NSW Act as not permitting multiple claims in respect of the same reference date, although amounts that have been claimed previously could form part of a subsequent payment claim pursuant to s 13(6). In the Supreme Court of New South Wales case of *Shellbridge* ([\[11\]](#) *supra*), Barrett J stated (at [28]–[29]):

28 ... Section 13(5) is to be read in the light of s.13(6) which, as is seen above, says that s.13(5) does not prevent the claimant from including in a payment claim an amount that has been the subject of a previous claim

29 It is thus clear that s.13(5) precludes the service of more than one payment claim in respect of any one reference date but does not seek to preclude cumulation of amounts in successive payment claims. As a result, if ... the claim in respect of the first reference date is for \$10,000 which is not promptly paid and there is then a claim for \$25,000 (inclusive of the first \$10,000) in respect of the second reference date, there is no overstepping of the limit allowed by s.13(5).

In a similar vein, in the New South Wales Court of Appeal case of *Dualcorp* ([11] *supra*), Allsop P stated (at [8] and [14]):

8 As can be seen from the Act, s 13(5) a claimant is limited to one payment claim in respect of each reference date. Section 13(6) permits, however, inclusion in another payment claim (necessarily by reference to another reference date) of an amount that has been the subject of a previous claim. Amongst other usual and uncontroversial examples, this permits the submission of cumulative payment claims by reference to later reference dates, which include an amount the subject of a previous claim. ...

14 ... The terms of s 13(5) are a prohibition. The words "cannot serve more than one payment claim" are a sufficiently clear statutory indication that a document purporting to be a payment claim that is in respect of the same reference date as a previous claim is not a payment claim under the Act and does not attract the statutory regime of the Act.

20 The interpretation given in *Shellbridge* and *Dualcorp* would appear to be in line with the legislative intention behind the enactment of ss 13(5) and 13(6), which apparently was to limit the number of times a claim could be made in respect of each particular reference date in order to prevent abuse. At the Second Reading of the Building and Construction Industry Security of Payment Amendment Bill 2002 (NSW), which sought to enact, *inter alia*, ss 13(5) and 13(6), Mr Morris Iemma (the Minister for Public Works and Services, Minister for Sport and Recreation, and Minister Assisting the Premier on Citizenship) stated (New South Wales, Legislative Assembly, *Parliamentary Debates* (12 November 2002) at p 6543):

We recognise the potential for claimants to abuse also the intent of the legislation. Consequently, the bill [ie, the Building and Construction Industry Security of Payment Amendment Bill] restricts claimants to one payment claim under the Act in respect of each reference date. [emphasis added]

21 Parenthetically, it should be added that in *Dualcorp*, MacFarlan JA opined that s 13(6) of the NSW Act does not allow for an amount that had already been the subject of an adjudication to be included in a subsequent payment claim. The Adjudicator held a similar view (see [9] above), but there would be no necessity for me to come to any conclusive opinion, if, as already mentioned (see [15] above), a proper construction of the SOP Act indicates that repeat claims cannot be served. Be that as it may, the *dicta* of MacFarlan JA is not wholly irrelevant, and should be set out at this juncture as follows (at [53]):

[U]nder s 13(5) only one payment claim may be served in respect of each reference date under the construction contract. There is a qualification that the claimant may include in a payment claim an amount that has been the subject of a previous claim. However, taking into account the Act's objectives and its provisions, I do not consider that that qualification can, or should, be read as authorising the inclusion in a payment claim of an amount which has been the subject of an earlier adjudication. It would in my view be inconsistent with the carefully structured procedures as to adjudication and the provisions, which I am in the course of mentioning, pointing towards finality of adjudication determinations to give it that construction.

22 Similarity with ss 13(5) and 13(6) of the NSW Act can be found in ss 14(8) and 14(9) of the Building and Construction Industry Security of Payment Act 2002 (Vic) ("the Victoria Act"), which was based on the NSW Act (see Marcus S Jacobs QC, *Security of Payment in the Australian Building and Construction Industry* (Thomson Lawbook Co, 2nd Ed, 2007) at p 15). The said provisions are as follows:

14 Payment claims

...

(8) A claimant cannot serve more than one payment claim in respect of each reference date under the construction contract.

(9) However, subsection (8) does not prevent the claimant from including in a payment claim an amount that has been the subject of a previous claim.

