

**ADJUDICATOR'S DETERMINATION**  
**PURSUANT TO**  
***CONSTRUCTION CONTRACTS (SECURITY OF PAYMENTS) ACT***  
**NORTHERN TERRITORY OF AUSTRALIA**

**Determination No: 19.14.02**

**APPLICANT:**

**CONTACT PERSON:**

**RESPONDENT:**

**CONTACT PERSON:**

I, John Brears, as the appointed Adjudicator, pursuant to the *Construction Contracts (Security of Payments) Act* (the Act) determine that the application should be dismissed, for the reasons given in item 4 on page 6.

## **History**

### **1. Appointment of Adjudicator**

I was appointed as Adjudicator by Master Builders, Northern Territory (MBNT), to determine this dispute on Monday 18 August 2014.

### **2. Pre Adjudication Conference**

I held a pre-adjudication conference at 3.00 pm on 25 August 2014

Present were:

1. [the Respondent]
2. [the Applicant's 1<sup>st</sup> representative]
3. [the Applicant's 2<sup>nd</sup> representative]

I explained that before starting work on the adjudication I needed to raise a number of issues and seek responses from both parties.

#### **2.1 Issue 1 – Existence of Contract**

I advised that from the “Notice of Dispute” and attached documentation it appeared that [the Applicant] had carried out construction work in the form of steel fabrication and erection work, for [the Respondent], but no formal written contract existed.

Both parties agree.

#### **2.2 Issue 2 – Location of Work**

I advised that it appeared that the construction works were carried out in the Northern Territory as defined in section 6(1) of the Act.

Both parties agreed.

#### **2.3 Payment Dispute**

I advised that it appeared that a payment dispute had arisen as defined under section 8 (a) of the Act.

Both parties agreed.

#### 2.4 Issue 4 – “Conflict of Interest”

I advised both parties of my current employment and knowledge of both companies and stated that I did not consider that I had a “Conflict of Interest”.

Both parties agreed.

#### 2.5 Issue 5 – “Point of Contact”

I requested that each party nominated a point of contact.

[The Applicant] nominated [the Applicant’s 1<sup>st</sup> representative]

[The Respondent] nominated [himself].

#### 2.6 Issue 6 Adjudication

I advised that all of the requirements of the Act appear to have been complied with, and the adjudication could proceed.

[The Respondent] was to provide his response by “close of business” on Friday 29 August 2014.

I would then hand down my decision by Friday 12 September 2014.

I subsequently applied for, and was granted, an extension of time until Tuesday 23 September 2014.

#### 2.7 Deposit of Funds

I requested that both parties deposit \$3,000.00 each into the (MBNT) trust fund. This money was to cover the adjudicator’s costs and fees and would be held in trust until the determination was completed and issued. The adjudicator would then direct how the funds were to be distributed.

#### 2.8 Legibility of Drawings provided as part of the “Application”

I noted that the drawings provided with the application were very faint and not legible. I asked for better copies to be provided.

### 3. Documents Regarded in Making the Determination

In making the determination, I have regard to the following:

3.1 The provisions of the Construction Contracts (*Security of Payments Act*)

3.2 The Adjudication Application dated 15 August 2014, which consisted of:

- 1) Covering letter dated 15 August 2014 (1 page)
- 2) The history behind the application and a list of documents provided (4 pages)

