

ADJUDICATOR’S DETERMINATION

UNDER THE
NORTHERN TERRITORY OF AUSTRALIA
CONSTRUCTION CONTRACTS (SECURITY OF PAYMENTS) ACT

IN THE MATTER BETWEEN:

[Redacted]

(APPLICANT)

AND

[Redacted]

(RESPONDENT)

BY PAUL BAXTER (ADJUDICATOR)

DETERMINED 3 November 2017

DETAILS OF THE PARTIES

Appointer:

Housing Industry Association Limited
ACN 004 631 752
651 Stuart Highway
Berrimah Business Park
BERRIMAH NT 0828
TEL: (08) 8995 6303
FAX: (08) 8995 6333
EMAIL: n.humphries@his.com.au

Applicant:

[redacted]

Address for service:

c/- Ms Tammy Wong
Bowden McCormack Lawyers & Advisers
Level 1 Northgate Plaza
101 Mitchell Street
DARWIN NT 0800
Tel: 8941 6355
Fax: 8941 6366
Email: tammy@bowden-mccormack.com.au

Respondent:

[redacted]

Address for service:

c/- Rod Perkins
Powell & Co Legal
Unit 2/3, 54 Marina Boulevard
CULLEN BAY NT 0820
Tel: (08) 8981 5551
Mobile: 0437 781 227
Email: rperkins@powellcolegal.com.au

Adjudicator:

Mr Paul Baxter

5 Little St

FANNIE BAY NT 0820

Mobile: 0418 894 300

Email: Pbaxter3351@gmail.com

ADJUDICATOR'S DETERMINATION

I, Paul Baxter, the appointed adjudicator, determine that:

- I. The adjudication application is dismissed.
- II. Each party shall bear its own costs.
- III. The cost of the adjudication of \$770 (inc GST) shall be shared equally between the parties.
- IV. Each party is to pay \$385.00 (inc GST) within 7 days.

Signed.....

Date 3 November 2017

1. BACKGROUND.

The Applicant is a contractor who undertook the construction of a new house [redacted]. The respondent is the owner of the house.

A dispute arose between the parties regarding the payment of tax invoices #0518, #0519 and #0520 for the sum of Seventy One Thousand Five Hundred and Sixty Three Dollars Sixty Three Cents (\$71,563.63) including GST.

2. APPOINTMENT OF ADJUDICATOR.

The Applicant made an application to the Housing Industry Association (HIA) for the appointment of an adjudicator to adjudicate the dispute regarding the payment claim under the *Construction Contracts (Security of Payments) Act* on 11 October 2017. On the 12th of October 2017, I, Paul Baxter, an adjudicator registered in the northern Territory, was appointed by HIA as the adjudicator. The appointment was within the 5 working days required by the Act.

3. SUBMISSIONS FROM THE PARTIES.

11th October 2017 application filed for adjudication.

12th October 2017 Mr Rod Perkins phoned the adjudicator and followed with letter to express his client's refusal to consent to two or more payment disputes being heard simultaneously.

17th October 2017 letter from Applicant.

19th October 2017 letter from adjudicator.

19th October 2017 Respondent advised that Invoice #0518 had been paid in full

23rd October 2017 adjudicator's request for submissions

24th October 2017 Applicant submissions

24th October 2017 submission of Respondent requested

24th October 2017 Email from the adjudicator advising he was still proceeding with adjudication.

25th October 2017 Adjudication response.

4. DIMISSAL CONSIDERATIONS.

Section 33(1) of the Act compels the adjudicator to dismiss an application without making a determination on the merits, in the following circumstances:

1. Pursuant to 33(1)(a)(iii), if an arbitrator or other person or court or other body has made an order, judgement or other finding concerning the payment dispute in issue.

In this case the respondent authorised her financier, the Commonwealth Bank, to make payment of the Applicant's tax invoice #0518 IN THE SUM OF \$65,870.00 inclusive of GST. The Applicant, in her letter dated the 24th October 2017, requested the application be dismissed.

In these circumstances where the applicant has withdrawn its application and the respondent has made a payment I hereby dismiss the adjudication.