SUPREME COURT OF QUEENSLAND

CITATION:	*Tenix Alliance P/L v Magaldi Power P/L* [2010] QSC 7
PARTIES:	**TENIX ALLIANCE PTY LTD (ABN 65 075 194 857)** (applicant) **v** **MAGALDI POWER PTY LTD (ABN 51 105 805 418)** (respondent)
FILE NO/S:	14104 of 2009
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	12, 15 January 2010
DELIVERED AT:	Brisbane
HEARING DATE:	12, 15 January 2010
JUDGE:	Fryberg J
ORDER:	**1. Judgment against the Respondent in the amount of $890,930.26 including $28,788.71 interest.** **2. Order that the Respondent pay the Applicant's costs of and incidental to the Application, including the costs of the appearance on 15 January 2010, to be assessed.**
CATCHWORDS:	Contracts – Building, engineering and related contracts – Remuneration – Statutory regulation of entitlement to and recovery of progress payments – Validity of payment claim – Claim made after reference date not invalid Contracts – Building, engineering and related contracts – Remuneration – Statutory regulation of entitlement to and recovery of progress payments – Prolongation costs for period after payment claim – Not costs of construction work Contracts – Building, engineering and related contracts – Remuneration – Statutory regulation of entitlement to and recovery of progress payments – Validity of payment schedule – Interpretation of schedule – Statement of amount proposed to be paid – Statement of reasons for withholding

part of amount claimed – Non-compliance with statutory requirements

Building and Construction Industry Payments Act 2004 (Qld), s 12, s 15, s 17, s 18(2), s 18(3), s 19(2)

Doolan v Rubikcon Pty Ltd [2008] 2 Qd R 117; [2007] QSC 168, cited
J Hutchinson Pty Ltd v Galform Pty Ltd & Ors [2008] QSC 205, cited
Minimax Fire Fighting Systems Pty Ltd v Bremore Engineering (WA Pty Ltd) & Ors [2007] QSC 333, cited
Quasar Constructions v Demtech Pty Ltd [2004] NSWSC 116, cited
Reed Constructions (Qld) Pty Ltd v Martinek Holdings Pty Ltd [2009] QSC 345, considered

COUNSEL: M H Hindman for the applicant
R Wensley QC for the respondent

SOLICITORS: Norton Rose for the applicant
N J Papallo as town agents for Tucker & Cowen Solicitors for the respondent

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

FRYBERG J

No 14104 of 2009

TENIX ALLIANCE Applicant

and

MAGALDI POWER Respondent

BRISBANE

..DATE 12/01/2010

JUDGMENT

HIS HONOUR: This is an application for judgment by a sub-contractor against the head-contractor pursuant to s 19(2)(a)(i) of the Building and Construction Industry Payments Act 2004. The sum claimed is $2,703,149.30. At the outset I was informed that the head-contractor had already paid, before the application was filed, an amount of $872,569.50 inclusive of GST. The sum actually claimed was in fact the difference between those two amounts.

The applicant, Tenix, entered into a contract with the respondent contractor, Magaldi, to dismantle an existing system at the Millmerran Power Station Unit 1 and carry out the mechanical and electrical erection of a MAC system.

The contract price was $2,484,000 and that price was payable under cl 13 by instalments. The contract obliged Tenix to provide security in the form of an unconditional bank guarantee to the value of 10 per cent of the contract price, and to effect certain policies of insurance. The first instalment of 10 per cent of the contract price was payable upon receipt of that guarantee and evidence of that insurance. Thereafter monthly progress payments were to be made based on the percentage completion of the works up to a total of 85 per cent of the contract price. Finally, there was to be a payment on practical completion of five per cent of the price.

The contract was made on or about the 19th of June 2009 subsequent to the commencement of the works by Tenix in May 2009. The initial claim for a progress payment of 10 per cent

was made and a further claim, taking the value of works up to 25 per cent, was also made in due course and both were paid. The present dispute relates to the third claim made by Tenix on or about the 7th of October 2009.

The matter came on in the Applications Court yesterday. Mr Wensley QC on behalf of Magaldi informed me that he expected the matter to take more than three hours and he submitted that it should be adjourned to the civil list. Ms Hindman for Tenix submitted that the matter might be disposed of in two hours and that in any event there was urgency attached to it, by reason of the prejudice which Tenix would suffer as a result of delay.

