George Developments Ltd v Canam Construction Ltd [2005] Adj.L.R. 04/12

New Zealand Court of Appeal before Anderson P, O'Regan and Robertson JJ. 12th April 2005.

JUDGMENT OF THE COURT

A The appeals are dismissed.

B The respondent is awarded costs of $6,000, plus reasonable disbursements (including travel and accommodation costs of counsel, if any) to be agreed by counsel or, in the absence of agreement, to be determined by the Registrar.

REASONS : (Given by Robertson J)

Introduction

[1] These are appeals from a judgment of Associate Judge Christiansen, delivered on 10 November 2004 in the High Court at Auckland on applications by, respectively, the appellant and the respondent, for summary judgment. The two applications were heard together.

Background

[2] The appellant (George) was the owner of a property at 11 Cheshire Street, Parnell. It engaged the respondent (Canam) to demolish an existing building and to construct apartments on the site.

[3] George and Canam entered into a demolition contract dated 2 April 2003 and a construction contract on 27 May 2003. The Construction Contracts Act 2002 (the Act) applied to both contracts. Section 3 of the Act enumerates as one of its stated purposes to "*facilitate regular and timely payments between the parties to a construction contract*". Part 2 of the Act sets out the procedure to ensure such payments. Section 23 (which is specifically intended to ensure cash flow to contractors and subcontractors) provides that if a contractor issues a payment claim under the Act and a payment schedule is not issued or is not issued in time, the contractor is entitled to the full amount of its claim as a debt due.

[4] Canam's claims for payment were to be made pursuant to clause 12 of the Contract which incorporated NZS 3915: 2000 General Conditions of Contract.

[5] The combined effect of the specific provisions of the contracts and the Act was that a mechanism existed for periodic claims to be made which had to be responded to in a timely manner.

[6] Various claims were made. There was some dispute in regard to the 1 April 2004 Payment Claim (Payment Claim 12) and a part-payment was made. Regarding the balance, Canam invoked the adjudication process provided for under the Act. Their claim was upheld so that there was owing to them a total sum of $185,457.95 including GST, adjudication fees, interest and costs.

[7] There was thereafter Payment Claim 13 that has not figured seriously in the litigation. There was no Payment Claim 14 but Payment Claim 15 was served by Canam on George on 3 June 2004. It included sums of money which had previously been invoiced and which were subject to adjudication under the Act but upon which the decision of the adjudicator was still awaited. Payment Claim 15 forms the major subject of this proceeding.

[8] The total amount claimed was $443,053.61 including GST. George did not strictly comply with the timetable contained in the statutory framework. Canam contended that it was entitled to judgment on the basis that George had not served a payment schedule as required by the Act.

[9] In the High Court, George sought:
a) A determination that the Principal's Representative under the contracts was Robert Barton
b) Judgment in the sum of $185,457.95
c) Interest and costs.

[10] George filed an application for summary judgment which was opposed by Canam which in turn sought summary judgment against George. A variety of matters were canvassed in a two day hearing before the Associate Judge but, inasmuch as is relevant to the appeal, the conclusions reached were

> *[62] The requirements of s 20 [of the Construction Contracts Act 2002] are cumulative and mandatory. A payment claim must:*
> - *Be in writing;*
> - *Contain sufficient details to identify the construction contract to which the payment claim relates;*
> - *Identify the construction work and the relevant period to which the payment claim relates;*
> - *Indicate a claimed amount and due date for payment;*
> - *Indicate how the payee calculated the claimed amount;*
> - *State that it is made under the Act.*
>
> *[63] George submits Canam's PC-15 claims an inflated figure because it includes the previously claimed amount in PC-12 in the sum of $158,591.76 (excluding GST) which sum, since the adjudicator's determination, is the subject of enforcement proceedings before the District Court.*
>
> *[64] Canam acknowledges PC-15 included reference to the amount previously claimed in PC-12. That is why when in the process of issuing its invoices, following receipt of Rider Hunt's valuation report, no invoice was issued in respect of that amount previously claimed in PC-12. Mr Commons [on behalf of George] submits that the fact that PC-15 included a claim of a previously claimed amount in itself is a breach of the Act.*

[65] Mr Commons identifies other respects in which he submits the validity of the payment claim can be challenged. In large part and for the purpose of demonstrating these submissions he refers to the exhibits attached to Mr Barton's affidavit dated 5 November 2004. It is claimed:

1) PC-15 is also the cumulative running total of amounts unpaid on PC-13 and PC-14.

