

Adjudicator's Determination

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

Adjudication 18.10.03

(Applicant)

And

(Respondent)

1. I, Brian J Gallagher, as the Appointed Adjudicator pursuant to the *Construction Contracts (Security of Payments) Act*, herewith accept the request of the Applicant to withdraw the Application for Adjudication.
2. The Adjudication was terminated 6 October 2010.
3. The Adjudicator's costs are to be shared equally between the Applicant and the Respondent.

Appointment of Adjudicator

4. I was invited to adjudicate this matter by the Master Builders Association Northern Territory (MBANT).
5. I accepted the invitation and was appointed as Adjudicator by the MBANT 23 September 2010. The parties were notified of the appointment the same day.
6. The Adjudicator has been properly appointed in accordance with the *Construction Contracts (Security of Payments) Act 2004*.

Documents Regarded in Making the Determination

7. In making the determination I have had regard to the following.
 - 7.1. The provisions of the *Construction Contracts (Security of Payments) Act 2004*.
(as in force 8 January 2008)
 - 7.2. Application from the Applicant dated 21 September 2010.
 - 7.3. Response from the Respondent dated 5 October 2010
 - 7.4. Applicant's request to withdraw application for adjudication dated 6 October 2008.

Withdrawal of Application

8. In the Response dated 5 October 2010 the Respondent submitted an argument claiming the Application had not been properly submitted in full compliance with Section 28(2)(b)(ii) of the Act and that accordingly the Adjudicator did not have jurisdiction to consider the Application.
9. The Applicant advised the Adjudicator, 6 October 2010, that it agreed with the Respondent's submission in regard to jurisdiction and it wished to withdraw the Application.
10. Section 28A of the Act empowers the Adjudicator to accept the request for withdrawal of the Application as both parties are in agreement with this request.
11. The Adjudication is therefore terminated prior to detailed reporting of the Adjudicator's considerations and hence no decision is recorded in this matter save for allocation of the Adjudicator's costs.

Costs

12. Clause 36 (1) of the Act requires the parties to bear their own costs.
13. Clause 36 (2) of the Act empowers the adjudicator to award costs if he is satisfied that the submissions of a party are unfounded or that the conduct of a party is frivolous or vexatious. There was no frivolous or vexatious conduct and as the Respondent was prepared to concede some funds owing to the Applicant a claim of unfounded submission by the Applicant is difficult to sustain.

14. I therefore determine that;

14.1. The adjudicator's costs are to be shared equally by the parties.

Conclusion

15. For the reasons set out above:

15.1. The Adjudication was terminated 6 October 2010.

15.2. The Adjudicator's costs are to be shared equally between the Applicant and the Respondent.

Brian J Gallagher
NT Registered Adjudicator No 18.
10 October 2010