I rejected the former of those submissions and held that I would resolve the matter in the Applications jurisdiction today as there was in excess of six hours free on the listings, and that ought to have been enough.

In the even the argument has taken five and a half hours and these reasons will add somewhat to that time. They are given extempore by reason of the circumstances of urgency and prejudice to which I have referred.

The claim which the applicant submitted was a very lengthy document and included 93 items. They can be divided into three classes. The first was the amount of the progress claim up to 63 percent of the job less the previous progress claim up to 25 percent. That came to $793,245 plus GST.

Second, there were 91 claims for variations totalling $380,961.07. Third, there was a claim for prolongation costs in the amount $1,283,202.25. All of those amounts were exclusive of GST. When GST of $245,740.85 was added, one reached the total claim of a bit over 2.7 million dollars.

The claim expressly stated that it was made under the Building and Construction Industry Payments Act 2004. That led Magaldi to prepare a document described as a payment schedule in response to the claim. It was dated the 19th of October and delivered to Tenix on or about the 20th of October 2009. It also was a very lengthy document. It dealt with the categories of the claim to which I have already referred, and I will describe the arguments in a little more detail later.

The applicant submits that it is not a payment schedule within the meaning of the Act because it fails to comply with s 18(2)(b). It fails to comply, it is submitted, in that it fails to state the amount of the payment, if any, which Magaldi proposes to make and does not state why the amount to be paid is less than the amount claimed. Those submissions are founded on s 18(2) and (3) respectively of the Act. There is one exception to that; item 81, which was inadvertently omitted from the claim and need not trouble these reasons.

Magaldi submits that on its proper construction the payment schedule does comply with s 18. In the alternative, it submits that it came under no obligation to deliver a payment

schedule and that the right to apply for judgment did not arise; and that the liability to pay the claimed amount, did not arise because the payment claim itself was not a payment claim which complied with the requirements of the Act.

There were in Magaldi's submissions, two issues that arose in that context. First, the Magaldi submitted that the claim was completely invalid because it was not served on the relevant reference date, within the meaning of the Act; and secondly, it was submitted that the inclusion in the claim of a claim for prolongation costs, was incompetent either in whole or in part. It is therefore logically sensible to begin with a consideration of the claim.

The starting point for that issue is, in my judgment, s 17. It provides that a person mentioned in s 12, who is or who claims to be entitled to a progress payment, may serve a payment claim on the person who, under the construction contract concerned, is or may be liable to make the payment. Section 12 provides that from each reference date under a construction contract, a person is entitled to a progress payment if the person has undertaken to carry out construction work under the contract.

There is a definition of progress payment, but in the present context, it does not assist with the meaning of the term as used in s 12, because it refers to s 12. It is a dictionary term, which can be used in relation to the expression elsewhere in the Act, to catch up all of the elements of s 12

including the requirement that the person had undertaken to carry out the construction work. But in s 12 itself, the words, "progress payment", must there, their ordinary English meaning.

The parties are agreed in the present case that the contract was a contract for construction work and that Tenix had undertaken to carry out that work.

A reference date, under the Act, is defined to mean, so far as is relevant in the present case, the last day of the named month in which the construction work was first carried out under the contract and the last day of each later named month. Quite what the word, "named", adds to that, I do not understand. It was common ground between the parties that that part of the definition, that is that part in paragraph (b), was the part which was relevant in the present case because the date for progress payments was not stated in and could not be worked out under the contract.

On the face of s 12, the opening words from each reference date would seem to suggest the existence of an entitlement on and after each date, which was a reference date. Magaldi submitted however, that that was not the correct approach.

In support of that decision, it relied upon the decision of Daubney J, in *Reed Constructions (Qld) Pty Ltd v Martinek Holdings Pty Ltd* [2009] QSC 345. As far as I am aware, that is the only case which could give any support to the

submission.

In that case the contract, unlike that in the present case, was able to supply a reference date. It made the date for payment of each progress payment the first of each month. It required a claim to be made “on” that date and deemed any early claim to be made on the first of the following month.

His Honour reached the conclusion that the Act allowed a claim to be served only on each reference date, not on and after the date. He did so because he thought that acceptance of the applicant's contention would mean that more than one progress claim could be served in relation to each reference date.

