

Adjudicator's Determination

Pursuant to the Northern Territory of Australia Construction Contracts (Security of Payments) Act

Adjudication CJC.13.01

Adjudicator Decision

1. I, Jaswant S. Deo, as the Appointed Adjudicator pursuant to the *Construction Contracts (Security of Payments) Act*, dismiss the application without making a determination of its merits.
2. The parties legal and preparation costs are not awarded.
3. The parties shall equally share the costs of the lodgement fee.

Appointment of Adjudicator

4. I was appointed as Adjudicator by Community Justice Centre (CJC) to determine this dispute on 21 December 2012 and the parties notified on the 9 January 2013.

Application and Response

5. The applicant served its application on CJC on the 21 December 2012 which CJC undertook to serve the respondent on behalf of the applicant by registered post on 21 December 2012.
6. The respondent served its written response to CJC and the applicant on 9 January 2013. The service was effected within ten (10) working days after receipt by it of the applicant's written application. In doing so, the respondent complied with its obligations under s29(1)(a) and (b) of the act.

Conflict Of Interest

7. I have no material personal interest in the payment dispute concerned or in the construction contract under which the dispute has arisen or in any party to the contract. This absence of material personal interest was declared to the parties via email on the 9 January 2012 and no objection was given by either party to such declaration.

Submissions from Parties

8. Following my appointment as adjudicator, I received from CJC by e-mail documents prepared by the Applicant containing: the application which comprised of 13 attachments on the 21st of December 2012.
9. On the 9 January 2013 I received from CJC one lever arch file prepared by the Respondent containing: the response separated into Tabs A to K.

Clarification Sought from Parties

10. I instructed CJC to seek further information from parties to support their claims in the form of Progress Claims or Invoices that may be constituted as PAYMENT CLAIMS to be submitted to CJC by close of business (COB) 15 January 2013.
11. I received no response from the Applicant but received a response from the Respondent on 14 January 2013 stating that no payment claim has ever been issued in respect of the \$ 4,000 which is the subject of the adjudication.

Contract

12. It is common ground that the Applicant and the Respondent entered into various contracts for construction works on or around 9 December 2010.
13. The contracts relevant to the dispute are:
 - TP01-7067 for the [project site] Stage 1 Works
 - TP03A-7051 for structural steel works for [the project site] Stage 1 Works

14. The contract is for construction work executed in the Northern Territory and is consequently a construction contract under s5 of the *Construction Contracts (Security of Payment) Act*.

Jurisdiction

15. Considering the many contentions from parties relating to the dispute, I must first determine if I have jurisdiction to adjudicate.
16. I can only rely on the submissions provided to me by both the Applicant and Respondent.
17. s8 of the Act states:

A payment dispute arises if:

a). when the amount claimed in a payment claim is due to be paid under the contract, the amount has not been paid in full or the claim has been rejected or wholly or partly disputed.

b). when an amount retained by a party under the contract is due to be paid under the contract, the amount has not been paid:

or

c). when any security held by a party under the contract is due to be returned under the contract, the security has not been returned.

Validity of Application

18. In order to establish if a payment dispute exist in accordance with s8 of the act, I must ascertain if a payment claim has been submitted by the Applicant.
19. The Applicant contends that an agreement had been reached with the Respondent to pay \$ 4,000 for the outstanding amount for the construction of stairs to various demountables. However on or about the 20 August 2012, the Respondent reversed a payment of \$ 5,000 and that the Applicant is relying on the remittance advise issued by the Respondent dated on or about 1 October 2012 for an approved payment of \$ 1,000 as the date the dispute arose.
20. The Respondent contends that there was no agreement reached for the payment of outstanding amount for the construction of the stairs to

various demountables. They claim that the construction of the stairs was settled for a sum of \$ 15,000 under contract number TPO3A/7051. The \$ 5,000 reversed payment was for Intel Doors under contract number TPO1/7067 that was deducted due to reduction in scope of works. The Respondent eventually approved payment of \$ 1,000 on or about 1 October 2012 for works done to Intel Doors.

Dismissal of Application

21. Based on (19) and (20) above, I am not satisfied that there is a dispute under the Act, as there is no valid payment claim submitted.
22. I am satisfied that the reversed payment of \$ 5,000 and eventual deduction of \$ 4,000 from contract TPO1/7067 was in relation to works for the Intel Doors and not the construction of stairs to various demountables.
23. I therefore dismiss the application and proceed only with a determination on costs.

Costs

24. I determine that:
 - The parties legal and preparation costs are not awarded and are to be borne by the Parties.
 - The parties shall equally share the cost of the lodgement fees.

Conclusion

26. I have concluded as follows:
 - The application is dismissed.
 - The parties legal and preparation costs are not awarded.
- The parties shall equally share the cost of the lodgement fees.

Jaswant S Deo
Adjudicator