2) It wrongly claims and in addition incorrectly calculates Canam's claims for variations. Of those claimed (exceeding $500,000) just slightly in excess of $478,000 has been approved. It follows, submits Mr Commons, that Canam's claim is by its own figures grossly inflated and inconsistent with the contracts; therefore the integrity of the figures used by Canam in PC-15 is undermined.

3) Canam cannot charge for work the subject of earlier payment claims especially where they have been responded to by earlier payment schedules.

[66] George asserts that PC-15 is non-compliant in form. Not only did it provide for a cumulative figure and not only were its calculations fundamentally flawed; it did not:

1) Indicate the manner in which the payee calculated the claimed amount;

2) Provide a specified amount for work done solely in the period 1 May 2004 to 3 June 2004 – but rather provided a cumulative work schedule.

[67] Contrary to Mr Commons' submissions, I find all of the requirements under s 20 are satisfied by Canam's PC-15, specifically:

1) It was in writing;

2) It identifies the construction contract to which the payment claim relates by its reference to the property address;

3) It identifies the construction work and the relevant period to which the payment claim relates. It states it is for the period 1 May 2004 – 3 June 2004 and sets out each of the trades and the work claimed for;

4) It indicates a claimed amount and a new date for payment;

5) It indicates the manner in which Canam calculated the amount claimed and its calculations in table form;

6) It is clearly stated at the top of the form that the claim is made under the Act.

[68] Challenges of the kind made by George are the stuff of which the scheme involving the issue of payment schedules and subsequent invoices were designed for. There is nothing in the process which disqualifies a payment claim for rolling over sums unpaid on previous payment claims. In any event it is clear from PC-15 and other progress claims previously submitted that this process was not only identified but well understood by the parties. This process does not undermine the integrity of PC-15 nor disqualify it pursuant to the provisions of s 20.

[69] In conclusion:

1) PC-15 was a valid payment claim;

2) No payment schedule was issued in response;

3) The s 22 liability provisions are triggered in the result.

The appeal

[11] In this Court, the bulk of the issues which were argued in the High Court were not re-litigated. The matter boiled down to whether the document which was described as Canam's Progress Payment Claim 15 (although in reality it might have been 14) was a valid "payment claim" in terms of the Act.

[12] There was a second ground of appeal as to whether the Principal's Representative under the contracts was Robert Barton. Mr Asher responsibly accepted that this issue was of only academic interest. It has real relevance only to a cost issue which remains outstanding.

[13] The serious contention had been whether it was an abuse of process to raise this question in the High Court in a substantive hearing when there were unresolved questions about the same point in the District Court (under proceedings pursuant to the adjudication procedure provided for in the Act).

[14] For us to deal with it would have been in effect to determine an appeal in advance against the possibility of an adverse costs order being made. All parties agreed that that was not an appropriate course to pursue. We do not therefore do so.

The crucial issue

[15] Thus the appeal now before this Court boils down to the meaning of "payment claims" which are specifically defined in s 20 of the Act, the relevant subsections of which provide as follows:

(1) A payee may serve a payment claim on the payer for each progress payment –

(a) if the contract provides for the matter, at the end of the relevant period that is specified in, or is determined in accordance with the terms of, the contract; or

(b) if the contract does not provide for the matter, at the end of the relevant period referred to in section 17(2).

(2) A payment claim must –

(a) be in writing; and

(b) contain sufficient details to identify the construction contract to which the progress payment relates; and

(c) identify the construction work and the relevant period to which the progress payment relates; and

(d) indicate a claimed amount and the due date for payment; and

(e) indicate the manner in which the payee calculated the claimed amount; and

(f) state that it is made under this Act.

