

IN THE MATTER OF THE
CONSTRUCTION CONTRACTS (SECURITY OF PAYMENTS) ACT
OF NORTHERN TERRITORY

CORRECTED DETERMINATION

MATTER NUMBER	CJC.09.01
APPOINTED ADJUDICATOR	Susan Storey
DATE OF DETERMINATION	23 June 2009
APPLICANT	
RESPONDENT	

Definitions

In this determination the following words and phrases shall, subject to the *Construction Contracts (Security of Payments) Act*, have the meanings given to them as follows:

“**CCSP Act**” means the Northern Territory of Australia *Construction Contracts (Security of Payments) Act*.

“**CJC Act**” means the *Community Justice Centre Act 2005* of the Northern Territory.

“**Director**” means the person holding or occupying the office of Director of the Community Justice Centre, Darwin, Northern Territory.

“**Applicant**” means the person described in Item 1 of Annexure A.

“**Construction Work**” means the work described in Item 4 of Annexure A.

“**Respondent**” means the person described in Item 2 of Annexure A.

“**Site**” means the place described in Item 3 of Annexure A.

Determination

In accordance with section 33(1)(b) of the CCSP Act and for the reasons set out in this determination, it is determined that the Respondent is liable to pay to the Applicant, within 10 working days of receiving this corrected determination, the sum of \$644.17.

Correction to Previous Determination

1. As provided for in section 43(2) of the CCSP Act (in summary), an Adjudicator may, after notifying the parties, initiate a correction to the determination. The corrections made to the determination relate in particular to the contract end date and agreed daily rate, and how these effect the calculation of monies owed to the Applicant. The corrections also relate to an omission of adequate information on how the determination was ascertained. Therefore, this corrected determination replaces the original determination dated 23 June 2009.

Appointment of Adjudicator

2. By written notice from the Director of the Community Justice Centre dated 11 June 2009, I was appointed the Adjudicator to determine this matter as provided for in section 20 of the CJC Act.
3. On the 12 June 2009, I received the Applicant's application with supporting documents.
4. The Application complies *prima facie* in its form and content with the requirements of section 28 of the CCSP Act.

Conflict of Interest

5. For the purposes of section 31 of the CCSP Act, I am not aware of any matter in this case that would give rise to my disqualification from adjudicating the dispute.

Construction Contract

6. Section 5 of the CCSP Act defines “construction contract” (in summary) as a contract or other agreement, whether in writing or not, under which the “contractor” has an obligation to carry out construction work, and/or to supply to the construction work site any related goods or services.
7. Section 6 of the CCSP Act defines “construction work” to mean any work on a site in the Territory of a class described in section 6(1).
8. The work undertaken in this case is on a site in the Territory and includes work of a class described in section 6(1) of the CCSP Act.
9. The contract in this case is evidenced by a verbal agreement between the Applicant and the Respondent made in March 2009.
10. The contract is a “construction contract” for the purposes of section 5 of the CCSP Act and the payment terms are expressed in that contract.

Payment Claim and Date of Payment Dispute Arising

11. Section 27 of the CCSP Act provides that an application for adjudication may be made if a payment dispute arises under a construction contract.
12. Section 8 of the CCSP Act provides (in summary) that a payment dispute arises if the amount claimed in a payment claim is due to be paid and the amount has not been paid in full, or the claim has been rejected or disputed.
13. Under section 4 of the CCSP Act, a payment claim includes a claim by the contractor (in this case the Applicant for the purposes of section 4) for payment of an amount in relation to the performance of its obligations under a construction contract.
14. The payment claim identified by the Applicant’s application for the purposes of section 28(2)(b)(ii) and (c) of the CCSP Act is for a total of \$1,194.00.

Application for Adjudication

15. The application for adjudication was served on me through the Director pursuant to section 30 of the CCSP Act and on the Respondent in accordance with section 28 of the CCSP Act.
16. The application was prepared in accordance with the Regulations and, therefore, with section 28(2)(a) of the CCSP Act.
17. The application set out, or had attached to it, the documents required under section 28 of the CCSP Act. Those documents contain the information required by section 28(2)(b) and it is the information contained in that documentation upon which the Applicant therefore relied for the purposes of section 28(2)(c) of the CCSP Act.

Response to Application

18. By e-mail dated 17 June 2009, the Respondent served upon me its response to the application for adjudication. By e-mail dated 22 June 2009 I served upon the Applicant the response to the application for adjudication by the Respondent. The response was therefore served in the manner and within the time prescribed by section 29(1) of the CCSP Act.
19. The response was prepared in accordance with the Regulations and, therefore, with section 29(2)(a) of the CCSP Act.
20. The response set out the details of the rejection or dispute of the Applicant's payment claim that has given rise to this payment dispute, as required by section 29(2)(b) and (c) of the CCSP Act.
21. The response contains the information required by section 29(2)(b) of the CCSP Act and it is the information contained in the response upon which the Respondent therefore relied for the purposes of section 29(2)(c) of the CCSP Act.

