

## Adjudication Decision: 58.17.04

Construction Contracts (Security of Payments) Act

**Adjudicator** : Chris Lenz (58)

### **Applicant - Claimant**

Name : [redacted]  
ACN :  
Address :

### **Respondent**

Name : [redacted]  
ACN :  
Address :

### **Work**

Nature of work : [redacted]  
Applicant's trade : [redacted]  
Location of construction site : [redacted]

### **Payment claim**

Date : 22 August 2017  
Due date for payment claim : 5 October 2017  
Amount of payment dispute : \$421,498.09 (excl GST)

### **Application detail**

Application service date : 23 October 2017  
Appointment date : 23 October 2017  
Response date : 6 November 2017

### **Adjudicator's determination**

Amount to be paid : \$17,881.54 (including GST)  
Due date for payment : 5 October 2017  
Amount of interest : \$608.46  
Claimant's adjudication costs : 50%  
Respondent's adjudication costs : 50%

**Determination date** : 13 December 2017 (2 week's extension granted)

## Table of Contents

### Contents

A. DECISION .....	3
B. REASONS .....	3
I. Background .....	3
II. Material provided in the adjudication.....	4
III. Threshold matters .....	4
IV. Is it a payment dispute?.....	4
V. Previous determination 58.17.03 .....	5
VI. Contact Works claim \$511,553.14.....	6
VII. Variation claims .....	6
VIII. Set off claims by the respondent .....	8
IX. Due date for payment.....	10
X. Rate of interest .....	10
XI. The costs of the adjudication .....	11

## A. DECISION

I have decided under the *Construction Contracts (Security of Payments) Act* ("the Act"), and in respect of the claimant's adjudication application:

- the amount to be paid by the respondent,
- the date upon which the amount is to be paid,
- the amount of interest until this determination, and
- the parties are liable to pay the costs of the adjudication in the proportions,

as shown on the first page of this decision.

## B. REASONS

### I. Background

1. [*The applicant*] (referred to in this adjudication as the "claimant") was engaged by [*the respondent*] (referred to in this adjudication as the "respondent"), for a [*project details redacted*] requiring [*work details redacted*] at [*site location redacted*] (the "work").
2. The work involved [*work details redacted*].
3. There was a written contract C1362-06-CON-005 executed by the parties on 2 March 2017.
4. Payment claim no 6, dated 22 August 2017 for \$819,488.74 (excl GST) comprising a claim under the contract, together with 6 claims for variations, was delivered to the respondent.
5. Payment schedule number C90376, dated 30 August 2017, identified a scheduled amount of \$397,990.65 (excl GST) (the "scheduled amount") was payable.
6. The claimant conceded that on 29 September 2017 the respondent made a payment of \$397,990.65. This was the scheduled amount.
7. The claimant lodged its adjudication application with RICS (numbered 58.17.04) on 23 October 2017.
8. The respondent lodged its adjudication response on 6 November 2017.
9. On 23 October 2017, the day it lodged this application, the applicant filed another application with RICS (application 58.17.03) for payment claim 5 claiming \$825,103.71 (excluding GST).
10. In accordance with s34(3)(b) of the Act, the parties consented to me adjudicating both the payment disputes. They had earlier consented to me adjudicating their [*redacted*] disputes 58.17.01 and 58.17.02 together. These earlier disputes were completed on 29 November 2017 and 30 November 2017 respectively.
11. These earlier disputes covered very similar issues to those in this adjudication 58.17.04, and adjudication 58.17.03, which I have already decided.
12. I requested the Registrar's consent to extend the time to decide both payment claims 5 and 6, and he granted an extension until 13 December 2017 for the determinations.
13. s34(4) of the Act allowed me to take into account information or documents received in the other adjudication in adjudicating each dispute, and I have done so.
14. The issues that emerged in 58.17.03, which also apply to this determination, were as follows:
  - (i) whether the claimant's design obligations precluded it from being entitled to some of the variation claims;
  - (ii) whether the claimant was entitled to extensions of time ("EOT's");
  - (iii) whether the respondent was entitled to set off liquidated damages;
  - (iv) whether the respondent was entitled to set off the costs of having taken the works out of the hands of the claim;
  - (v) whether the respondent could claim set off for any amounts that I may have found due under the Tennant Creek project, which I also adjudicated.
15. I followed the format of the previous determination 58.17.03, as far as possible.
16. The approach taken was to decide the claimant's entitlement under payment claim 6, and then to consider the respondent's set off claim, which was a live issue.