[16] Before us there was no challenge to the fact that, in respect of the definition in s 20(2):
- the document was clearly in writing (s 20(2)(a));
- contained sufficient detail to identify the construction contract to which the progress payments related (s 20(2)(b));
- indicated a claimed amount and the amount due for payment (s 20(2)(d)); and
- stated that it was made under the Act (s 20(2)(f)).

Therefore the issue became whether s 20(2)(c) and (e) were complied with.

Compliance with s 20(2)(c)

[17] Three significant issues arose in regard to s 20(2)(c):
- Issue 1: could a payment claim include work done prior to the period stated in the claim? In other words, in regard to this case, could a payment claim for the period 1 May 2004 to 3 June 2004 include, in the claimed total, work done prior to that period.
- Issue 2: if it was permissible to include work done outside the period, was it necessary that the claim expressly itemise which work had been done in which period?
- Issue 3: was it permissible to include a claim for anything other than physical construction work, specifically a claim for extension of time costs.

[18] There was no doubt that PC-15 included work from previous periods, was not broken down according to pay periods, and included claims for extension of time costs.

Appellant's submissions

[19] The appellant submitted that, to comply with s 20(2)(c), PC-15 must:
- Identify the relevant period it related to; and
- Identify the construction work done in the relevant period

[20] The appellant acknowledged that PC-15 identified the period to which it related (1 May 2004 to 3 June 2004), however it submitted that PC-15 did not identify construction work done in that period, but was instead a cumulative claim which included claims from prior periods.

[21] In this regard the appellant argued that a "progress claim" had to be for an "instalment" due. Section 5 of the Act defined "progress payment" as meaning: *[A] payment for construction work carried out under a construction contract that is in the nature of an instalment (whether or not of equal value) of the contract price for the contract (other than an amount that is, or is in the nature of, a deposit under the contract)*.

[22] The appellant cited the Oxford Dictionary (10 ed) definition of "instalment": *A sum of money due as one of several equal payments for something, spread over an agreed period of time.*

[23] George submitted that the instalment nature required that a payment claim was one of a number of sequential claims each of which remained discrete of the others.

[24] George further submitted that an instalment of the contract price for work carried out in the relevant month was in the nature of an invoice for construction work carried out for that period. A claim for an instalment was not in the nature of a statement. Citing ***Quasar Constructions NSW Pty Ltd v Demtech Pty Ltd*** [2004] NSWSC 116 (4 March 2004) the appellant submitted that "progress payment" imported the notion of part payment, rather than a lump sum amount.

[25] It was contended that, if the particularised construction work included in the claim was not identified, the payer was unable to assess the claim. If a claim included work done other than in the period to which the claim related, the appellant submitted that the construction work done in that period had not been identified.

[26] Alternatively the appellant submitted that, unless the claim was for the construction work done during the period of 1 May to 3 June, the claim did not relate to the period to which it asserted it related. Canam and George had agreed that progress claims would be presented not less than monthly. Mr Asher submitted that it would undo the rationale for instalments if a claim in fact became a statement that related to all previous transactions. He argued that, where previous statements disallowed elements of previous claims, incorporation of the disallowed components into a later payment claim would allow "Trojan horse" claims for payment.

[27] It was further contended that a progress payment could not identify a relevant period yet purport to include construction work that was not done in that period. Counsel submitted: *If it did its content would be different depending on whether reference was had to* ***"the construction work"*** *done or* ***"the relevant period"*** *to which it related" (appellant's emphasis)*.

[28] Noting that s 20(2)(d) required Canam to indicate the "claimed amount", it was argued by George that the statutory framework required Canam to indicate the sum it claimed was payable for construction work done in the period to which the progress payment related. If it were otherwise Canam could claim an amount that had no reference to work carried out in that period, making the task of assessing the claim almost impossible.

[29] Finally there was the issue as to whether, in terms of the section, PC-15 was, in part, not for "construction work carried out" in that it included the $111,598.89, plus GST claim, for extension of time costs. This was on the basis that a claim for extension of time is not for construction work which had been carried out.

