Right to Arbitration under HIA Contracts upheld by State Administrative Tribunal

A recent decision of the State Administrative Tribunal has confirmed that it does not have jurisdiction to deal with building service and home building contract complaints in circumstances where the parties have already activated the dispute resolution clause of their Housing Industry Association (HIA) standard form residential building contract to refer their matters in dispute to arbitration.

In *Shakur and Aintree Holdings Pty Ltd t/a Beaumonde Homes* [2015] WASAT 12, a home owner entered into a HIA lump sum building contract with the builder for the construction of a residential house. The parties fell into dispute on a number of contractual and workmanship matters during the course of the building works, and the builder responded by issuing a formal notice of dispute under clause 16 of the contract to refer the matters in dispute to resolution by an arbitrator appointed by HIA.

However, the home owner clients subsequently proceeded to lodge a building service complaint with the Building Commissioner, which in turn was referred by the Building Commissioner to the State Administrative Tribunal for determination. The Tribunal concluded that the proceedings before it were an abuse of process, as the builder had already referred the matters in dispute to arbitration and the home owner had participated in the arbitration proceedings. As Senior Member Raymond stated at paragraph 48, “It is inappropriate, and an abuse of process, to litigate before two different bodies when the one body, in this case the arbitrator, has jurisdiction to deal with all matters in controversy between the parties”.

This is an important decision which confirms that the arbitration clause of the HIA standard form residential building contracts gives a party the right to insist on arbitration, rather than determination of the matters in dispute by the Building Commissioner or the State Administrative Tribunal.

If you have any queries on this article or arbitration under HIA contracts then please contact Michael O’Kane, HIA Workplace Advisor (WA) on 9492 9200 or m.okane@hia.com.au