## II. Material provided in the adjudication

### *Application*

17. I received two lever arch folders documents from RICS from the claimant dated 23 October 2017.
18. In the application, the claimant outlined the basis of the payment dispute, and provided 19 annexures supporting its submissions that it had provided in the application.

### *Response*

19. The response comprised two lever arch folders.

## III. Threshold matters

### *Construction contract and construction work*

20. In determination 58.17.03 for payment claim 5, I found that there was a construction contract for construction, and this is the same contract, so there is no need to reconsider this issue.

### *Did the application comply with s28 of the Act?*

21. I already found that the earlier application for payment claim 5 complied with the Act, and this application has followed an identical approach
22. Accordingly, I am satisfied that the application required it to be adjudicated in accordance with my obligations as an adjudicator under the Act.

## IV. Is it a payment dispute?

23. s8 of the Act deals with the term **Payment dispute** provides that:
  - (a) a payment dispute arises if a payment claim under the contract has been made and either:
    - i. rejected or wholly or partly disputed; or
    - ii. an amount claimed which is due to be paid, that has not been paid in full; or
  - (b) when an amount retained by a party under the contract is due to be paid under the contract, and the amount has not been paid; or
  - (c) when any security of a party under the contract is due to be returned on contract, the security has not been returned.
24. At paragraph D of its submissions, and paragraphs 21 and 22 specifically, the claimant submitted:
  - (i) the payment claim had been rejected or wholly or partly disputed in accordance with s8(a)(i) of the Act;
  - (ii) the amount claimed in the payment claim and the amount certified the payment schedule had not been paid in full.
25. In my previous determination 58.17.03, I carried out an analysis about the payment dispute ingredients. There is no need to repeat that analysis here, nor is it material in this case, because I find that:
  - (i) A payment claim was made on 22 August 2017 for \$819,488.74 (exc GST);
  - (ii) A payment schedule certifying \$397,990.65 (exc GST) was delivered to the claimant.
26. Those ingredients are sufficient for a *payment dispute* to have arisen under s8(a)(i) of the Act, because in the payment schedule regarding several items, it stated, “*Costs are not accepted by CEA.*”
27. Accordingly, I find that a *payment dispute* arose on 5 October 2017, when the certified amount should have been paid. This is in line with my reasoning in the earlier determination, based on *Department of Construction and Infrastructure v Urban and Rural Contracting Pty Ltd & Anor* [2012] NTSC 22.
28. This means that I have satisfied myself of the threshold issues needed to commence an adjudication.

V. Previous determination 58.17.03

29. This adjudication contains similar facts and submissions as that in my determination 58.17.03, which I completed on 12 December 2017. It dealt with payment claim number 5.
30. I note that the statutory declarations provided in this adjudication, are the same as those for my previous determination, as was the [T] report, and the [B] report.
31. The parties' submissions in this adjudication, are for the most part similar.
32. I am therefore content to only deal with new submissions raised by the parties, and the new facts surrounding the additional variations involved in this dispute.
33. I refer to my earlier determination from time to time, and identify the various paragraphs of reasons, to ensure that the parties understand the findings that have already been made on certain issues, for which no further analysis is required.
34. As with my previous determinations 58.17.01 & 02, which also were considered together on another matter, I thought it prudent to list some of my findings in 58.17.03 which, in my view, apply in this adjudication. This will allow this determination to be much shorter.
35. These findings included:
  - (i) the respondent was not entitled to raise the time bars [paragraph 260];
  - (ii) the respondent was not entitled to set off for liquidated damages [paragraph 295];
  - (iii) I could give no weight to the [T] report because there was no evidence of [*its author's*] qualifications upon which he could found an expert opinion, even having searched the report in this adjudication to glean if any qualifications were provided, and found none [paragraph 280];
  - (iv) I had similar misgiving about the [B] report because there was no evidence of qualifications and experience [paragraph 419], but I used some of its findings;
  - (v) the claimant had no design obligations under the contract [paragraph 166];
  - (vi) the [*redacted*] schedule did not form part of the contract [paragraph 386];
  - (vii) the tender letter did not form part of the contract [paragraph 381];
  - (viii) the respondent's RFQ did not form part of the contract [paragraph 382];
  - (ix) the contract did not fall within the *inclusive price principle* which, although not named by the respondent, was its argument against the variation claims [paragraph 395];
  - (x) I was unable to allow a set off of amounts from previous adjudications [paragraph 509];
  - (xi) such that the claimant was entitled to contract works, and variations, if it could demonstrate the claimed activity fell within clause 36.1 of the contract [paragraph 412].
36. The structure of the earlier determination is followed so that the parties can easily follow the reasoning although, there may be some deviations.
37. In this adjudication, I only need to therefore analyse the disputed variations 21, 24 and 30, and the respondent's set off claims.
38. In determination 58.17.03, I found that the respondent was unable to set-off amounts against that claim. The liquidated damages failed because of the respondent's lack of entitlement to levy liquidated damages, and for the costs of works taken out for the reasons which follow.
39. The reasons were:
  - (i) the set off claim did not form part of the *payment dispute* of 4 September 2017;
  - (ii) that the certificate which made those sums due and payable was only issued on 6 October 2017 (not 6 November 2017 identified by the respondent in submissions), and
  - (iii) I found the set off claim had not been raised in the 16 September liquidated damages set off letter.
40. I found there that I needed to consider the set off claim in this adjudication, as the moneys had only become due and payable on 6 October 2017.