He relied upon in particular, or primarily, s 15 which he said contemplated that there would be a progress payment and that the progress payment would become payable on the day on which payment becomes payable under the provisions of the contract.

He also referred to the decision of Chesterman J in *Hutchinson Pty Ltd v Galform Pty Ltd* [2008] QSC 205 and a decision of mine *Doolan v Rubikcon Pty Ltd* [2008] 2 Qd R 117. He concluded that to allow a claim to be served after the date would allow two claims to be made in respect of the one reference date, something which is expressly prohibited under s 17(5) of the Act.

With great respect, I am not able to agree with his Honour's interpretation. It is true that the Act does not permit two

claims to be made in respect of the one reference date. It is, however a considerable jump from that proposition to conclude that the Act does not permit one claim to be made after the relevant reference date but in respect of that date. It does not seem to me that the words of the Act require such a conclusion.

Section 15, particularly relied on by his Honour, states when a progress payment becomes payable, that is on the day on which the payment becomes payable under the provision in the contract, or 10 business days after a payment claim is made. But that does not mandate a claim on a particular date. I do not think that anything that was said by Chesterman J or by me in the two cases referred to leads to the conclusion which his Honour reached.

There is no inconsistency in the view that a claim may be made at any time on and after the entitlement arises under s 12, and the provisions of s 17(5). They simply provide a limitation on the number of claims that can be made in respect of the one reference date.

Consequently, I reject the first submission made by Magaldi. In these circumstances it is not necessary for me to deal with an alternative submission advanced on behalf of Tenix relating to the time when a point such as this must be raised. I shall defer consideration of the effect of partial error on the validity of the claim. The relevant error is the inclusion of prolongation costs not yet incurred.

I move then to the second aspect of the case, the question of the validity, to use the term loosely, of the schedule which Magaldi served under s 18. That section sets out in effect three requirements for a payment schedule.

The first, under s 18(2)(a), is that the schedule must identify the payment claim to which it relates. It is common ground that the schedule in the present case did that.

The second, under s 18(2)(b) is that it must state the amount of the payment, if any, that the respondent proposes to make.

The third requirement is that if the amount which the respondent proposes to pay is less than the claimed amount the schedule must state why that amount is less and if it less, because the respondent is withholding payment for any reason, the respondent's reason or reasons for withholding payment.

Quite what is meant by withholding payment as opposed to any other form of non-payment was not explored in argument before me. Tenix submitted that the schedule in the present case failed to comply with the second and third requirements. To understand that it is, unfortunately, necessary to refer at some length to the schedule.

I set out as shortly as possible the most relevant provisions but I note that a good many more were referred to in the course of argument before me.

"1.4. Magaldi will agree to pay Tenix the sum of $793,245.00 for the Invoice Item No. 1 of the Payment Claim, provided Tenix agrees to the following two conditions:

1.4.1. Tenix is to provide all necessary supporting documents for Invoice Items No 2 to 93 of the Payment Claim to substantiate its claim, as the documents provided in the Payment Claim are inadequate to support (and/or do not in any way support) the amounts claimed in the Payment Claim; and

1.4.2. If the parties cannot reach a reasonable agreement as to the settlement of amounts for the Invoice Items No. 2 to 93, the parties are to appoint an independent quantity surveyor for independent assessment of the claimed amounts (if any is owed by Magaldi, which is disputed), and agree to be bound by the findings made by the quantity surveyor. The costs of such appointment are to be shared equally.

...

2. INVOICE ITEM NO. 1 OF PAYMENT CLAIM – PROGRESS CLAIM

2.1. Magaldi is prepared to approve that up to August 2009 Tenix had progressed 63% of its work required under the Contract No. 2026/2009 Rev 3 dated 10 June (Contract) (see Attachment 10), and will approve Tenix's second progress claim for the sum of $793,245.00 under clause 13.2 of the Contract, subject to the two conditions listed in paragraph 1.4 above.

2.2. However, this approval will be granted without prejudice to Magaldi's rights and entitlement under the Contract, as follows:

2.2.1. Clause 13.2 of the Contract provides that Tenix's progress payments should be based on proportional completion of the works by Tenix in percentage terms ("payments based on percent completion of the works").

