

Adjudicator's Determination

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

Adjudication 18-08-03

(Applicant)

And

(Respondent)

1. I, Brian J Gallagher, as the Appointed Adjudicator pursuant to the *Construction Contracts (Security of Payments) Act*, herewith accept the joint request of the parties to withdraw the Application for Adjudication.
2. The Adjudication was terminated 2 September 2008.
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 Law Society Northern Territory.
5. I accepted the invitation and was appointed as Adjudicator by the Law Society Northern Territory 14 August 2008. 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. The provisions of the *Interpretation Act*. (as in force 17 May 2007)
 - 7.3. Application from the Applicant dated 14 August 2008.
 - 7.4. Adjudicator's notes from Preliminary Conference dated 19 August 2008.
 - 7.5. Request by Respondent for Applicant to withdraw application following payment to Applicant dated 1 September 2008
 - 7.6. Applicant's request to withdraw application for adjudication dated 2 September 2008.

Withdrawal of Application

8. At the Preliminary Conference dated 19 August 2008 the parties were advised that the latest date for the Respondent to submit a Response would be 25 August 2008.
9. Following an enquiry by the Adjudicator the Respondent advised on 26 August 2008 that no Response would be submitted.
10. The Respondent advised the Adjudicator 1 September 2008 that payment in excess of the amount claimed had been paid on that day and that the Applicant was requested to withdraw the application for adjudication.
11. The Applicant advised the Adjudicator that it wished to withdraw the application 2 September 2008.
12. 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.
13. 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

14. The Applicant seeks the Adjudicators costs.
15. Clause 36 (1) of the Act requires the parties to bear their own costs.
16. 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. The parties did not make unfounded submissions and the conduct of the parties to reach agreement on the dispute prior to a decision from the Adjudicator indicates responsible conduct which is most certainly not frivolous or vexatious.
17. I therefore determine that;
 - 17.1. The adjudicator's costs are to be shared equally by the parties.

Conclusion

18. For the reasons set above:
 - 18.1. The Adjudication was terminated 2 September 2008.
 - 18.2. The Adjudicator's costs are to be shared equally between the Applicant and the Respondent.

Brian J Gallagher
NT Registered Adjudicator No 18.
3 September 2008