

MILLION DOLLAR CONSEQUENCES FOR THE BUILDING INDUSTRY

A recent decision of the Supreme Court has provided a further reminder to the construction industry of how strong the bite can be of the Building & Construction Industry Security of Payment Act 1999 ("Act") on the unwary.

RECENT CASE LAW

In *Lucas Stuart Pty Limited v Council of the City of Sydney* [2005] NSWSC 840 decided in August 2005, the Supreme Court ordered summary judgment against the Council in favour of the builder of more than \$3 million as Council failed to provide a Payment Schedule to the builder's Payment Claim within the time prescribed under the Act.

Section 15 of the Act provides where a respondent fails to provide a Payment Schedule within the prescribed time and fails to pay the amount of a Payment Claim on or before the due date, the claimant can recover the unpaid portion as a debt due in any court.

This means that if, after receiving the Payment Claim, a Respondent does nothing, even after being given a lifeline under section 17(2) of the

Act, the Respondent becomes liable for the full amount of the Payment Claim.

In addition, a Respondent would not have a defence to an application for judgment.

WHAT YOU NEED TO DO

As demonstrated in the *Lucas Stuart* case, this leads to very serious consequences for the unprepared.

The case confirms that the Act can be a very powerful tool when used effectively by contractors in the recovery of monies payable under a construction contract.

Clients need to ensure that they act immediately once served with a Payment Claim under the Act.

The case also demonstrates the need for clients to ensure that they satisfy the requirements of a valid Payment Claim under the Act.

If you require any further information in relation to this topic, please contact Catherine Lucas on 9375 2259 or email catherine.lucas@kreissonlegal.com.au