

**Adjudicator's Decision No. 68.18.01**  
(Construction Contracts (Security of Payments) Act)

Adjudicator	Ranjit Khosla
Jurisdiction	Yes
Adjudicated Amount	\$8,122.49 including GST
Due date for payment under the contract	16 March 2018
Date for payment	Within 7 days of the date of release of the decision
Rate of Interest	8% per annum
Apportionment of Fees	Applicant: 50% Respondent: 50%
Date of Decision	15 May 2018
Applicant	[redacted]
Respondent	[redacted]
Project	Shop fitout at [redacted]
Payment Claim	Payment claim dated 28 February 2018 for \$8,122.49 including GST, served on the respondent on the same day
Payment Dispute Notice	13 March 2018
Adjudication Application	20 April 2018
Adjudication referred by RICS	23 April 2018
Adjudication Accepted	23 April 2018
Adjudication Response	Not received
Extension of time for determination	Not requested

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**DECISION**

1. This is a decision made under the *Construction Contracts (Security of Payments) Act* (“*Act*”) in respect of the applicant’s payment claim dated 28 February 2018.
2. I have determined that:
  - (a) The amount of payment to be made by the respondent to the applicant is \$8,122.49 inclusive of GST.
  - (b) In addition the respondent shall pay to the applicant interest of \$106.80.
  - (c) The date for payment be no later than seven days of the date of release of the decision.
  - (d) The rate of interest payable on that amount is 8% per annum.
  - (e) The proportion of the adjudication fees be paid by:
    - The Applicant 50%
    - The Respondent 50%

**BACKGROUND**

3. The Applicant and the Respondent entered into a contract for the modification and relocation of existing sprinklers in a shop at [the project site].
4. Applicant served a payment claim dated 28 February 2018 on the respondent on the same day. Respondent served the payment dispute notice on 13 March 2018. Applicant lodged the adjudication application on 20 April 2018.
5. RICS Dispute Resolution Service (**RICS - DRS**) referred the application to me on 23 April 2018. I accepted the adjudication application and the RICS – DRS notified the parties of my appointment to adjudicate the matter on 24 April 2018. I am a registered adjudicator under the Act.
6. I have received the following documents in respect of this adjudication application:
  - (a) Adjudication application and documents in support of adjudication application.

**APPOINTMENT OF AN ADJUDICATOR**

7. The adjudication application was referred to me as an adjudicator on 23 April 2018 by RICS – DRS, which is a “Prescribed Appointor” pursuant to s30 of the Act.
8. I am a registered adjudicator under the Act. I am not a party to the contract and I do not have a conflict of interest in this matter; therefore, I find that I am capable of fulfilling the obligations of an adjudicator under the Act.

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9. I accepted the adjudication application and the RICS - DRS served the notice of appointment on the parties on 24 April 2018, pursuant to s30 of the Act. I find that I have been appointed as the adjudicator in accordance with the Act.

### **PAYMENT CLAIM**

10. The Applicant served the payment claim dated 28 February 2018 on the Respondent on the same day. The payment claim comprises an email detailing the amounts for the works and has referred to invoices which detail the works completed. I find that the payment claim is valid as it complies with the requirements of s4 of the Act.

### **PAYMENT DISPUTE NOTICE**

11. The Respondent served a payment dispute notice via email dated 13 March 2018 at 8.55 am. It refers to the payment claim; therefore, I find that the payment dispute notice is valid as it complies with the requirements of s8 of the Act.

### **ADJUDICATION APPLICATION**

12. The Applicant lodged the adjudication application on 20 April 2018, which is within the 90 days after the payment dispute notice was served. The adjudication application complies with the requirements of s28 of the Act. Therefore, I find that the adjudication application was lodged in accordance with the Act.

### **ADJUDICATION RESPONSE**

13. I have not received an adjudication response. The Applicant served a copy of the adjudication application on the Respondent on 20 April 2018. The Respondent had 10 business days from 20 April 2018 to provide adjudication response, which expired on 8 May 2018; as 25 April 2018 (ANZAC day) and 7 May 2018 (May Day) are public holidays.

### **MATERIAL CONSIDERED**

14. In accordance with s34(1)(a) of the Act I have considered the following matters in deciding this adjudication:-

(a) the application and its attachments.