[30] George claimed that the position advocated by it was consistent with both the recommended form of payment claim provided in Smellie *Progress Payments and Adjudication* (2003) which suggested the payment claim be "*less*

previously claimed" amounts (on the form prepared by The New Zealand Building Subcontractors Federation Inc), and the recommended form of payment claim in Bayley and Kennedy-Grant *A Guide to the Construction Contracts Act* (2003), which required a payment claim be less previously claimed amounts. The *Guide* also at 64 said a payment claim must *"... identify the work carried out during the period to which the claim relates (s20(2)(c)) ...".*

Respondent's submissions

[31] The respondent submitted that George's contention that a contractor could only claim for work done in a particular month ignored how claims were presented and valued in the construction industry. The respondent cited a passage from *Wallace Hudson's Building and Engineering Contracts* (11 ed 1995) at para 8.105 as strongly supporting its argument, where it said: *... it remains the case that the great majority of English standard forms nevertheless use periodical valuation, usually monthly, of the work done to date as the basis of interim payment. For entirely valid practical reasons, these valuations usually represent successive retrospective* ***valuations of the whole of the work done to date,*** *and not of the work done in the preceding month, since many items, due to the differences in measurement or the subsequent discovery of defective work or the replacement "materials on site" valuations with valuations of work done subsequent to their incorporation, may require revision in later certificates (author's emphasis).*

[32] Canam submitted that such an approach was required by NZS3915. Under clause 12 Canam was required to show on its claims the extent and value of the Contract Works that had been carried out (not just work for that month) and the extent and value of all work done or other costs claimed in respect of variations.

[33] In support of its position, the respondent argued that the fact that the claim was presented in a cumulative way (% of 100% complete) did not mean that the work done in the relevant period was not identified. The percent complete column allowed the Principal to see how much work had been carried out in respect of each trade since the last claim. It was noted that Quantity Surveyors and the ASB Bank had no difficulties in understanding the PC form adopted.

[34] Mr Christie argued that to adopt George's contentions would mean that a contractor would have to present an artificial claim for work done just in that particular month, without reference to work previously done or the overall completion. It would also mean that, if an amount was overlooked in an earlier month, or a subcontractor's claim was late, the contractor couldn't claim it in the following month.

[35] Counsel noted that the variations were itemised individually, allowing the Principal to see what was being claimed and the extent, if any, in which that differed from a previous claim. On the appellant's claim a contractor could never re-present a previously declined (or ignored) claim even if it wished to resubmit the claim or support it with further information.

[36] The respondent's position was that an object of the Act was to speed up the flow of funds to contractors, not to restrict it through technical applications and interpretations. There was no evidence anyone was under any doubt about what period PC-15 related to or what was further and additional to earlier claims.

[37] It was submitted that the identification of the construction work was additional to identification of the relevant period hence the use of "and" between those aspects in s 20(2)(c). There was no requirement in the Act for the claimed amount to be "net" as George contended, and George did not point to any provision that would require this.

[38] On the specific point that extension of time costs could not be included Mr Christie noted that this issue was considered by the New South Wales Supreme Court under its equivalent legislation in ***Walter Construction Group Limited v CPL (Surrey Hills) Pty Limited*** [2003] NSWSC 266 (9 April 2003) and specifically rejected.

[39] The contractors' payment claim in that case included an extension of time consolidated claim for $3,140,022 which was a consolidation of extension of time claims previously made by the contractor, a special measures claim for $1,863,799 and a further entitlements claim for $3,000,000. The defendant had argued that these did not relate to ***"construction work"*** and that physical work was contemplated as being fundamental to an entitlement to a payment claim. It had also been argued that consequential claims were in a different category and had to be differently recovered.

[40] The Court held that it was irrelevant that an item, which is a component of a payment claim, does not come within the narrow definition of construction work. The fundamental question was held to be whether the item of the payment claim was adequately identified as such and not whether it related to construction work or related goods or services in a literal sense.