2.2.2. In order to make a progress claim under the Contract, Tenix is required to submit on a monthly basis a Progress Report to Magaldi for approval.

2.2.3 The scope of Tenix's works is detailed in Magaldi's technicial specification "IMP0201-MIW rev. 2 dated 20 May 2009 as initialled by S.Pigozzo" (Technical Specification), and as per clause 1 of the Contract, this Technical Specification is incorporated into, and forms a part of, the Contract.

2.2.4 The monthly progress of Tenix's works is to be

assessed with reference to the progress in terms of the overall percentage for the actual works carried out by Tenix in the project program with detailed references to Tenix's scope of work in the Technical Specification.

2.2.5 In particular, Tenix's works is to be assessed with reference to the 'global' percentage completion of work, as well as with reference to the total weight of machineries installed (since Tenix's work mainly consisted of installation of these machineries) as opposed to the total erection work.

2.2.6 The calculation method adopted by Tenix in its Progress Claim Schedule (see Tab A of the Payment Claim) is not agreeable, because Tenix's assessment of its progress claims is based on the percentage of its budget spent for the costs of site overhead, plant & equiptment hire, materials supply, labour and sub-contractors.

2.2.7 Despite the disagreement over Tenix's calculation method, Magaldi is prepared to approve that up to August 2009 Tenix had progressed 63% of its work required under the Contract. However, this approval by Magaldi in this Payment Schedule does not waive Magaldi's right to claim a monthly Progress Report properly issued in the manner specified in clause 13.2 of the Contract and in paragraph 2.2.4 above.

...

3.1 Detailed response by Magaldi to Tenix's claims for the amounts in Invoice Items No. 2 to 90 is provided in Table of Magaldi's Calculation for Alleged Variation Amounts (see Attachment 1).

...

6.1 Prolongation coses claimed by Tenix in the Invoice Item No. 93 in connection with its claim for Extension of Time (EOT) is in the sum of $1,283,202.45 (Prolongation Costs). Magaldi understands that this sum consists of the following amounts.

6.1.1 The project overhead costs in the sum of $1,141,308.63, allegedly incurred as a result of extension of time for Practical Completion date by 81 working days from 25 August 2009 to 28 November 2009, consisting of the costs incurred for 70 days of extension of the period outside the outage period (Future Delay Costs) and the costs incurred for 11 days of the extension of the outage period (Past Delay Costs). The sum is calculated as the

combination of:

(a) 70 days x $14,090.23 (daily rate adopted by Tenix for the time-related project overhead costs outside the outage period) = $986,316.10; and

(b) 11 days x $14,090.23 (daily rate adopted by Tenix for the time-related project overhead costs during the outage period) = $154,992.53

6.1.2 The additional project overhead costs in the sum of $96,050.46, allegedly incurred on the top of the costs listed in paragraph 6.1.1(b) above, as a result of extending the boiler outage period by 11 days (Additional Past Delay Costs), which is calculated as:

(a) 11 days x $8,731.86 (additional daily rate on top of $14,090.23 claimed by Tenix in paragraph 6.1.1(b) above since the work during the outage allegedly attracted higher rate of $22,822.09 per day) = $96,050.46

6.1.3 The project overhead costs in the sum of $45,843.36, allegedly incurred as a result of demobilisation from site for 12 days till 28 September 2009 (Demobilisation Delay Costs), which is calculated as:

(a) 12 days x $3,820.28 = $45,843.36 (daily rate adopted by Tenix for the time-related project overhead costs since demobilisation)

...

6.19 Tenix's claim for the Future Delay Costs as described in paragraph 6.1.1(a) is premature, as such alleged costs should have been claimed (assuming Tenix is entitled to claim such, which is denied) only after the full period of the alleged delay has in fact been caused. The calculation of the Future Delay Costs by Tenix is based on Tenix's anticipation that the date of Practical Completion would be delayed until 28 November and it is further noted that Tenix's claim for the Future Delay Costs in the Payment Claim is based on the anticipated costs of future delay which has not yet been fully incurred.

6.20 Section 12 of the Act provides that: 'a person is entitled to a progress payment if the person has undertaken to carry out construction work, or supply related goods and services, under the contract.' Section 17 of the Act provides that: 'a person mentioned in section 12 who is or who claims to be entitled to a progress payment may service a payment claim.'

