

## **Adjudicator's Determination**

### **Pursuant to the Northern Territory of Australia *Construction Contracts (Security of Payments) Act 2004***

#### **Adjudication CJC.15.01**

**Applicant:**

**Address:**

**Mailing Address:**

**Telephone:**

**Email:**

**Contact:**

**Telephone:**

And

**Respondent:**

**Address:**

**Mailing Address:**

**Telephone:**

**Email:**

**Contact:**

**Telephone:**

**Adjudicator:**

**Jaswant Deo**

**Adjudicator Registration Number 47**

**Address:**

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0800

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## **Adjudicator Decision**

1. I, Jaswant S. Deo, as the Appointed Adjudicator pursuant to the *Construction Contracts (Security of Payments) Act, (The Act)* determine on 4 August 2015 that the respondent pay the applicant:
  - \$ 3,029.40 inclusive of GST.
  - Payment to be made on or before 10 August 2015.
2. The parties legal and preparation costs are not awarded.
3. The parties shall equally share the costs of the lodgment fee.

## **Appointment of Adjudicator**

4. I was appointed as Adjudicator by Community Justice Centre (**CJC**) to determine this dispute on 7 July 2015 and the parties notified on 7 July 2015.

## **Application and Response**

5. The applicant served its application on CJC on 3 July 2015 which was also served on the respondent on 3 July 2015.
6. The respondent was obliged to serve a written response on the applicant and appointed adjudicator within ten (10) working days after receipt by it of the applicant's written application. The respondent did respond to the applicant and the appointed adjudicator on 7 July 2015 by email, however it was not in accordance with s.29(2)(a),(b) and (c). As such, the respondent has not complied with its obligations under s.29(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 Director of CJC, on 3 July 2015 and no objection was given by the applicant and respondent to such declaration.

## **Submissions from Parties**

8. Following my appointment as adjudicator on 7 July 2015, I received from CJC by e-mail documents prepared by the applicant containing the application comprising pages 1 to 27 inclusive.
9. On 7 July 2015 I received from CJC an email prepared by the respondent containing 1 page.

## **Background**

10. On or about 9 December 2014 the applicant and respondent entered into an agreement whereby the applicant was to provide [redacted] services to various houses in the suburb of [redacted] Northern Territory as a subcontractor to the respondent.
11. On or about 25 February 2015 the applicant submitted Invoice 780 which was for [address redacted] in the amount of \$ 19,336.90 inclusive of GST.
12. The respondent paid Invoice 780 in the amount of \$ 18,000 which left a balance of \$ 1,336.90 outstanding.
13. On or about 12 March 2015, the applicant submitted Invoice 797 which was for [address redacted] in the amount of \$ 1,936.00 inclusive of GST.
14. Invoice 797 has not been paid and remains outstanding.

15. On or about 9 April 2015, the applicant submitted Invoice 816 which was for [*address redacted*] in the amount of \$ 2,237.00 inclusive of GST.
16. Invoice 816 has not been paid and remains outstanding.
17. On or about 9 April 2015, the applicant submitted Invoice 817 which was for [*the project site*] in the amount of \$ 3,029.40 inclusive of GST.
18. Invoice 817 has not been paid and remains outstanding.
19. There were further emails between the respondent and applicant in regards to the quality of works provided by the applicant which I will not go through at this stage. The reason being, there is no reference to which property the disputed quality of work was referred.

### **Clarification Sought from Parties**

20. On 14 July 2015 I requested the consent of all parties to adjudicate Invoice 780, Invoice 797, Invoice 816 and Invoice 817 simultaneously.
21. On 14 July 2015 I requested further information as to how and when invoices were submitted and further details in relation to the agreement and subsequent dispute.
22. I received a response on 15 July 2015 from the applicant. The response included a chronology of events leading up to the dispute. I did not receive the consent from the applicant to adjudicate the 4 invoices simultaneously.
23. I received a response on 14 July 2015 from the respondent. The response did not provide consent to adjudicate the 4 invoices simultaneously and did not provide any further details in regards to the dispute. The only point in the response from the respondent was that it was denying any liability to the claim.

## **Adjudicating 2 or more Payment Disputes simultaneously**

24. Since consent was not granted by all parties to adjudicate the 4 invoices simultaneously, I will proceed to adjudicate Invoice 418 dated 9 April 2015 in the amount of \$3,029.40 inclusive of GST for [*the project site*], being the latest invoice.

## **Contract**

25. It is common ground that the Applicant and the Respondent entered into a contract for tiling works on or around 9 December 2014.

26. The contract relevant to the dispute is:

- Typed quotation by the applicant dated 9 December 2014.
- Hand written reply by the respondent agreeing to the price sent by the applicant. This hand written reply is dated 9 December 2014.

27. The contract is for construction work on a site in the Northern Territory which complies with s.6(1)(c) of the Act and therefore is a construction contract under s.5(1)(a) of the Act.

## **Jurisdiction**

28. Considering the many contentions from parties relating to the dispute, I must first determine if I have jurisdiction to adjudicate.

