

**RICS**the mark of
property
professionalism
worldwide**Dispute Resolution Service****Adjudicator's Dismissal**

Pursuant to the

Construction Contracts (Security of Payments) CCA 2004

Adjudication Number	35.15.01
Prescribed Appointor	RICS Dispute Resolution Service
Adjudicator	John Tuhtan¹
Applicant:	
Respondent:	
Project:	
Amount to be paid by Respondent	\$0.00 excl. Adjudicator's Fees
Due date for payment	N/A
Adjudication Fees Apportionment	Applicant: 50% Respondent: 50%
Date of Determination or Dismissal	3 March 2015
Payment Claim	Claimed Amount : \$338,927.60 including GST Dated : 24 September 2014
Notice of Dispute / Response to Payment Claim	Notice of Dispute Amount : None provided
Adjudication Application	Dated: 2 February 2015
Adjudicator Acceptance	Dated: 3 February 2015
Adjudication Response	Dated: 13 February 2015

¹ Registered Adjudicator Number 35

Table of Contents

Table of Contents 2
DETERMINATION 3
BACKGROUND 3
REASONS FOR DISMISSAL 4
COSTS 4
CONFIDENTIAL INFORMATION 5

DETERMINATION

- 1) I, John Tuhtan², the adjudicator appointed pursuant to section 30(1)(a) of the Construction Contracts (Security of Payments) Act (NT) (CCA), for the reasons set out below, have dismissed this application because the applicant has not submitted its application for adjudication under section 39(2)(a) within the time prescribed under section 39(2)(b) of the CCA.
- 2) The applicant and the respondent must each pay 50% of the adjudicator's fees in relation to application for adjudication 35.14.01.
- 3) The applicant will bear its own costs for the preparation of the application for adjudication and other submissions made in support of the application.
- 4) The respondent will bear its own costs for the preparation of the response and other submissions made in support of the response.

BACKGROUND

- 5) On or about 21 November 2014, the applicant made a further application for adjudication of a payment dispute that was the subject of a previous application for adjudication referenced 30.14.01.
- 6) The application for adjudication referenced 30.14.01 was received by the respondent on 21 November 2014.
- 7) On 25 November 2014, the prescribed appointer notified the parties that the adjudicator, Mr Damien Michaels, had accepted the application for adjudication referenced 30.14.01.
- 8) Pursuant to section 29 of the CCA, the respondent had 10 working days (that is until 5 December 2014) to provide a response to the application for adjudication.
- 9) On 4 December 2014, the respondent provided its response to the prescribed appointer. A copy of the response was provided to the applicant on 5 December 2014.
- 10) Pursuant to section 33 of the CCA, the adjudicator was required to hand down his determination within 10 working days after the last date on which a response is required to be served under section 29(1) of the CCA.
- 11) In this instance, the adjudicator's determination or dismissal was to have been provided by 18 December 2014 or within any extension of time approved by the Registrar pursuant to section 33(3)(a) of the CCA.

² Registered Adjudicator Number 35

- 12) On 5 January 2015 at 11.07am, the respondent sent an email to the prescribed appointer requesting advice as to the current position of the application.
- 13) On or about 5 January 2015, the applicant also advised the prescribed appointer and the respondent that it had not received any correspondence from the adjudicator in relation to the application for adjudication referenced 30.14.01.
- 14) On 6 January 2015, the prescribed appointer advised the parties that;

“The application was not determined as a result of jurisdictional issues and is taken to have been dismissed under section 33(2) of the Act.”

REASONS FOR DISMISSAL

- 15) The Registrar has informed me that he never granted the adjudicator any extension of time in relation to determining or dismissal of the application for adjudication referenced 30.14.01.
- 16) The adjudicator did not determine or dismiss the application for adjudication referenced 30.14.01 by 18 December 2015 or any extension of time approved by the Registrar pursuant to section 33(1) of the CCA.
- 17) Accordingly, pursuant to section 33(2) of the CCA, the application for application 30.14.01 was taken to be dismissed from 18 December 2014.
- 18) Pursuant to section 39(2) of the CCA, the applicant became entitled to resubmit the dispute the subject of application for adjudication referenced 30.14.01 within 28 days of 18 December 2014, which was by 15 January 2015.
- 19) The applicant submitted the application for adjudication referenced 35.15.01 on 2 February 2015, which is outside of the time permitted by the CCA.
- 20) Accordingly, there is no valid application for adjudication and I have no jurisdiction to determine the application for adjudication.

COSTS

- 21) The respondent asserts the applicant’s conduct in making the application for adjudication was frivolous or vexatious or unfounded and requests that pursuant to clause 36 of the CCA I determine that the applicant must pay the adjudicator’s costs and the costs of preparing the adjudication response.
- 22) Section 34(3)(a) of the CCA states:

“(3) An appointed adjudicator may:

(a) with the Registrar’s consent, extend the time for making a determination under section 33(1);”

- 23) There is nothing in the CCA that requires an adjudicator to inform the parties that the adjudicator has been granted an extension of time by the Registrar under section 34(3)(a) of the CCA.
- 24) Similarly, there is no positive obligation on the applicant or the respondent to ascertain whether or not the adjudicator is proceeding to determine an application within times permitted by the CCA.
- 25) Therefore, if either the applicant or the respondent does not ascertain whether or not an application for adjudication is taken to be dismissed, then either may prejudice some right that they would otherwise have in any further application under section 39 of the CCA.
- 26) The respondent has not provided me with any evidence that the applicant's conduct was frivolous or vexatious or unfounded.
- 27) On the submissions provided to me, it appears that both parties acted in good faith during the course of application for adjudication 35.14.01.
- 28) Accordingly, pursuant to section 36(1) of the CCA, I determine that the parties will each bear their respective costs in this application for adjudication referenced 35.14.01.
- 29) I acknowledge that the applicant has paid \$12,000.00 to me on account of the adjudication costs. I will return the amount paid to me less the costs of the adjudication.
- 30) The costs of the adjudication amount to 15.2 hours @ \$305.00 plus GST, which is; \$5,099.60 incl. GST.
- 31) I will issue a single Tax Invoice to the applicant for my fees in making this determination.
- 32) I determine that the respondent must pay to the applicant one half of the adjudication costs that is set out above in paragraph 30), which amounts to \$2,549.80 incl. GST.

CONFIDENTIAL INFORMATION

- 33) The parties have not indicated which parts of the information provided to me with their submissions are to be treated as confidential.
- 34) If either party considers any part of their submissions confidential or any part of this determination as confidential, I request that they notify me accordingly within 2 working days of receipt of this determination.



Signed:

John Tuhtan³

Date: 3 March 2015

³ Registered Adjudicator Number 35