

Serving documents by Dropbox??

Can you validly serve documents using Dropbox?

The Queensland Supreme Court has recently annulled a Security of Payments adjudication on the basis that the claimant served its submissions using Dropbox.

What is Dropbox?

Dropbox is a free internet facility for file sharing. It is one of many file sharing sites on the internet.

Wikipedia says: *“Dropbox is a file hosting service operated by Dropbox, Inc., headquartered in San Francisco, California, that offers cloud storage, file synchronization, and client software. Dropbox allows users to create a special folder on each of their computers, which Dropbox then synchronizes so that it appears to be the same folder (with the same contents) regardless of which computer is used to view it. Files placed in this folder also are accessible through a website and mobile phone applications.”*

In the case of *Conveyor & General Engineering v Basetec* [2014] QSC 30, Basetec, a supplier of pre-assembled pipe rack units for water treatment facilities, claimed that Conveyor & General Engineering (CGE) owed it money for the supply of these units on two projects. Basetec served payment claims on CGE under the Queensland Security of Payments legislation (*Building and Construction Industry Payments Act 2004*, commonly referred to as “BCIPA”). CGE served payments schedules disputing the claims.

Exchange of payment claims and payment schedules gives the claimant the option of seeking adjudication, initiated by serving an adjudication application. Basetec did this by emailing CGE’s solicitors, attaching two applications. The email contained two Dropbox links. The Dropbox links directed the recipient to Dropbox files, which contained Basetec’s written submissions in support of the applications. BCIPA requires written submissions to be served with the adjudication application. CGE did not access the Dropbox files or read the submissions, until the time for a response had passed.

The adjudicator accepted the application and the submissions and adjudicated in favour of Basetec. CGE challenged the adjudication on the basis that it had not been served effectively.

The Supreme Court agreed. The Court examined three relevant Acts:

▪ **BCIPA:**

Section 103 provides that in addition to service authorised by other legislation, notices may be served in accordance with the construction contract in question. Although these parties had previously exchanged documents by Dropbox, it was not a method of service provided for by the contract between them, so this did not assist Basetec.

▪ **Acts Interpretation Act 1954:**

Section 39 provides for service by “sending it by post, telex, facsimile or other similar facility”. In relation to Dropbox, the Court found that “it cannot be said that the documents in the Dropbox file were ... ‘sent’ to CGE’s office”. Therefore, even if email or Dropbox was a “similar facility”, which was doubtful, there was no proper service under the Acts Interpretation Act.

▪ **Electronic Transactions (Queensland) Act 2001 (ETQA):**

Section 11 provides that information required to be given in writing under State law can be given by an electronic communication, but only where the information is useable for subsequent reference and *“the person to whom the information is required to be given consents to the information being given by an electronic communication”*.

Here, although these parties had previously exchanged documents by Dropbox, CGE had not consented to service of an adjudication application by Dropbox. The judge also found that Dropbox was not an electronic communication within the definition in ETQA – Dropbox is a website where the documents may be found, and not itself electronic communication. So ETQA was of no help to Basetec either.

The Court held that the adjudication application had not been properly served and that the adjudicator’s decision in favour of Basetec was of no effect.

Serving documents by Dropbox?? (...continued)

Lessons:

- **Relying on Dropbox or any other file sharing service to serve legal documents is risky.** Despite their relative inconvenience, more traditional means of service, such as personal or postal service, are more likely to be legally effective. As the law stands at the moment, these are the methods that should usually be adopted.
- In construction projects, payment claims under Security of Payment legislation may be served as provided for by contract. Often, the many participants in the construction project – architects, engineers, project managers, builder, contractors,

subcontractors etc. use file sharing facilities such as Dropbox as an extremely useful central repository of the voluminous documentation required for the modern construction project. **If the parties want payment claims under Security of Payment legislation to be made in this way as well, the construction contracts and subcontracts must contain specific provisions allowing it.**

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