22. As provided in section 34(1)(b) of the CCSP Act, I spoke with Mr T of [the respondent] and Ms Ann Lewis, Director of Beagle Motor Inn on Monday 22 June 2009 to clarify some details of the response in order to make my determination.

Determination Details

23. (a) The Applicant and the Respondent agree that the contract, which is in dispute, was for construction works undertaken at a site in Katherine, Northern Territory and that the agreed amount to be paid for completion of the contract is \$7,500.00 plus goods and services tax (GST) or \$8,250.00 GST inclusive.
- (b) The Applicant and Respondent agree that the Respondent booked and paid for flights from Brisbane to Darwin, departing 14 March 2009 and returning to Brisbane from Darwin on 28 March 2009. The 14th to 28th of March inclusive equates to a total of 15 days, which allows for two days of travel and 13 days on site.
- (c) The Respondent states in a letter to the Applicant that the agreed daily rate is \$550.00 GST inclusive. The daily rate of \$550.00 multiplied by 15 days equates to the agreed contract price of \$8,250.00 GST inclusive.
- (d) The Applicant states in the application for adjudication that the agreed contract price for labour only is \$7,500.00 plus GST. The contract price of \$8,250.00 divided by 13 days of labour equates to \$634.61 GST inclusive and not \$750.00 per day as claimed in the Applicant's invoice to the Respondent.
- (e) The Applicant and Respondent agree that only partial works were completed due to an unresolved dispute between the Applicant and Respondent, and that the Applicant instigated the cessation of the contract on 17 March 2009.
- (f) The Applicant claims that a full three days of labour were completed. Therefore, three days at the daily rate of \$634.61 equates to \$1,903.83.

(g) The Respondent claims that the Applicant completed two and one-half days on site and it is agreed that the Applicant spent one day travelling from Brisbane to Katherine. Further to this, the Respondent states in a letter to the Applicant dated 4 June 2009 that the Applicant elected “to quit the job on the fourth day into a 15 day contract”. Therefore, three and one-half days at the daily rate of \$550.00 equates to \$1925.00.

(h) As there are no compelling facts provided by the Applicant or Respondent to prove or disprove either claim, it is determined that the difference is to be equally shared.

Therefore, it is determined that the Respondent is to pay the Applicant \$1,914.42 GST inclusive for the portion of the contract completed.

24. The Applicant and Respondent agree that the Respondent is to reimburse the Applicant for a change of flight fee to the amount of \$85.00, which was incurred as a result of a mutually agreed delay in commencement date. It is determined that \$85.00 is to be paid by the Respondent for the change of flight fee.

25. The Applicant and Respondent agree that the Respondent is liable for accommodation and meal expenses throughout the contract period and that the Respondent made arrangement for accommodation and meals at the Beagle Motor Inn. However, it is further agreed that the Applicant made alternative accommodation arrangements without consulting the Respondent, and that the Applicant terminated the contract on 17 March 2009. The cost for accommodation and all meals at the Beagle Motor Inn is \$82.50 per night. Therefore, it is determined that the amount to be paid by the Respondent to the Applicant for accommodation and meals is \$288.75, being three and a half nights at \$82.50 per night.

26. Pursuant to the provisions of section 26(2) of the CJC Act (in summary), each party to an adjudication is liable to pay an equal share of the lodgement fee. Therefore, it is determined that as the Applicant has paid the lodgement fee of \$500.00 in full, the Respondent is to pay the Applicant \$250.00 as an equal share of that lodgement fee.

27. The Applicant and Respondent agree that an amount of \$1,894.00, as described in the Respondent's letter to the Applicant on 4 June 2009, has been paid by the Respondent to the Applicant. Therefore, it is determined that the amount of \$1,894.00 is to be deducted from the accumulated total of \$2,538.18.

28. In consideration of the details included in clauses 23 to 27 above, it is determined that the sum of \$644.17 is due and payable by the Respondent to the Applicant within 10 working days of the Respondent receiving this determination.

Interest

29. In accordance with sections 41(1), (2) and (3) of the CCSP Act, it is determined that daily interest at a rate of 8% per annum is to be paid to the Applicant by the Respondent on any amount outstanding beyond the payment date as stated in clause 29 of this determination, until the amount is paid in full.

Costs

30. Having regard to the provisions of section 36(1) of the CCSP Act, each party bears its own costs in relation to the adjudication of the dispute.

Signed by:
Susan Storey - Adjudicator

Dated: 14 July 2009

ANNEXURE A

Construction Contracts (Security of Payments) Act

Adjudication Number: CJC2009/61

Item	Definition	Description
1	Applicant	
2	Respondent	
3	Site	Katherine NT
4	Construction Work	Tiling works