VI. Contact Works claim \$511,553.14

41. The payment claim was provided by the claimant behind Annexure 4.
42. The claimant submitted, under heading F [*CLAIMANT'S*] ENTITLEMENT TO PAYMENT, that systems 5-14, 36, 38, 49, 55, 57, 60, 65 and E1 commissioning were claimable, in the amount of \$511,553.14, but recognised the scheduled amount of \$313,202.09.
43. Under paragraph 31 of its submissions, in Item 1 of its table, it provided further details of its claim [pages 10 and 11] to which it referred to Annexure 7.
44. As with payment claim 5, the claim for this aspect of work was based on its assessment of the completed percentages of works [based on a walk-around by [E]], and it substantiated that by reference to the Project NPC [paragraph 7 of the submissions relating to item 1].
45. There was nothing different in the claimant's submissions about its entitlement to this claim, and again, the claimant did not explain, nor cross reference documents within this annexure to its submissions with any meaningful detail.
46. As I found in the earlier determination at paragraph 317, the claimant has failed to substantiate its claim, but as I did in the previous decision [paragraph 318], I looked to the payment schedule for the respondent's assessment of the contract works claim, which was provided behind tab 5 of the application.
47. The respondent's payment schedule assessed the contract works claim at **\$313,201.09**, and as with my earlier determination, I am satisfied that this is the value of the contract claim.
48. This amount of **\$313,201.09** was taken to the attached spreadsheet "LM4".
49. In my earlier determination, the spreadsheet was called "LM3", and sheet 2 of that document contained the Contract works claim details, which I had compiled because I thought it would help me in assessing that claim. It certainly helped me to understand the subsystems comprising the *WUC* and the contents of the work.
50. Ultimately, however, it served no purpose, because I found that the claimant had not substantiated its Contract Works claim, so I have not put this sheet in "LM4".

VII. Variation claims

51. The variation claims up VO1, VO2 and VO26 were already dealt with in the earlier adjudication, and there is no reason to disturb this finding.
52. I have taken the data from the attachment "LM3" to the earlier determination regarding those variations to populate "LM4". However, the adjudicated amount for these 3 variations is \$0, as they cannot be paid twice.
53. The only additional disputed variation claims in this adjudication are the following:
  - (i) VO 21 \$21,105.00 of which \$10,552.50 has already been scheduled;
  - (ii) VO 24 \$21,202.58 of which \$10,601.29 has already been scheduled;
  - (iii) VO 30 \$21,605.00.
54. In the payment schedule dated 30 August 2017, there were a number of variations which had been approved by the respondent, and they are not in dispute. However, the value of these I decided needed to populate LM4, even though they were not in dispute, because the respondent had paid these variations on 29 September 2017, and payment included these amounts. This was to ensure the arithmetic was correct.
55. VO 21 and 24 were scheduled at 50% of the claim, with the comment that they were still being assessed. VO30 was disputed in its entirety. I consider each one of these variations.  
VO 21
56. At paragraph 19.3, the respondent in its submissions referred to in paragraph 61 – 64 of [W's] statutory declaration.
57. I have read his statement and his argument was that there was little or no evidence of the claimant's materials to support its claim, nor the evidence of value of the claim when it was submitted. At paragraph 64 he also referred to the [B] report.
58. I note on page 1 of the [B] report that VO 21 was not provided to it, so the respondent's arguments are contained within the failure by the claimant to provide evidence of the materials and the value of the claim, at the time it was submitted.
59. I therefore turn to the claimant's material on this variation.

