

# **Adjudicator's Determination**

Adjudicator Registration Number 17  
Determination No: 17.11.01

## **Pursuant to the Construction Contracts (Security of Payments) Act 2004 (NT)**

### **(Applicant)**

Contact Details

Address:

Phone:

Facsimile:

**And**

### **(Respondent)**

Contact Details

Address:

Phone:

Facsimile:

## **Dismissal**

1. I, Charles H. Wright, as the appointed Adjudicator pursuant to the *Construction Contracts (Security of Payments) Act* (the Act), dismiss this application.

## **Appointment of Adjudicator**

2. I was appointed Adjudicator to determine this dispute by Contractors Accreditation Limited (CAL) on the 22 December 2010 and recorded in my letter to the parties dated 24 December 2010.

## **Acceptance of Adjudication Application**

3. In my letter dated 24 December 2010 to the parties, I advised that due to the nature of the matter a telephone conference would not be held. I also advised of two associations that I had with the Respondent and requested that should any party consider that I had a conflict of interest or raise an objection to my appointment as the Adjudicator, they were to notify myself and the Appointer by 31 December 2010.
4. I have received no objection and I am not aware of the Appointer receiving an objection and on that basis, I confirm my appointment.

## **Documents Regarded in Making the Determination**

5. In making this dismissal I have had regard to the following:
  - 5.1. The provision of the *Construction Contracts (Security of Payments) Act*;
  - 5.2. The Applicant's purported Application dated 15 December 2010;
  - 5.3. Further correspondence from the Applicant dated 15 December 2010;
  - 5.4. The Respondent's Response dated 10 January 2011;

## **Conference with the Parties**

6. As mentioned above, a telephone conference was not held.

## **Determination**

7. The Act requires (at s.33(1)) *An appointed adjudicator must, within the prescribed time or any extension of it under section 34(3)(a) -*
  - (a) *dismiss the application without making a determination of its merits if -*
    - (i) *the contract concerned is not a construction contract;*
    - (ii) *the application has not been prepared and served in accordance with section 28;*

- (iii) *an arbitrator or other person or a court or other body dealing with a matter arising under a construction contract makes an order, judgment or other finding about the dispute that is the subject of the application; or*
  - (iv) *satisfied it is not possible to fairly make a determination –*
    - (A) *because of the complexity of the matter; or*
    - (B) *because the prescribed time or any extension of it is not sufficient for another reason; or*
  - (b) *otherwise – determine on the balance of probabilities whether any party to the payment dispute is liable to make a payment or to return any security and, if so, determine –*
    - (i) *the amount to be paid, or security to be returned, and any interest payable on it under section 35; and*
    - (ii) *the date on or before which the amount must be paid or the security must be returned.*
8. The Respondent's Response has been received, and therefore, s33 of the Act requires a determination to be made within the *prescribed time* in accordance with s33 (3)(a) which provides that;
- (a) *if the appointed adjudicator is served with a response under section 29(1) – 10 working days after the date of the service of the response; or*
  - (b) *otherwise – 10 working days after the last date on which a response is required to be served under section 29(1).*

My determination is therefore required by 24 January 2011.

### **The Adjudication Application**

9. The Adjudication Application consists of the following papers;
- 9.1. The document I was served with by the Appointer on 22 December 2010, and dated 15 December 2010, consisted of a Statutory Declaration duly signed and witnessed, two (2) Tax Invoices and a five (5) page blank Hire Agreement.
  - 9.2. I was served with another document dated 15 December 2010 on 23 December 2010 by the Appointer being a one (1) page letter addressed to the Appointer seeking the appointment of an Adjudicator.
10. The purported Application for Adjudication does not comply with Section 28 of the Act, in particular;

- 10.1. The contract is not a construction contract as defined in section 5(1)(b), or under section 7(1)(c);
- 10.2. The purported Application for Adjudication does not comply with section 28 of the Act;
- 10.3. The invoices attached to the purported Application for Adjudication have not been prepared in accordance with the Schedule, Division 4, section 5(1);
- 10.4. The purported Application for Appointment of an Adjudicator was not made within the prescribed time of section 28(1) from when the dispute first arose;

### **The Adjudication Response**

11. The Adjudicator received the Respondent's Response within the time prescribed in the Act. The Response complies with section 29 of the Act, in particular;

11.1. The Response is;

*(a) in writing;*

*(b) has been served on each party to the contract;*

*(c) has been served on the Adjudicator;*

11.2. The Response;

*(a) is prepared in accordance with, and contains the information prescribed to the Regulations;*

*(b) states the details of the dispute to the payment claim;*

*(c) provides the information and documents upon which it relies in the adjudication.*

### **The Construction Contract for the purposes of the Act**

12. The Act defines a Construction Contract (s5) as:

*(1) A construction contract is a contract (whether or not in writing) under which a person (the contractor) has one or more of the following obligations:*

*(a) to carry out construction work;*

*(b) to supply to the site where construction work is being carried out any goods that are related to construction work;*

13. *Goods* are defined in section 7(1) as,

(c) *plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of the construction work at the site of the construction work; or*

(d) *goods prescribed by the Regulations to be goods related to construction work for this Act.*

14. The contract is for the hire of an item of plant that is used in a location other than a construction site and for undertaking task not related to construction activities.

### **The Application for Adjudication for the Purpose of the Act**

15. The first document served on the Adjudicator by the Appointer was not prepared in accordance with section 28 of the Act,

(a) The document was not identified as an Application for Adjudication;

(b) The document contained no reference to the Act;

(c) The document was no more than a Statutory Declaration with invoices and blank Hire Agreement as attachments.

16. The second document served on the Adjudicator by the Appointer was not prepared in accordance with section 28 of the Act;

(a) The document was identified as an Application for Adjudication;

(b) The document was served a day after service of the first document;

(c) The document contained no attachments but referred to 'attached documentation'.

17. The Application for Adjudication was not served within the prescribed time as I find the dispute arose with Invoice No. 1513 dated 31 July 2010, requiring payment 30 days after the invoice date. Therefore, the Application for Adjudication would have had to been served by 28 November 2010.

### **Dismissal of the Application**

18. Having been appointed by the Appointer as the Adjudicator in this matter, I am bound to adjudicate on the matter.

19. The Act requires (at s.33(1)) *An appointed adjudicator must, within the prescribed time or any extension of it under section 34(3)(a) -*

(a) *dismiss the application without making a determination of its merits if -*

(i) *the contract concerned is not a construction contract;*

(ii) *the application has not been prepared and served in accordance with section 28;*

20. For the reasons set out above I find that the Application for Adjudication fails the most basic tests and therefore dismiss the Application.

**Costs**

21. In accordance with section 36(1) I determine that each party bear their own costs in relation to the adjudication.

22. In accordance with section 46(1A)(5) I determine that the parties involved in the adjudication pay the adjudication cost in equal shares.



.....  
**Charles H. Wright**  
**Adjudicator**

**24 January 2011**