

# CASE IN BRIEF

## GPW INVESTMENTS LTD V DREAMHOME CONSTRUCTION GROUP LTD

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### FACILITATOR OF TIMELY PAYMENTS, OR DRACONIAN REGIME?

Can a contractor get around their delays and inadequacies simply by issuing a payment claim? The recent High Court case of *GPW Investments Ltd v Dreamhome Construction Group Ltd* [2017] NZHC 2057 illustrates the interaction between the payment regime under the Construction Contracts Act 2002 (CCA), and the statutory demand regime under the Companies Act 1993.

#### Facts

A dispute around payment arose in a particularly fraught project in Glenn Innes. The project, as described by Associate Judge Sargisson, was for two houses that were architecturally unique and complex on a difficult construction site. Throughout the project, construction and communication difficulties compounded and accordingly “tensions rose considerably once issues of payment entered the picture.”

Dreamhome (the contractor) sought payment for achieving two milestones. GPW (the principal) disagreed that these milestones had been achieved and sought expert determination under the contract. The expert agreed with GPW that the milestones had not been achieved. Dreamhome disputed this finding and issued a Payment Claim under the CCA. Relevantly, the date of service was disputed with Dreamhome claiming it was served 12 December 2017, whereas Dreamhome claims it was not served until 27 January 2017. A responding payment schedule was issued 3 February 2017 (out of time if Dreamhome’s service date was correct).

On 27 January 2017, Dreamhome notified GPW of its intention to suspend work (for non-payment of the payment claim). On this date, Dreamhome also served a statutory demand for the sum claimed under the invoices (being \$232,531.57). A second expert determination was released on 24 February 2017, agreeing that Dreamhome had not complied with their contractual obligations and GPW was entitled to cancel the contract.



## The judgment

The issue arises due to what Associate Judge Sargisson refers to as the "draconian 'sudden death'" regime implemented by CCA. If the CCA was not engaged, in a case such as this, it would be easy to satisfy the court that there was a substantial dispute as to whether the debt is due and owing (on the back of the two expert determinations alone). However, under the CCA, failure to respond properly to a payment claim results in debt due. For the statutory demand to be set aside, the Court needed to be persuaded that the state of "sudden death" under the CCA has not actually arisen.

Fortunately for GPW, Associate Judge Sargisson was satisfied that GPW raised sufficient doubt as to the date of service.

GPW also satisfied the Court that the Payment Claim was not valid as it was served prematurely to "the end of the relevant period that is specified in... the contract" as required under s 20(1) (a) of the Construction Contract Act. His honour stated that "Dreamhome could not simply issue a payment claim for the same milestones at issue and further, ruled upon in the first Determination. GPW was entitled to rely on the two Determination to the effect that the milestones were still unreachd, and therefore that no payment was owing pursuant to s 20(1) (a)."

It was also found the payment claim failed to meet the technical requirements of section 20(2).

The statutory demand was therefore set aside.

This case highlights a quirk of the Payment Claim regime, a manifestly apparent dispute as to payment can be defeated if the technical requirements of the CCA are met. The takeaway from this case is, of course, to ensure that complying Payment Schedules are issued on time.



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