### **FURTHER SUBMISSIONS**

15. I requested further submissions from the parties under s34(2)(a) of the Act. I have not received any submissions from either of the parties.

**CONTRACT**

16. There is no written contract between the parties. Based on the documents provided, the applicant provided a quotation for the works, to the respondent, on 9 October 2017. The Respondent via email dated 10 October 2017 at 6.11am accepted the quotation and states

*“Following our phone conversation of yesterday we confirm acceptance of the above quotation”.*

*“If you can arrange to have the work commence this morning and complete asap it would be appreciated, I believe [B] is on holiday this week hence the possible delay in getting the approvals”.*

17. Based on the documents provided, I find there is a construction contract between the parties.

**JURISDICTION**

18. Before deciding on the matter I must be satisfied that I have jurisdiction to proceed.
19. There is a construction contract between the parties and the works completed by the applicant is construction work under the Act. Neither party has raised any jurisdiction issues. For the reasons set out above, I am satisfied that I have jurisdiction to decide on this adjudication application.

**ISSUES IN DISPUTE**

20. The Applicant has claimed \$8,122.49 (including GST) for the work carried out. Respondent in its email dated 13 March 2018 at 8.40 am, to the applicant, suggests that the applicant should direct its claim to the owner of the shop or the developer. In the email the respondent states among other things *“[P] the QS I hire to assist me in project admin has drawn my attention to our contract with the owner of [the shop] I have attached a copy for you to have a look at. He points out we excluded fire and air-con from our quote and suggests you get your finance or admin department to re-address to either [the manager of the centre] or the owners at the shop”.*
21. In response to the respondent’s email, the applicant in its email dated 13 March 2018 at 8.51am, to the respondent, states *“Your contract is not [the Applicant’s] problem – On the 10<sup>th</sup> of October you accepted our price and instructed [the Applicant] to complete works on your behalf. You need to pay and sort the mess out between yourself and the lessor and or [the centre manager]. Please respond by COB today with remittance”.*
22. The Respondent in its email dated 13 March 2018 at 8.55 am, to the Applicant, states *“Either way we both need to get paid, I will do that you will get paid on Friday this week”.*
23. The Applicant states in the adjudication application that the Respondent has not paid the amount it accepted in the payment dispute notice.

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24. Based on the documents provided, the applicant has carried out the works and the Respondent has accepted the liability to pay for the works; therefore, there is no dispute between the parties for payment for the works. I accept the Applicant's claims for the works.
25. I find that the adjudicated amount is \$8,122.49 (including GST), which should be paid by the Respondent to the applicant within 7 days of the date of release of the decision.

### CONFIDENTIAL INFORMATION

26. I have not received any submission from the parties as to any information that may be of confidential nature, which may not be suitable for publication by the Registrar under s54(2)(b) of the Act.

### DATE FOR PAYMENT

27. There is no reference to the payment terms in the applicant's quotation dated 9 October 2017. Invoices referred to in the payment claim refer to payment within 14 days from the date of invoice. Respondent had offered to pay the amount on 16 March 2018 and the applicant has accepted it; therefore, I find the due date for payment is 16 March 2018.

### INTEREST

28. The Act provides under s35(1) that an applicant is entitled to interest in accordance with the contract or at a rate prescribed by the Regulations.
29. The applicant's quotation dated 9 October 2017 does not state the interest payable on the unpaid amount; therefore, interest is to be calculated at the rate prescribed by the Regulations. I find that the rate of interest is 8% as stated in s85(b) of the *Supreme Court Act*.
30. As the respondent has not made any payment to the applicant, I find that the interest is to be calculated from 16 March 2018 to the date of the determination, as stated in s35(1)(b) of the Act.
31. My assessment of the interest due on the amount \$8,122.49 from 16 March 2018 to the date of the determination is \$106.80.

### ADJUDICATION FEES

32. I have not received submissions on the fees from either of the parties. Section 46(4) of the Act provides for the parties to be jointly and severally liable to pay the cost of an adjudication of the dispute. I find that both parties are equally liable (50% by the applicant and 50% by the respondent) to pay the adjudicator's fees.

Ranjit Khosla  
Adjudicator No.68  
Date: 15 May 2018