

IN THE MATTER of an Adjudication
pursuant to the *Construction
Contracts (Security of Payments)
Act* (NT) (“The Act”)

BETWEEN:

[redacted] Applicant

(“[redacted]”)

and

[redacted] Respondent

(“[redacted]”)

WITHDRAWAL OF APPLICATION

Introduction

1. On 13 November 2014 I was appointed by the Master Builders Association Northern Territory (“MBANT”) to adjudicate a payment dispute between the Applicant, [redacted], and the Respondent, [redacted]. The payment dispute was in relation to electrical works undertaken by the Applicant at the [project name redacted] at [project site redacted].
2. I received the application documents from the MBANT on 14 November 2014.
3. On 23 November 2014 I wrote to the parties advising my appointment and declared no conflict of interest in the matter. I sought submissions should either party object to the appointment. There were no objections to my appointment.

4. In my letter of 23 November 2014 I also advised the parties that I had received a letter dated 17 November 2014 from the Respondent advising that they had not been served the application documents as required by section 28 of the Act. In order to confirm precisely the date and method of service of the application documents, I invited both the Applicant and the Respondent to provide details of service of the Application and set a submission deadline of 2:00pm CST on Tuesday, 25 November 2014. There was further correspondence between the parties and the MBANT in relation to service of the application documents, to which I was copied.
5. On 24 November 2014 I received an email submission from the Applicant containing proof of service and that service had been made in two locations, first at the address nominated in the Contract on 18 November 2014 and then at the Respondent's registered offices on 19 November 2014. The Applicant also advised that it would agree to service on 19 November 2014 for the purposes of resolving the issue.
6. On 25 November 2014 I received by letter confirmation from the Respondent that service of the application documents took place as evidenced by the Applicant in their submissions. The Respondent also advised that it would agree to proceed on the basis that service was made on 19 November 2014.
7. On 29 November 2014 I wrote to the parties advising that service of the applications documents must be 18 November 2014 following the Construction Contract that agreed between the parties. I set out the reasons for arriving at this decision and confirmed to the parties that the Response, if any, would be due on or before Tuesday, 2 December 2014.

8. I received the Response both by email on 1 December 2014 and a hard copy by courier on 2 December 2014. On 2 December 2014 I confirmed receipt of service of the response documents to the parties.
9. On 2 December 2014 I also received a request from the Applicant to seek further submissions under section 34(2)(a) of the Act as, in its view, the Response contained new material that was not made available to the Applicant from the Respondent at the time of submitting their Application.
10. On 3 December 2014 I requested the parties confirm the date and method of service of the Response documents on the Applicant. That same day, 3 December 2014, both parties confirmed service of the Response documents by email on 1 December 2014 and in hard copy by courier on 2 December 2014.
11. After having read both the Application and the Response, on 10 December 2014 I requested further submissions from the parties under section 34(2)(a) of the Act on the following matters:
 - i. A full reconciliation of the contract as per the attached Scott Schedule;
 - ii. Full copies of each of payment claims 17, 18 and 19 and copies of certificates, if any, issued in assessment of each payment claim; and
 - iii. The current position of each party in relation to the Applicant's variations 16, 22, 25, 26, 32, and 38.

I requested submissions from each party be provided by 4:00pm CST, 13 December 2014.

12. On 12 December 2014 I received an email from the Applicant advising that settlement discussions had taken place and there was a real possibility of reaching an agreement without adjudicating the payment dispute. There was a joint request made by the parties to extend the date of further submissions to 4:00pm CST on 16 December 2014.

13. On 15 December 2014 I sought and received an extension of time in making my determination until 23 December 2014 from the Construction Registrar under section 34(3)(a) of the Act.
14. I notified the parties of the extension that same day, 15 December 2014, whereupon the parties sought some additional time for their further submissions up to and inclusive of 18 December 2014. I immediately provided the parties until 4:00pm CST 18 December 2014 in making their submissions.
15. On 18 December 2014 I was advised by the Applicant that a settlement agreement had been reached and the Applicant notified me that, pursuant to section 28A of the Act and with the consent of the Respondent, the Applicant withdrew its Application for Adjudication.
16. That same day, 18 December 2014, I wrote to the parties and confirmed that the Applicant wished to withdraw its Application, with the consent of the Respondent, by way of written notice under section 28A(2) of the Act.
17. I subsequently accepted the withdrawal of the Application under section 28(2)(b) of the Act and I released the parties from the Adjudication of the payment dispute.

Costs

18. In relation to my costs to date, it was agreed between the parties as part of the settlement agreement that each party would bear my costs in equal shares. I therefore make no decision under section 46(b)(i) of the Act.
19. I make no decision under section 36(2) of the Act. The parties must bear their own legal costs.

Confidential Information

20. The following information is confidential:

- (a) the identity of the parties;
- (b) the identity of the principal; and
- (c) the location and nature of the works.

DATED: 31 December 2014

Rod Perkins

Adjudicator No. 26