60. In item 4 under paragraph 31 of its application on pages 14 and 15, the claimant identifies its basis for claim and refers to annexure 10 for substantiation.
61. Whilst what the claimant stated in its submissions may well be correct, it provided no supporting documentation in annexure 10 or anywhere else regarding this variation.
62. Accordingly, I am unable to assess this variation at any more than what has already been assessed by the respondent in its payment schedule.
63. The amount of \$10,552.50, which is the scheduled amount is then taken to LM4.
- VO 24
64. At paragraph 19.4.1, the respondent in its submissions referred to in paragraph 65 of [W's] statutory declaration.
65. I have read his statement and note that he now concedes that that the variation is no longer contested.
66. I therefore find that the claimant is entitled to the full amount of \$21,002.58 and this amount, less what the respondent had already scheduled, has been taken to LM4.
- VO 30
67. At paragraph 19.6.1 of the respondent's submissions, it refers to paragraph 72 to 81 of the [W] declaration.
68. It added that the claim was rejected as the work was always part of the scope and that the claimant knew [redacted], and that it did not properly supervise the work, such that any rework could have been avoided.
69. Turning firstly to [W's] statutory declarations from paragraph 72 to 80, I note that he said from the outset that this claim was first made in progress claim number 5 and had not been formally provided by way of notice.
70. [W] explained that the contract had always required [redacted], and attached an extract of the [redacted] schedule and also an extract from page 34 of the General [redacted] specification regarding [redacted]
71. He explained that there are only two methods available for [redacted], the use of a [redacted] or [redacted], and the latter was only possible with a much wider [redacted] which would have resulted in significant cost to the claimant.
72. At paragraph 76 he said the work was always required to be carried out and was part of the scope and could not constitute a variation.
73. His "Summary" which was particularly detailed, essentially argued that this constituted re-work which was as a result of the claimant not following the [redacted] direction and specification.
74. He added, at paragraph 80 that the claimant had risen relied on issued drawings to justify its claim.
75. That is not entirely correct, as in the claimant's submissions paragraph 6 under item 7 in paragraph 31 of its submissions, on page 16, the claimant relied upon a site instruction C1362-07 -ESI-008\_A for its entitlement to a variation. I note, however, that 3 mark-up drawings were attached to the site instruction, to which [W] may have been referring.
76. In my view, the respondent failed to address the basis of the claimant's claim, being a site instruction dated 11 May 2017 from [M], which having regard to it behind Tab 13, stated *All cost to be signed off on day worksheets at the end of the day.*
77. Whether or not [redacted] was within the original scope, the site instruction stated, *"Additional [redacted] is required for the protection cabling from the protection panels to the HV switchgear. This additional [redacted] as shown on the attached redline mark-up drawings attached.*  
*Note this [redacted] also requires a [redacted] to be fitted for [redacted]"*.
78. I cannot understand why the respondent did not engage directly with the claimant about the basis of its claim. Insofar as quantum is concerned, [W] merely stated that the claim was excessive.
79. I am satisfied that the site instruction fell within the additional work definition under clause 36.1(a) of the contract. [M] directed that the work be paid using day works, and the claimant provided the day worksheets.

80. On the first page behind Tab 13 of the claim, the claimant summarised the day worksheets and the times of the personnel with the total labour hours for ordinary time, time and ½ and double time being clearly identified.
81. Having regard to schedule C behind tab 3.5, which was the rates for additional works identified in the contract, I note that a qualified [redacted] is all-inclusive rate was \$120 per hour for normal time and \$150 per hour overtime.
82. I am satisfied of the hours worked which were signed off by the respondent, and of the calculation carried out where the rates of \$120 per hour and \$150 per hour overtime, were correctly identified.
83. In my view the claimant has demonstrated its entitlement to claim on the basis of the site instruction, together with justification of its quantum.
84. I therefore accept the variation claim is \$21,605, and this is taken to LM4.
85. I have put all those amounts into the spreadsheet “LM4” for calculation of the amount owing.
86. The contract works claim was **\$313,202.09**, to which was added the sum of **\$101,044.51** for the disputed variations, and that those variations that had been accepted in this payment schedule.
87. Accordingly, the amount payable to the claimant (subject to any set off) is **\$414,246.60** from which I was required to deduct the amount paid by the respondent for this payment schedule of \$397,990.65.
88. The balance calculated to \$16,255.95 plus GST which amounted to \$17,881.54.
89. I now consider the set off claims by the respondent.