Discussion

[41] We are satisfied that the necessary analysis must be undertaken with the purpose of the Act in mind. The purpose provision of the Act includes the fact that the Act was "*to facilitate regular and timely payments between the parties to a construction contract"*. The importance of such regular and timely payments is well recognised. Lord Denning (quoted in ***Gilbert-Ash (Northern) Ltd v Modern Engineering* (Bristol) Ltd** [1973] 3 All ER 195, 214 (HL) Lord Diplock) said: "There must be a "cashflow" in the building trade. It is the very life blood of the enterprise".

[42] As is noted in Smellie *Progress Payments and Adjudication* (2003) at 31, *"Although [the s 20(2)] requirements are mandatory, technical quibbles that they have not been complied with will probably receive scant attention"*. The learned author notes the New South Wales case of ***Hawkins Construction v Mac's Industrial Pipework*** [2001]

NSWSC 815 where Windeyer J considered the validity of a payment claim under legislation equivalent to the New Zealand Act and said at paragraph 8

> [Counsel] contended that the payment claims served on the plaintiff ... were ineffective because they did not comply with section 13(2)(a) and (c) of the Act. The arguments were that they contained the incorrect contract number and abbreviated the name of the Act under which the claim was made ... As to the first, while the contract number may have been wrong in some cases, the claims did identify the work done. The second argument was that because the payment claims abbreviated the name of the Act, they did not fulfil a statutory requirement to name the Act. This argument might have had some weight in 1800. In 2001, an argument based on the absence of the word "***and***" and the letters "***USTRY"*** has no merit. It should not have been put.

[43] We acknowledge that the approach of this appellant was not as pedantic as those confronting Windeyer J, but the general observation that technical quibbles should not be allowed to vitiate a payment claim that substantively complies with the requirements of the Act is critical and needs to be weighed alongside the "technocratic" interpretation advanced by George.

[44] We accept the respondent's submission that to adopt George's contentions would mean that a contractor would have to present a somewhat artificial claim for work done just in that particular month, without reference to work previously done or the overall completion. Further it would be arbitrary to prevent a subcontractor from including amounts overlooked in an earlier month, or a late claim. We do not accept the appellant's contention that a contractor could never re-present a previously declined or ignored claim even if it wished to resubmit the claim or support it with further information. As noted by the Associate Judge at [68] there is nothing in the Act that restricted payment claims in this way.

[45] We observe that the format of PC-15 generally mirrored the recommended forms cited in Smellie and in Bayley and Kennedy-Grant. PC-15 deducted payments previously rendered under the heading ***"Less Previous Payments Received"***. Further, PC-15 in the ***"percentage complete"*** column informed the reader as to progress. We agree that the claim would be better if claimed amounts from different periods were itemised according to when those amounts were incurred, but to say that is not to hold that what occurred lacked legal efficacy.

[46] If George could not understand the claim it could have obtained clarification by using the framework contained in the Act. It is not without significance, in assessing the reality of this challenge, that George had not complained about the comprehensibility of previous payment claims that were made in a way that mirrored the form of PC-15. The Associate Judge commented at [68] "*In any event it is clear from PC-15 and other progress claims previously submitted that this process was not only identified but well understood by the parties".*

[47] The inclusion of claims for work in prior periods appears to be common practice in the building industry: see *Wallace Hudson's Building and Engineering Contracts* (11 ed 1995) at para 8.105. Although it would have been better practice to include a column identifying previously claimed amounts, its absence did not nullify PC-15's effect as a claim for works registered. If such a factor could vitiate a payment claim it could frustrate the intent of the Act which was to secure "cash flow" in the industry.

[48] In our judgment the Australian decision of ***Quasar*** does not materially assist in the determination of the present case. There Barrett J held that a claimant cannot claim for work that has not yet been done. In regard to lump sum payments Barrett J said at [28]: *I might add, by way of aside, that I do not consider that the whole payment for the totality of work under a lump sum and entire contract could sensibly be regarded as within para (a) of the definition of "progress payment".*

[49] PC-15 is not a "lump sum" invoice of the type described by Barrett J. It is not an omnibus claim for the amount of the whole Contract Works, but is an instalment-style claim. Just because it included work from previous periods did not put it in the category of a "lump sum" claim. We are satisfied that PC-15 fits the definition of a "progress claim" as stated in the Act.