The following 9 No A3 size drawings

- 3) Existing floor plan (sheet 1 of 10) dated 26/6/2013
- 4) Proposed floor plan (sheet 2 of 10) – with hand written notes added, dated 26/6/2013
- 5) Proposed floor plan (sheet 2 of 10) with additional hand written notes added dated 26/6/2013
- 6) Proposed New Extension Elevations (sheet 3 of 10) dated 26/6/2013
- 7) Proposed New Extension Details (sheet 4 of 10) dated 26/6/2013
- 8) Proposed New Extension Plan with dimensions (sheet 6 of 10) dated 26/6/2013
- 9) Proposed New Extension – Sections (sheet 9 of 10) dated 26/6/2013
- 10) Structural Steelwork Plan Dwg. No. S02.00 rev A dated 30/7/2013
- 11) Structural Steelwork Roof Plan Dwg. No. S03.00 rev A dated 30/7/2013
- 12) Mighty M Quotation 7393 (1 page) dated 9/1/2014
- 13) Bluescope Distribution Sales Order Confirmation No.8598216 (1 page) dated 31/1/2014
- 14) Bluescope Distribution Tax Invoice No. 52464520 (3 pages) dated 26/3/2014
- 15) [The Applicant's] Tax Invoice No. 13141345 (1 page) dated 1/4/2014
- 16) Copy of [the Applicant's] Tax Invoice No. 13141345 (1 page) dated 1/4/2014
- 17) Bluescope Distribution Sales Order Confirm No. 8732969 (1 page) dated 14/5/2014
- 18) Bluescope Distribution Tax Invoice No. 52536698 (1 page) dated 15/5/2014
- 19) [The Applicant's] Tax Invoice No. 13141352 (1 page) dated 21/5/2014
- 20) [The Applicant's] Tax Invoice No.13141352 – similar but not identical to 19) above (1 page) dated 21/5/2014
- 21) A sheet of handwritten figures that looked like a record of levels taken by a surveyors “Dumpy Level” (1 page)
- 22) Colour photographs of erected structural steelworks – untitled (5 pages)
- 23) Letter (28/5/2014) from Jo-Anne Sivyer [the Applicant] – (2 pages) dated 28/5/2014
- 24) Letter (11/6/2014) from Withnalls Lawyers, to Jo-Ann Sivyer (4 pages) dated 11/6/2014
- 25) Letter (1/7/2014) from Jo-Anne Sivyer to Withnalls Lawyers (6 pages) plus:

- (a) Letter from Wood-Grievess (1 page) 24/6/2014
  - (b) Quotation from Pro Lane Custom Works (No.51) (1 page) dated 16/6/2014
  - (c) Quotation from Pro Lane Custom Works (No50) dated 15/6/2014 (1 page)
- 26) Letter from Withnalls Lawyers to Jo-Anne Sivyer dated 8/7/2014 (2 pages)
  - 27) Statement by the Applicant's 1<sup>st</sup> representative] dated 11/7/2014 (6 pages)
  - 28) Statement by [MP] dated 11/7/2014 (1 page)
  - 29) Statement by [JD] dated 14/7/2014 (2 pages)
  - 30) Reference by [MK] dated 8/8/2014 (1 page)

3.3 The Response to the Application for Adjudication undated, but provided on 29/8/2014 and consisted of:

- 1) Cover page and details of all parties involved in the adjudication (2 pages)
- 2) History and response from [the Respondent] to adjudication (7 pages)
- 3) Attachment 1 – ASIC search of [the Applicant] – dated 28/8/2014 (8 pages)
- 4) Attachment 2 – Statement by [the Respondent] dated 29/8/2014 (7 pages) and a quotation number 82 dated 4/5/2014 from Better Build Homes to [the Respondent] (1 page)
- 5) Attachment 3 – Email from [PK] to [the Respondent] dated 18/8/2014 with a tax invoice number 13141352 dated 5/21/2014 from [the Applicant] to [the Respondent] for \$22,813.00 (2 pages)
- 6) Attachment 4 – a set of 19 drawings consisting of
  - (a) Sheets 1 to 10 of Dwg. No. BAN-LT2975 – 13.dwg
  - (b) Dwg No. S00.02 rev A
  - (c) Dwg No. S00.02 rev A
  - (d) Dwg No. S01.00 rev A
  - (e) Dwg No. S02.00 rev A
  - (f) Dwg No. S02.01 rev A
  - (g) Dwg No. S02.02 rev A
  - (h) Dwg No. S03.00 rev A
  - (i) Dwg No. S04.00 rev A
  - (j) Dwg No. S04.01 rev A
- 7) Attachment 5 – Quotation 7393 from Mighty M dated 9/1/2014 to [the Respondent] \$16,907.00 (1 page)
- 8) Attachment 6 - set of photos 23 in number, showing the structural steelwork.
- 9) Attachment 7 – letter from QS Services dated 28 /8/2014, to De Silva Hebron, enclosing cost estimates for structural steelwork (11 pages)
- 10) Attachment 8 – A reference and statement from Mr [ND], about [the Respondent] and the work they carried out, undated (1 page)
- 11) Attachment 9 – Letter from Wood and Grieve Engineers, dated 20/8/2014 to [the Respondent] (1 page)

