

IN THE MATTER OF THE CONSTRUCTION CONTRACTS (SECURITY OF PAYMENTS)

ACT 2004

OF NORTHERN TERRITORY

MATTER NUMBER 11 - 06 - 11

DETERMINATION

APPOINTED ADJUDICATOR

Alan V Riley

DATE OF DETERMINATION

25 February 2006

Definitions

In this determination the following words and phrases shall, subject to the Construction Contracts (Security of Payments) Act 2004, have the meanings given to them as follows:

“**Act**” means the Construction Contracts (Security of Payments) Act 2004 of Northern Territory.

“**Applicant**” means the person described in Item 1 of Annexure A.

“**Construction Work**” means the work described in Item 4 of Annexure A.

“**Respondent**” means the person described in Item 2 of Annexure A.

“**Site**” means the places described in Item 3 of Annexure A.

Determination

For the reasons set out in this determination, I determine that the Respondent is liable to pay to the Applicant \$ 53,509.50 including GST, on or before 13 March 2006. The Respondent must also account to the Applicant for one half of my fees for this adjudication, as stated at paragraph 20.

Appointment of Adjudicator

1. By letter dated 6 February 2006 from Clayton Utz of Darwin, I was appointed the Adjudicator to determine this matter.
2. I was at 6 February 2006, and am at the date of this determination, a registered Adjudicator as provided for in section 52 of the Act.
3. With the Clayton Utz letter dated 6 February 2006, I was served with the Applicant's application dated 6 February 2006 with supporting documents. I received the Application by Registered Post on 9 February 2006.
4. The Application was made pursuant to section 39 (2) (b) of the Act and complies *prima facie* with the requirements of section 39 of the Act.

Conflict of Interest

5. For the purposes of section 31 of the Act, I am not aware of any matter in this case that would give rise to my disqualification from adjudicating the dispute.

Construction Contract

6. Section 5 of the Act defines "construction contract" (in summary) as a contract or other agreement, whether in writing or not, under which the "contractor" has an obligation to carry out construction work, and/or to supply to the construction work site any related goods or services.

7. Section 6 of the Act defines “construction work” to mean any work on a site in the Territory of a class described in section 6(1).
8. The work undertaken in this case relates to construction work on a site in the Territory for the purposes of Section 6 of the Act.
9. The construction contracts in this case are partly written, partly oral and partly to be implied, which the Respondent has not denied, either as to form or substance.
10. It is clear from the documentation submitted to me by the Applicant that the Applicant has performed construction work and that the Respondent has acknowledged its obligation to pay for that work.
11. In the absence of any challenge by the Respondent, I find that the terms of the contracts are as the Applicant has stated.
12. There is sufficient evidence of contracts between the parties so as to construe a “construction contract” for each of the works for the purposes of section 5 of the Act.

Payment Claim and Date of Payment Dispute Arising

13. Since the application for adjudication in this case was made pursuant to section 39 of the Act, I am not required to consider the requirements of Part 3, Division 2 of the Act.

Application for Adjudication

14. The application for adjudication was served on me on 9 February 2006 and on the Respondent by Clayton Utz’s letter to the Respondent dated 6 February 2006.
15. The application set out, or had attached to it, a number of documents containing the information required by section 28 (2)(c) of the Act and it is the information contained in that documentation upon which the Applicant therefore relied for the purposes of section 28(2)(c) of the Act.

Response to application

16. The Respondent has not served a response upon the Applicant or upon me as required by section 29 of the Act.

Determination

17. The Respondent has made no response to the Applicant's adjudication application as required by the Act.

18. I therefore determine that the sum of \$53,509.50 (including GST) is due and payable by the Respondent to the Applicant.

Costs

19. Having regard to the provisions of subsections 36(1) of the Act, each party bears its own costs in relation to the adjudication of the dispute.

20. Pursuant to the provisions of subsection 46(5) of the Act, the parties to an adjudication are, as between themselves, liable to pay my fees in equal shares, such that the Respondent, who has failed to lodge the required security deposit, is liable to the Applicant for one half of my fees in addition to the amount determined in paragraph 18.

Interest

21. Having regard to the fact that this application for adjudication has been made pursuant to section 39 of the Act, and having regard to the provisions of section 35 of the Act, I am unable to determine interest in accordance with subsection 35(1)(b) and must leave it to the parties to determine any interest that may have accrued pursuant to subsection 35(1)(a), at least to the extent that the contracts are partly written.

Signed by Alan V RileyAdjudicator

25 February 2006.

ANNEXURE A TO CONSTRUCTION CONTRACTS ACT ADJUDICATION

ADJUDICATION No 11-06-01

| Item | Definition | Description |
|-------------|-------------------|--|
| 1 | Applicant | |
| 2 | Respondent | |
| 3 | Site | |
| 4 | Construction Work | Supply and installation of structural steel. |