23 Although there is no relevant case law from the courts of Victoria on ss 14(8) and 14(9), it can be expected that these provisions would be interpreted in a manner similar to that espoused in *Shellbridge* ([11] *supra*) and *Dualcorp* ([11] *supra*), as the legislative intention behind the enactment of these provisions, as reflected in the Explanatory Memorandum provided for the Building and Construction Industry Security of Payment (Amendment) Bill 2006 (Vic), was as follows:

New subs (8) [*ie*, s 14(8)] *restricts a person from serving more than one payment claim* in regard to each reference date under the construction contract.

New subs (9) [*ie*, s 14(9)] provides that subs (8) does not prevent a claimant from *including an amount in a payment claim that was included in a previous claim but not paid*.

[emphasis added]

24 Provisions that are similar to ss 13(5) and 13(6) of the NSW Act can also be found in the Queensland Act, which was based on the NSW Act (see Queensland, Legislative Assembly, *Parliamentary Debates* (11 May 2004) at p 859 (Mr Neil Roberts)). In the Queensland Act, ss 17(5) and 17(6) state as follows:

17 Payment claims

...

(5) A claimant cannot serve more than one payment claim in respect of each reference date under the construction contract.

(6) However, subsection (5) does not prevent the claimant from including in a payment claim an amount that has been the subject of a previous claim.

25 The Queensland Act has likewise been interpreted, in cases such as *Doolan* ([11] *supra*), as not permitting multiple claims in respect of the same reference date. The facts in that case are somewhat similar to the facts of the present case. The respondent had served a payment claim on the applicant in November 2006, and this payment claim became the subject of an attempted adjudication under the Queensland Act. The adjudication failed, due to the failure of the respondent to observe one of the timelines contemplated by the Queensland Act. The parties accepted that outcome, but on 16 February 2007, the respondent served an identical payment claim for the same amount that had been earlier claimed in November 2006. In allowing the application for review, the following was stated by Fryberg J (at 121–122):

... Subsection 17(6) permits also the inclusion of an amount which has been the subject of a previous claim but that does not mean that a previous claim can be the sole item included in the later claim.

No case has been cited to me where such a claim was permitted. ...

...

In [*Shellbridge*] ... Justice Barrett said of the equivalent sections:

“It is thus clear that s. 13(5) precludes the service of more than one payment claim in respect of any one reference date but does not seek to preclude cumulation of amounts in successive payment claims. As a result, if, in a case within s. 8(2)(b), the claim in respect of the first reference date is for \$10,000, which is not promptly paid and there is then a claim for \$25,000 (inclusive of the first \$10,000) in respect of the second reference date, there is no overstepping of the limit allowed by s. 13(5).”

That is the situation to which I have referred as permissible and I respectfully agree with what his Honour has said. What distinguishes the present case in my judgment is the fact that the second claim was identical to the first.

26 Doo Ree highlighted that the language of s 10(1) of the SOP Act, unlike s 13(5) of the NSW Act and s 17(5) of the Queensland Act, is not prohibitory in nature. On a plain reading, however, s 10(1) of the SOP Act and the aforesaid Australian provisions have a similar effect – s 10(1) of the SOP Act limits the payment claims for each progress payment to one and s 13(5) of the NSW Act and s 17(5) of the Queensland Act limit the payment claims for each reference date to one. A more obvious difference would be that s 10(1) of the SOP Act refers to the service of payment claims for particular *progress payments*, while s 13(5) of the NSW Act and s 17(5) of the Queensland Act refer to the service of payment claims for particular *reference dates* (ie, the dates specified in the contract for

making payment claims, or, if not stated, the last day of each month of the year (*per* s 8(2) of the NSW Act and Sched 2 of the Queensland Act)). But this difference is not significant.

27 In my view, the material parts of the relevant provisions of the SOP Act, the NSW Act, the Victoria Act, and the Queensland Act that relate to the service of repeat claims are *substantially similar*. Accordingly, the New South Wales and Queensland cases cited by Taisei could not be dismissed as irrelevant, and these cases provided further support for the adoption of a plain reading of s 10 of the SOP Act, *viz*, that repeat claims are not allowed under the SOP Act (see [\[16\]](#) above).

Conclusion

28 For the foregoing reasons, this application was dismissed. Costs of \$4,000 and reasonable disbursements were awarded to Taisei.

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