[50] The appellant also argued, that PC-15 did not comply with the requirements of clause 12.1.1 of NZS3915. However it is not mandatory to comply with clause 12.1.1, which provides: *The Contractor **may** submit to the Principal claims for payment under the contract in the form of provisional progress certificates. Unless otherwise provided in the Contract Documents such claims shall be submitted in respect of work carried out during periods of not less than one Month. The provisional progress payment certificate shall be in the form given in the Eleventh Schedule (emphasis added)*.

[51] If PC-15 did in fact vary from the model certificate in the Eleventh Schedule of NZS3915, Canam had chosen not to adopt that form of progress payment. The form of the certificate did not vary in any material way from the information contained in PC-15. The only real difference was that, instead of subtracting the ***"total value certified previously"*** (as provided in the model certificate) from the total value certified to date, PC-15 subtracted ***"previous payments received"***. That variance is not unreasonable given the claimant would want to draw attention to amounts still owing, and not let George lag behind with its payments. Such sums remained outstanding until paid.

[52] Section 17(1) requires that the progress payment must be calculated by reference to certain factors however the list of factors was not exhaustive. Because s 17(1)(b) refers to "*the value of the construction work carried out, or to be carried out, **during that period***" (emphasis added) it does not mean that a PC must only refer to work carried

out in that particular period. Such a "technocratic" or "formalistic" interpretation would undercut Parliament's intent that cash flow be maintained.

[53] We are persuaded that the provisions of the Act and the contract did not prevent the use of a cumulative-style claim. As submitted by the respondent, and as the Associate Judge held, there is nothing in the Act to prevent such a claim.

[54] We are supported in that conclusion by s 19 which defines "***claimed amount***" as *"an amount of progress payment specified in a payment claim that the payee claims to be due for construction work carried out"*. The definition does not limit the claimed amount to work carried out solely in the period stated on the claim. Clause 12.1.1 of the NZS3915 said: "Unless otherwise provided in the Contract Documents such claims shall be submitted in respect of work carried out during periods of not less than one Month". Again there was no express limit imposed on what work could be included in a payment claim.

[55] On the inclusion of extension of time costs, we adopt the New South Wales approach. The New South Wales Act is not identical to the Act (it requires that a payment claim identify the construction work ***"or related goods and services"*** to which it relates, in contrast to s 20(2)(c) of the Act), but we do not think the difference is material in this context. Although the definition of construction work in s 6 of the Act refers to physical work, the force and thrust of the Act cannot be limited to claims for physical work actually done as opposed to costs which inevitably arise from carrying out the work. This might include: insurance costs, interest, costs of preparing a programme or an extension of time entitlement. As long as the construction contract provides for the payee to be paid the claimed amount in consideration for its performance of construction work (whether or not the entitlement is contingent on a factor such as an extension of time being granted), the payee is entitled to make a claim for payment in a payment claim. If the payer's stance is vindicated, the particular amount will not have to be paid, but that will not prejudice the entitlement of the payee to be paid the other amounts claimed in the payment claim or invalidate the payment claim as a whole. It is not necessary that every amount claimed in the payment claim can be directly linked to a physical task involved in the construction of the building or structure. The Act was specifically intended to avoid artificial distinctions. Cash flow was intended to be protected by the Act and it is to be interpreted so as to achieve its object of speeding up payments.

[56] This approach was echoed by ***Quasar***, where the Court distinguished between an amount claimed under a provision in the construction contract and a claim for damages for breach which is not referable to a provision in the contract. We too adopt the same reasoning. We reject the suggestion that the Act and its protective processes are to be interpreted in a restrictive and confining manner.

[57] Accordingly we agree with the Associate Judge that s 20(2)(c) was complied with.

Compliance with section 20(2)(e)

[58] Section 20(2)(e) required Canam to "indicate the manner in which the payee calculated the claimed amount" in the payment claim. George claimed that Canam had not fulfilled this requirement.

