

IN THE MATTER of an Adjudication
pursuant to the Construction Contracts
(Security of Payments) Act (NT) (“The Act”)

BETWEEN:

Applicant

and

Respondent

WITHDRAWAL OF APPLICATION

Introduction

1. On 13 December 2017 I was appointed by the Institute of Arbitrators and Mediators Australia (now part of the Resolution Institute) (“the Institute”) to adjudicate a payment dispute between the Applicant and the Respondent in relation to the Preliminary Civil Works for [*project details redacted*] being undertaken by the Respondent in [*site details redacted*] in the Northern Territory.
2. The Application documents dated 12 December 2017 were sent to me electronically by the Institute as Appointer under the Act on 13 December 2017.
3. On 19 December 2017 I wrote to the parties advising my appointment and declared no conflict of interest in the matter. I sought submissions by 2:00pm CST on Thursday 21 December 2017 should either party object to the appointment and to electronic service of the Application and the Response.
4. In that same letter of 19 December 2017 I sought confirmation from the Applicant of the date of service of the Application on the Respondent.

5. On 21 December 2017 the Applicant wrote to me, with a copy to the Respondent, advising that service of the Application was made on 12 December 2017. The Applicant also advised that there were no objections to my appointment or service of documents of the Adjudication by electronic means
6. That same day, 21 December 2017, I received an email from the Applicant's Solicitor advising that they were experiencing a delay in receiving instructions from their client, however would be able to respond to my request for submissions on 22 December 2017. There were no objections from the Respondent in this regard.
7. On 22 December 2017 I received an email from the Applicant, with a copy to the Respondent, confirming that the Application was served on 12 December 2017 and that there were no objections to my appointment or service of the documents of the Adjudication by electronic means.
8. Later that same morning of 22 December 2017 I received an email from the Applicant, with a copy to the Respondent, advising that the parties had reached a commercial settlement of the dispute and that the Applicant wished to withdraw the Application by notice under s.28A of the Act as follows:

"...Dear Mr Perkins

[The Applicant] served an adjudication application under the Construction Contracts (Security of Payments) Act (Act) on the Resolution Institute and on [the Respondent] on 12 December 2017. On 13 December 2017 you were appointed by the Resolution Institute to adjudicate this matter.

In accordance with section 28A of the Act, I hereby give written notice to you and to [the Respondent] that [the Applicant] wishes to withdraw this adjudication application as a commercial settlement has been reached.

Should you have any questions or queries, please do not hesitate to contact me on 0410 498 838

*Regards,
[Redacted], Director...."*

9. Shortly afterwards I received an email from the Respondent, with a copy to the Applicant, confirming that the Respondent consented to the withdrawal.

10. Later that same day, 22 December 2017, I wrote to the parties confirming the withdrawal of the Application and in relation to other matters of the Adjudication as follows:

“...Dear [redacted] redacted]

Thank you for your emails below and advice that the matter has settled and that the Applicant withdraws the Application under s.28A of the Construction Contracts (Security of Payments) Act.

I will need to write a Withdrawal for the Registrar and will do so in the next week or so and send it through to you both. As you would know, the withdrawal of an application will generally attract costs and I will advise my costs in due course.

Kind regards

*Rod Perkins
Powell & Co Legal...”*

11. I confirm and accept the Applicant’s notice of withdrawal of the Application under section 28A(2)(b) of the Act. I release the parties from the Adjudication of the payment dispute.

Costs

12. On 22 December 2017 I wrote to the parties and advised that generally on Withdrawal of an Application costs follow the Withdrawal. There has been no indication of prior arrangements for costs advised by the parties.
13. In relation to my costs to date, these are to be paid by the Applicant as Costs of the Adjudication under section 46(5) of the Act.
14. I make no decision under section 36(2) of the Act. The parties must bear their own costs.

Confidential Information

15. The following information is confidential:
- (a) the identity of the parties;
 - (b) the identity of the principal; and
 - (c) the location and nature of the works.

DATED: 18 January 2018



Rod Perkins
Adjudicator No. 26