#### VIII. Set off claims by the respondent

90. In this adjudication, the claimant again dealt with the respondent’s setoffs as in the previous adjudication, but only regarding liquidated damages.
91. In the previous determination, as I have said, I found against the respondent regarding its claim for liquidated damages, because it was not able to overcome the prevention principle and demonstrate that it had exercised its *residual power* fairly and reasonably to grant the claimant EOT’s.
92. There is nothing new in the respondent’s submissions about its entitlement to liquidated damages, in this adjudication. Accordingly, I find again that the respondent is unable to set off its liquidated damages.
93. In my previous determination 58.17.03, at paragraph 509, I found that I was unable to bring to bear any earlier determination is on any other projects by way of a set off in accordance with clause 37.6 of the contract. There is nothing in the respondent’s submissions in this adjudication to disturb this finding.
94. I turn to the merits of the takeout claim, which may be the only possible set off that is open to the respondent.

##### *Claimant’s submissions*

95. The claimant had no submissions about the work taken out claim. Its submissions focused on the 18 September 2017 letters from the superintendent setting off liquidated damages.
96. In the other [redacted] dispute, the subjects of determinations 58.17.01 & 02, the respondent had also claimed set off for works taken out, when it set off the liquidated damages, so that the claimant was aware of a works taken out claim.
97. As I have already found in determination 58.17.03, it was only on 6 October 2017 (not 6 November 2017 as contained in the respondent’s submissions in paragraph 22.7) that the superintendent certified the costs of the work taken out.
98. By the time of this claim, the claimant must have been aware that the respondent could claim for set off, as on 4 August 2017, some of the work was taken out by the respondent.
99. This was evident from paragraph 25 of [V’s] statutory declaration, and pages 43 and 44 of his attachments.



100. The claimant's objections to the respondent's set off claim were under heading F of the application, where, at paragraph 32 it referred to the two letters dated 18 September 2017. The one letter set off liquidated damages of \$313,465.51, and the other certified the balance owing to the claimant for the July claim, i.e. payment claim 5.
101. At paragraph 33, the claimant said that the July payment claim was the subject of a separate adjudication application, and that there was no legal or contractual basis that the respondent could bring to account or set off liquidated damages against the July payment claim [paragraph 34].
102. At paragraph 35, it then extended its argument by saying that was no legal or contractual right of the respondent to bring forward liquidated damages amounts and off set them off against the August payment claim, i.e. payment claim 6 in this adjudication because:
  - (i) it did not raise its set off claims in the payment schedule or otherwise prior to the that date by which it paid the amount certified in the payment schedule 6;
  - (ii) the respondent had committed substantial breach of contract by failing or refusing to pay the full certified value of the payment claim;
  - (iii) and the respondent had failed to acknowledge that the claimant was entitled to EOT's.
103. I now turn to the respondent's submissions, but my focus is only on the works taken out claim, because I have already found the respondent had no entitlement to set off liquidated damages.

#### *Respondent's submissions*

104. The respondent's submissions commenced at heading D where the respondent laid the foundation of the claimant's conduct which forced the respondent to take certain works out of the claimant's hands. These were contained in three paragraphs:
  - (i) paragraph 15 dealt with resourcing;
  - (ii) paragraph 16 dealt with delay;
  - (iii) paragraph 17 dealt with the expert report summaries.
105. I did not make any further assessment of the expert report summaries, because as I had already found in determination 58.17.03, neither author established their qualifications and experience in their reports for me to be able to safely attribute any weight to them.
106. At paragraph 22, the respondent continued with its submissions under the heading "Take out and Assessment of Take out".
107. At paragraph 19, the respondent made important submissions regarding an adjudicator's duty to take into consideration all of the contractual elements and determine legal liability as between the parties.
108. I could consider the resourcing deficiencies alleged by the respondent in this adjudication, as I did in 58.17.02, in which I found there that the claimant had not resourced the project appropriately, such the respondent was entitled to take the works out of the claimant's hands.
109. The submissions on this aspect are similar to those in 58.17.02, and [W] again demonstrated by means of actual data, and his analysis, that the claimant had significantly under-resourced the project.
110. The reason why I have not reviewed this material again, is because of the limits of my ability to do so.
111. In determination 58.17.03, I found that there were limits to what I could consider, and that those limits were dictated by the *payment dispute*.
112. In my earlier decision 58.17.03, at paragraph 58, I said that it was necessary for me to reconsider the set off claim of work taken out together with liquidated damages in this adjudication.
113. In that decision, the payment dispute was on 4 September 2017, and there were no sums due and payable on that date for the costs of the work taken out [paragraph 56].
114. Unless there are further submissions from the respondent on this point, in this adjudication, I am again limited to the issues in the payment dispute.