Appellant's submissions

[59] The appellant claimed that PC-15 did not indicate how any calculation was made relating to ***"construction work"*** done during the period 1 May 2004 to 3 June 2004. PC-15 instead indicated how Canam calculated the running total of money it alleged it was entitled to be paid from the time the Contract Works commenced to 3 June 2004.

[60] George claimed Canam effectively acknowledged that PC-15 did not indicate how Canam calculated the ***"claimed amount"*** due as it had to identify this amount in a supporting affidavit. Without the explanation in the affidavit George claimed it was impossible to discern the claimed amount.

[61] Further George claimed it was impossible to identify which of the itemised work was done during the period to which PC-15 related as opposed to claims from previous periods incorporated into PC-15.

Respondent's submissions

[62] The respondent submitted that the appellant's contention regarding the affidavit confused the amount claimed in the payment claim with that claimed in the present proceedings. The two amounts need not be the same. Simply because Canam sought less on the Summary Judgment than the amount claimed in the payment claim did not invalidate that claim.

[63] The respondent argued that, if the appellant's contention was valid and the claimed amount was required to be the exact sum sought by way of Summary Judgment, then a Principal could avoid judgment if it had paid just $1 of the claimed amount. In the present case Canam chose not to claim, by way of summary judgment, the amount before the adjudicator in respect of PC-12 (which was carried over to PC-15 because it was unpaid). This should not invalidate the payment claim.

Discussion

[64] The inclusion of work from previous pay periods has been dealt with above and does not require further comment.

[65] The affidavit point does not impress us. The fact that Canam chose in these proceedings to claim a portion of the claimed amount in PC-15 was reasonable. They responsibly should not claim the amount carried over from PC-12, given that claim was subject to an adjudication procedure.

[66] The layout of PC-15 was substantially as recommended in the forms cited by Smellie and in Bayley and Kennedy-Grant. Bayley and Kennedy-Grant at 65 note: *There is no prescribed form in the Act for the way in which the payee must indicate the manner of calculating the claimed amount in order to comply with the Act ... The key is the provision of sufficient information to make clear the manner in which the amount claimed has been calculated.*

PC-15 was organised in a tabular form and broke down the claimed amount into component parts (such as "Demolition" and "Drainage"). For each component the form indicated the contract value, the percentage complete and the total claimed to date. The form totalled the amount claimed to date, and then subtracted the payments already received giving the "claimed amount". PC-15 also included a schedule of variations.

[67] We agree with the Associate Judge that PC-15 "indicates the manner in which Canam calculated the amount claimed and its calculations in table form". Further, the variations were described with sufficient specificity as noted as necessary in ***Maxi Construction Management Ltd v Mortons Rolls Ltd*** [2001] ScotCS 199 (7 August 2001) per Lord MacFadyen at [29].

[68] As with s 20(2)(c), best practice would suggest that there could be improvements. Reference to previous claims may be required to ascertain the amount claimed in PC-15 that was in addition to the earlier PCs. The inclusion of an extra column, containing that information, would be better but George had that information in any event. It could have obtained particularisation through a payment schedule response. George had never raised any problems with previous payment claims that were of the same form as PC-15. As Lord MacFadyen said at [29] in *Maxi* it was appropriate to look at the payment claim "in the context of the other applications for payment that had gone before". The fact that previous claims may have had to be considered to fully understand PC-15 cannot be a ground for challenging its validity. We are satisfied that s 20(2)(e) was complied with.

Conclusion

[69] Accordingly we are satisfied that the Associate Judge was right to conclude that PC-15 was a valid and enforceable claim in terms of s 20(2) of the Construction Contracts Act 2002. There was no proper challenge to it and the respondent was entitled to Judgment.

[70] The respondent is awarded costs of $6,000, plus reasonable disbursements (including travel and accommodation costs of counsel, if any) to be agreed by counsel or, in the absence of agreement, to be determined by the Registrar.

R J Asher QC and A H J Commons for Appellant instructed by Hornabrook MacDonald, Auckland.
G J Christie and D A Welsh for Respondent instructed by Simpson Grierson, Auckland.