6.21 The Futre Delay Costs are for the costs of the anticipated delay up to 28 November 2009, and until the

> anticipated delay has actually occurred in its entirety Tenix is not entitled to a progress payment for the Future Delay Costs and cannot issue (and should not have issued) the Payment Claim for the Future Delay Costs.
> 6.22 For the reasons provided in paragraphs 6.19 to 6.21 above, Tenix's Payment Claim, as far as it relates to the Future Delay Costs in paragraph 6.1.1(a), is invalid. Magaldi will not pay this amount for now, although Magaldi agrees to discuss further with Tenix to determine the amount of the Future Delay Costs on the Basis of 'without prejudice'."

The detailed response referred to in cl 3.1 was set out in a table which contained a number of columns, the most important of which were headed, "Further reply by Magaldi in response to Tenix's claim" and "Estimated amount Magaldi may offer during negotiation with Tenix subject to satisfactory inspection of all supporting documents."

Under the first of those headings was stated in respect of each item in Tenix's claim what Magaldi submitted was the reason for not paying it and under the second of those columns was an amount which Magaldi submitted was simply an amount which they were willing to negotiate about but not an amount which they were willing to pay.

In the result then, Magaldi submitted that the schedule properly construed stated that Magaldi would make no payment of the claim and gave reasons for that. In my judgement one cannot read Magaldi's response as making that statement.

Clause 1.4, it was submitted, by imposing the conditions, in effect stated that nothing would be paid. However, it is equally to be read as stating that $793,245 would be paid if

two conditions were complied with. I cannot read it as either a statement that nothing will be paid, or as a statement that that amount would be paid.

The same is true in my judgment of all the detailed items, which are set out in the variation claims. They do not on a fair reading amount to a statement that that Magaldi does not propose to pay any amount in respect of them. In my judgment, Magaldi has not complied with the requirements of s 18(2)(b) of the Act.

I do not propose to examine the whole of the schedule item by item to see whether the reasons given for each item were adequate to comply with s 18(3). They were not adequate in respect of item 1 and there may be other items in which the reasons are inadequate. However, that is perhaps a matter of degree and those inadequacies might not be enough to take the document outside of the ambit of a payment schedule within the meaning of s 18.

Chesterman J observed in *Minimax Fire Fighting Systems Pty Ltd v Bremore Engineering (WA) Pty Ltd & Ors* [2007] QSC 333 that:

> "one should not approach the question whether a document satisfies the description of a payment schedule from an unduly critical viewpoint. No particular form is required. One is concerned only with whether the content of the document in question satisfies the statutory description."

I agree.

That dictum of Chesterman J also has application to the last

argument with which I must deal; that is an argument advanced orally on behalf of Magaldi that the claim was defective in that it included a claim for prolongation costs, and in particular for prolongation costs subsequent to the date of the claim. The question which arises in this context is whether the claim for such costs can be construed as a claim for construction work.

The cases have emphasised that the word "for" in that context is to be given a wide meaning. It seems to me that it is wide enough to include a claim for delay if the claim is made pursuant to a provision in the contract, as was the case here, and is in respect of costs already incurred.

However, I think that there is force in what was said by Barrett J in *Quasar Constructions New South Wales Proprietary Limited v Demtech Proprietary Limited* [2004] NSWSC 116 in relation to amounts claimed in respect of a period subsequent to the date of the claim. His Honour emphasised at para 34 the relationship implied by the word "for".

A claim for delay in respect of a period after the date of the claim is in my judgment too remote to answer that description. I note Ms Hindman's argument in response that an entitlement, arises if a person has undertaken to carry out construction work under s 12, there being no requirement that the work has been done, and the provision in s 17 that a person who claims to be entitled to a progress payment may serve a claim on any person who may be liable to make the payment. I do not think

those provisions answer the argument addressed by Mr Wensley.

However, it does not seem to me that the inclusion of one aspect of a claim incorrectly in the claim is sufficient to invalidate the whole claim. The requirements for a valid claim are set out in s 17(2) of the Act, and in my judgment the erroneous inclusion of the amount to which I have just been discussing, is not sufficient to take the claim outside the statutory description.