- 12) Attachment 10 – A handwritten letter from Building One Pty Ltd. Dated 27/8/2014 to [the Respondent]
- 13) Attachment 11 Signed Statement by [ZG], dated 21/8/14 (1 page)
- 14) Attachment 12 – Email reference by [MT] about [the Respondent] dated 21/8/2014 and a reference by [DU] dated 20/8/2014 about [the Respondent] dated 20/8/2014 (2 pages)

3.4 In addition from Withnalls, dated 26/8/2014 a letter and attached

- (a) A list of hours spent by the applicant between 14/4/2014 and 16/5/2014 (1 page)
- (b) A better, more legible copy of the drawings originally supplied in the application for adjudication, 9 No. A3 size, listed before under 3.2 (3) to (11).

#### 4. Determination

[The Respondent] has presented two grounds under which it is contended that the application should be dismissed by the adjudicator. Dealing with each of these grounds in turn:

1. *6 (a) The application itself does not strictly comply with s.6(b) of the Construction Contracts (Security of Payments) Regulations in that the name of the applicant and their contact details are not correctly supplied.*

The application was made by Olette Doherty, from Withnalls Lawyers, who identified that they were acting under the instructions from their client, “[the Applicant]. The covering letter contains full contact details of Withnalls for the respondent to make contact with. The application documentation contains both an emails address and mobile phone number relating to [the Applicant]. [The Applicant] and [the Respondent] had been in contact with each other a considerable number of times over the past 12 months to know contact details etc. of the other party. In summary I consider that sufficient information has been provided by the applicant to identify themselves and give contact details to the respondent. This ground for dismissal is denied.

2. *6 (b). The application does not involve a payment dispute as defined by s.8 of the Construction Contracts (Security of Payments) Act (“the Act”) as there is no valid payment claim strictly in compliance with the implied provisions of the Act, more particularly, Clause 5 of the Schedule of Implied Provisions in the invoice purported to constitute the payment claim:*

*(1) Is not signed by the claimant (Clause 5 (1)(h) of the Schedule); and*

*(2) Does not comply with (Clause 5 (2)(a) or (c) of the Schedule) (depending upon which view the adjudicator is minded to take in respect of contract price) in calculating the amount claimed.*

[The Applicant] and [the Respondent] have both agreed that any verbal understanding that either party had in relation to the steel fabrication works carried out was not confirmed in writing, and as such no written agreement exists.

The Act in these circumstances specifies certain implied provisions (see Part 2 Division 2 Implied Provisions).

These provisions apply to oral construction contracts, which is what [the Applicant] and [the Respondent] have between them.

These provisions cover “making payment claims” and detail specifically how a payment claim must be made (see Division 4 Making claims for payment 5 Content of claim for payment).

[The Respondent] contends that two of the “Implied Provision” have not been complied with, and refers to a legal precedent that was established in the “Court of Appeal of the Northern Territory” in 2011, relating to a dispute between K & J Burns Electrical and GRD Group. In this decision it was held that in order to constitute a payment claim for the purposes of the Act an invoice must strictly comply with all the requirements for such a document, which in this case includes all of the “implied provisions”.

[The Respondent] has identified two implied provisions that [the Applicant] has not complied and with this I am inclined to agree.

The application is therefore dismissed.

In relation to the costs of the adjudication, I consider that both parties have contributed equally to the dispute between the parties, and therefore should both pay 50% of the costs.

John Brears  
Adjudicator  
22 September 2014