29. Section 33(1) of the Act requires that an appointed adjudicator must, within the prescribed time or any extension of it made under s.34(3)(a):

- (a). *dismiss the application without making a determination of its merits if:*

- (i). *the contract concerned is not a construction contract;*
  - (ii). *the application has not been prepared and served in accordance with s28;*
  - (iii). *an arbitrator or other person or a court or other body dealing with a matter arising under a construction contract makes an order, judgment or other finding about the dispute that is the subject of the application; or*
  - (iv). *satisfied it is not possible to fairly make a determination:*
    - (A) *because of the complexity of the matter; or*
    - (B) *because the prescribed time or any extension of it is not sufficient for another reason; or*
  - (v). *not in accordance with s20 of the Community Justice Centre Act which state that the amount of the payment claim for the dispute is less than \$10,000.00.*
- (b) *otherwise – determine on the balance of probabilities whether any party to the payment dispute is liable to make a payment or to return any security and, if so, determine:*
- (i). *the amount to be paid, or security to be returned and any interest payable on it under s35; and*
  - (ii). *the date on or before which the amount must be paid or the security must be returned.*

30. With respect to s.33(1)(a), I deal below with items (i), (ii), (iii) and (iv).

- (i). I am satisfied the contract concerned is a construction contract as determined in paragraph 26 above.

- (ii). I am satisfied the application has been prepared and served in accordance with s28.
- (iii). I am satisfied there is no arbitrator or other person or a court or other body dealing with this matter or has made an order, judgment or other finding about the dispute.
- (iv). I am satisfied that the matter is not complex nor is the prescribed time insufficient for any reason.
- (v). I am satisfied that the amount claimed in Invoice 817 dated 9 April 2015 in the amount of \$ 3,029.40 is in accordance with s20 of the Community Justice Centre Act.

31. Based on paragraphs 29, 30 and 31 above and since neither party has raised any suggestion that there exists any judgment or other finding about the dispute that is the subject of the application, I am satisfied that I have jurisdiction to adjudicate on the applicant's claim.

### **Validity of Application and Merits of the Claim**

32. In order to establish if a payment dispute exist in accordance with s.8 of the Act, I must ascertain if a payment claim has been submitted by the Applicant.

33. I am satisfied that a payment dispute exists and that Invoice 817 for [*the project site*] has been submitted by the applicant on 9 April 2015.

34. The applicant contends that Tax Invoice 817 for [*the project site*] is for works carried out in accordance with the contract.

35. Since there is no written provision in the contract about when and how a party must respond to a payment claim and by when a payment must be made, I rely on s.20 of the Act, which implies into a contract certain provisions relating to responding to and paying payment claims. That section says:

*The provisions in the Schedule, Division 5 about the following matters are implied in a construction contract that does not have a written provision about the matter:*

*(a) when and how a party must respond to a payment claim made by another party;*

*(b) by when a payment must be made.*

36. The provisions of Division 5 of the schedule are therefore implied into the contract, which states:

*Division 5 Responding to payment claims*

*6. Responding to payment claim by notice of dispute or payment.*

*(1) This clause applies if:*

*(a) a party receives a payment claim under this contract;  
and*

*(b) the party:*

*(i) believes the claim should be rejected because the claim has not been made in accordance with this contract; or*

*(ii) Disputes the whole or part of the claim.*

*(2) The party must:*

*(a) within 14 days of receiving the payment claim:*

*(i) give the claimant a notice of dispute; and*

*(ii) If the party disputes part of the claim – pay the amount of the claim that is not disputed; or*

*(b) within 28 days after receiving the payment claim, pay the whole of the amount of the claim.*

*(3) The notice of dispute must:*

*(a) be in writing;*

*(b) be addressed to the claimant;*

- (c). state the name of the party giving the notice;*
- (d). state the date of the notice;*
- (e). identify the claim to which the notice relates;*
- (f). if the claim is being rejected under subclause (1)(b)(i) – state the reasons for believing the claim has not been made in accordance with this contract;*
- (g). if the claim is being disputed under subclause (1)(b)(ii) – identify each item of the claim that is disputed and state, for each of the items, the reason for disputing it; and*
- (h). be signed by the party giving the notice.*

37. By subclause (2) the respondent had 14 days from receipt of the notice to dispute it, failing which it had 28 days from receipt to pay it. Remembering that Division 5 is implied into the contract as a contractual term, the amount claimed was ‘due to be paid under the contract’ 28 days after receipt by the respondent.

38. In my view, the respondent’s failure to give notice of dispute within 14 days after the payment claim in the form of Invoice 817 dated 9 April 2015 for [*the project site*], or pay the amount claimed within 28 days thereafter has the effect that the amount is due and payable under the terms of clause 6(2) of Division 5, which by virtue of s.20 is a contractual term.

39. Even in the absence of this provision I would have found that the amount of the payment claim in the form of Invoice 817 is due by the respondent to the applicant. This is because the respondent has not provided any evidence pertaining to the defects specifically at [*the project site*] and reasons as to why Invoice 817 should not be paid.

40. I therefore find that on the merits and on the balance of probabilities payment claim in the form of Invoice 817 in the amount of \$ 3,029.40 inclusive of GST is payable to the applicant.

## **Determination**

41. In accordance with s.38(1) of the Act I determine that the amount to be paid by the respondent to the applicant is \$3,029.40 inclusive of GST.

42. Payment to be made on or before 10 August 2015

## **Costs**

43. 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 lodgment fees.

.....  
**Jaswant S Deo**  
**Adjudicator Registration Number 47**