It follows therefore that in my judgment there has been a valid claim save to the extent of the amount not properly included, and that there has not been a compliant payment schedule. Under s 19(2), Tenix is entitled to recover the unpaid portion of the claimed amount as a debt and that is the proceeding that has been brought before me. I propose to give judgment for that amount and for interest as appropriately calculated. I would ask the parties to prepare a draft order in accordance with these reasons, calculating the amount and calculating the interest.

...

The draft order should include the costs.

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

FRYBERG J

No 14104 of 2009

TENIX ALLIANCE PTY LTD (ACN 075 194 857)	Applicant
and	
MAGALDI POWER PTY LTD (ACN 105 805 418)	Respondent

BRISBANE

..DATE 15/01/2010

ORDER

HIS HONOUR: In this matter I gave reasons a couple of days ago for determining that a payment claim made by the present applicant was valid and that the payment schedule prepared by the head contractor in response to the claim was invalid. The consequence of that was that the applicant was entitled to judgment for the amount of the claim, insofar as it could be characterised as a claim as for the payment of construction work.

I held that in regard to a claim for prolongation costs, in the statutory sense, which had not yet, at the time of the claim, been carried out or had not occurred, was not within the description of construction work and that, therefore, the amount which the claim could properly relate to was limited to amounts incurred up to the time of the making of the claim. The parties have been unable to agree on the amount that should be determined to comply with those reasons for judgment.

The applicant submits, primarily, that the proper way to determine the matter is to take the proportion of the additional 81 days as had occurred between the original date for practical completion and the date of the claim and apply that to the amount claimed for the prolongation claim.

That would be an appropriate approach if the work actually carried out during that period had been uniform, however, it in fact was not uniform. During that period there was a period of 11 days when delay occurred by reason of the boiler outage over and above a planned delay and the parties agreed

that in respect of that 11 day period an amount of $96,000 was appropriate.

The second period of abnormality began on the 13th of September when the applicant went off site, it must be assumed legitimately, and its overheads were much less than would normally be the case.

During those two periods of abnormality the applicant's overheads were in one case much greater and in the other case much less than normal.

My judgment was intended to include prolongation costs actually incurred up to the date of the claim. Those prolongation costs were four days of ordinary time working, 11 days at an increased rate due to the extension of the boiler shutdown time and 19 days during which the applicant was off site.

In respect of the four days, it is not for present purposes disputed, the rate to be allowed was to be $14,090.23. In respect of the 11 days it is not disputed that the rate to be allowed was $22,822.09 and in respect of the 19 days it was not disputed that the rate to be allowed was $3,820.28.

As I have said, what was in dispute was whether one should look at the actual history of the days which occurred or simply take a proportion of the additional days required by the delay being a proportion which had occurred up to the time of the claim. Because of the fact that the days were not

identical, that methodology is, in my judgment, incorrect and the methodology which I have more recently described is the proper approach.

There was a subsidiary dispute regarding whether the amount to be allowed for the time off site should cover 12 days or 19 days. In my judgment the amount of the claim was clearly sufficient to cover the whole of the period of the 19 days, and my order was intended and should be applied to allow an amount sufficient to cover those days.

Consequently, it seems to me, the amount of the prolongation costs should be calculated as four days at $14,090.23, 11 days at $22,822.09 and 19 days at $3,820.28. Other matters are not in dispute and I understand the parties can calculate it from those figures.

...

In my judgment the working out of the order was a matter of some complexity and the failure of the parties to be able to reach agreement on it is not altogether surprising. The need to work out the amounts was an inherent part of the application. On the face of things the costs order made in respect of the application ought to cover today's proceedings.

Mr Wensley, a QC on behalf of the respondent, submits that his client should have the costs of today because it was an extra day brought about by the failure of the applicant to agree to the methodology proposed by his client. That is only part of

the picture as Ms Hindman submits the result of the arguments today has been that a figure for judgment has been reached, which was some $32,000 more than the amount which the respondent was prepared to have included and the hearing was necessary.

Whatever might be the position if today were a stand alone application and one were considering the respective positions of the parties, when the prima facie position is that the exercise carried out today was one which was inherently necessary for the resolution of the application, it does not seem to me that in the circumstances there should be any departure from the proposition that the order for costs made in respect of the application, that is that the respondent pay the applicant's costs of the application, should not extend to cover the costs of today.