115. At paragraph 2.4.2 of the response, the respondent conceded that the due date for any payment in respect of progress claim 6 was 5 October 2017.
116. By reference again to the *Urban*<sup>1</sup> case, I find that the payment dispute in this adjudication was 5 October 2017, when the due date for payment arose.
117. It was only on 6 October 2017, that the superintendent issued its certificate regarding the costs of work taken out.
118. I appreciate this was only the next day, but on a strict interpretation of the adjudicator's limits being proscribed to the issues in the payment dispute, it fell outside the issues for determination.
119. In the [*other site*] adjudication, the superintendent had certified the costs to take out work, and it formed part of the payment dispute, and the claimant had unsuccessfully addressed submissions on this issue.
120. Therefore, consistent with my reasoning in my earlier determination 58.17.03, and my finding at paragraph 57, that I am limited to the issues in the payment dispute, which precludes this set-off claim.
121. I appreciate that this ignores the legal merits of the respondent's setoffs, but adjudication has its limitations, and an adjudicator has a limited jurisdiction.
122. These respondent's submissions regarding the costs of the work taken out, other monies due and the assessment of the contract sum payable, were identical to those provided in my earlier determination 58.17.03. There was nothing further from the respondent that I could address afresh this time.
123. Accordingly, I find that I am limited to those issues up until 5 October 2017, which means the respondent is unable to set off its cost of works taken out in this adjudication, as they arose on 6 October 2017.
124. Therefore, there is no point in me considering the merits of the respondent's arguments about lack of resourcing and the costs of work taken out, because they cannot be considered in this adjudication.

#### IX. Due date for payment

125. The claimant submitted, and the respondent at paragraph 2.4.2 agreed that the **due date for payment is 5 October 2017**, and I so find. The payment amount, including GST is \$17,881.54.
126. I am obliged by section 33(1)(b)(ii) of the act to determine the date on or before which the amount must be paid.
127. I was given no authority as to how this date was to be determined and the Act was silent about it.
128. Given that this date has already past, in my view to promote the objects of the Act s3(2)(c) for the rapid recovery of payments, I find that the amount of \$17,881.54 including GST is payable within 7 days of the date of this decision.

#### X. Rate of interest

129. I refer to my earlier determination about the calculation of the rate of interest, and note that neither party provided any different submissions in this adjudication.
130. Accordingly, the rate of 18% is payable on overdue payments, and the due date for payment was 5 October 2017, so I calculate interest from 6 October 2017 to 13 December 2017, which is the date of this determination.
131. I calculate this period to be 9 weeks and 6 days = 69 days.
132. Interest equals  $18\% * 69 / 365 * \$17,881.54 = \$608.46$ .
133. I find the amount of interest is \$608.46 payable on the overdue amount.

---

<sup>1</sup> *Department of Construction and Infrastructure v Urban and Rural Contracting Pty Ltd & Anor [2012] NTSC222*

XI. The costs of the adjudication

134. The default provision contained in s36(1) of the Act makes the parties liable to bear their own costs, including the costs that they are liable to pay the adjudicator.
135. s 46(4) of the Act provides that the parties are jointly and severally liable to pay the costs of the adjudicator in equal shares, but this can be altered if I am satisfied that a party has incurred costs of the adjudication because of unfounded submissions by a party, in which case I may decide that the other party pay some or all of those costs.
136. The claimant succeeded in its payment claim, but largely due to the respondent's assessment of the contract works claim. It was not liable for the costs of the respondent's entitlement to take work out of the claimant's hands because it was one day outside the payment dispute.
137. I adjudicated both matters together, but in this case, I did differentiate between the costs of each adjudication, and it is evident that the costs in adjudicating payment claim 6 were far smaller.
138. Accordingly, I do not see a need to exercise my discretion to alter the default position, so I find that the respondent is liable to pay 50% of my fees and the claimant 50%, which are part of the costs of the adjudication under s36(3) of the Act.

Chris Lenz



Adjudicator 13 December 2017

ATTACHMENT LM<sub>4</sub> FOLLOWING