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Pursuant to the

Construction Contracts (Security of Payments) CCA 2004

Adjudication Number	35.16.02
Prescribed Appointor	RICS Dispute Resolution Service
Adjudicator	John Tuhtan¹
Applicant:	[redacted]
Respondent:	[redacted]
Project:	[redacted]
Amount to be paid by Respondent	\$7,023.50 incl. GST plus interest plus the Adjudicator's Fees
Due date for payment	9 August 2016
Adjudication Fees Apportionment	Applicant: 0% Respondent: 100%
Date of Determination or Dismissal	25 November 2016
Payment Claim	Claimed Amount: \$7,023.50 including GST Dated: 12 July 2016
Notice of Dispute / Response to Payment Claim	Notice of Dispute Amount : None provided
Adjudication Application	Dated: 7 November 2016
Adjudicator Acceptance	Dated: 10 November 2016
Adjudication Response	Dated: None provided

¹ Registered Adjudicator Number 35

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DETERMINATION

- 1) I, John Tuhtan², the adjudicator appointed pursuant to section 30(1)(a) of the Construction Contracts (Security of Payments) Act (NT) (CCA), for the reasons set out below, determine that the amount to be paid by the respondent to the applicant is:
 - a) \$7,023.50 including GST (the **adjudicated amount**).
 - b) interest on the adjudicated amount calculated at a rate of 8.0% per annum commencing on 10 August 2016 and continuing each day up to the date of payment of the adjudicated amount; and
 - c) the adjudicator's fees in the amount of \$1,342.00 incl. GST.
- 2) The respondent must pay the adjudicated amount, the interest and the adjudication fees to the applicant within 7 days of the date that the determination is released.

BACKGROUND

- 3) The application arises from an unpaid payment claim made by the applicant on the respondent under section 8(a) of the CCA for construction work carried out under a construction contract at the '[site details redacted] Palmerston in the Northern Territory' (**Project**).

APPOINTMENT OF ADJUDICATOR

- 4) Pursuant to section 28(1)(c)(iii) of the CCA, the applicant served its adjudication application on the RICS Dispute Resolution Service, which is a prescribed appointor under the CCA.
- 5) The adjudication application was referred to me as adjudicator on 10 November 2016 by the RICS Dispute Resolution Service pursuant to section 30(1)(a) of the CCA.
- 6) The RICS Dispute Resolution Service served a notice of my acceptance of the appointment on the applicant and the respondent on 10 November 2016.

DOCUMENTS

- 7) The following document was provided to me;
 - a) the adjudication application and the attached submissions dated 7 November 2016 on 10 November 2016.

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JURISDICTION

- 8) On or about 23 March 2016, the parties entered into a contract to carry out [redacted] work on a site identified as '[site details redacted] Palmerston in the Northern Territory' (**Contract**). The Contract was entered into after the commencement of section 9 of the CCA.
- 9) The work carried out under the Contract is '*construction work*' as defined in section 6(1) of the CCA.
- 10) Accordingly, the Contract is a construction contract as defined in section 5(1) of the CCA and the CCA applies to disputes arising under the Contract.
- 11) Pursuant to section 27 of the CCA, the applicant is a party to the Contract under which the payment dispute has arisen and is, therefore, entitled to apply to have the dispute adjudicated.
- 12) I am not aware of any unresolved application for adjudication or order, judgment or finding by an arbitrator or court dealing with a matter arising under the Contract as referred to in sections 27(a) or 27(b) of the CCA.
- 13) I am, therefore, satisfied that I have jurisdiction to determine the adjudication application pursuant to the CCA.

PAYMENT CLAIM

- 14) The applicant served the respondent with Tax Invoice No. 1025874 on 12 July 2016 (payment claim), which was the payment claim for the purposes of the CCA. The payment claim was comprised of 2 parts as follows:
 - a) A claim for payment of the Original Contract Works in the amount of \$6,270.00 excl. GST pursuant to the applicant's quotation referenced 'PAJ23032016 V1' dated 23 March 2016; and
 - b) A claim for payment of an Approved Variation in the amount of \$115.00 excl. GST for a sound level test carried out on 20 June 2016. The claim for Approved Variation was notified to the respondent by way of email on 20 June 2016.
- 15) The total amount claimed to date under the Contract is the amount stated in the payment claim, which is \$6,385.00 excl. GST.

PAYMENT OR NOTICE OF DISPUTE

- 16) The respondent received the applicant's payment claim on 12 July 2016 but has not provided the applicant with any notice of dispute or payment as was required pursuant to Division 5 section 6 of the Schedule to the CCA.

DATE OF PAYMENT DISPUTE

- 17) The applicant submitted its payment claim to the respondent on 12 July 2016.
- 18) The applicant submits that pursuant to the Contract, the due date for payment was 11 August 2016.
- 19) There is nothing in the Contract that states the time by which the respondent must provide to the applicant a response to the applicant's payment claim.
- 20) Section 20 of the CCA states:

'The provisions in the Schedule, Division 5 about the following matters are implied in a construction contract that does not have a written provision about the matter:

- (a) *when and how a party must respond to a payment claim made by another party;*
- (b) *by when a payment must be made.'*

- 21) Division 5 of the Schedule A of the CCA states:

'Responding to payment claim by notice of dispute or payment

(1) *This clause applies if:*

- (a) *a party receives a payment claim under this contract; and*
- (b) *the party:*
 - (i) *believes the claim should be rejected because the claim has not been made in accordance with this contract; or*
 - (ii) *disputes the whole or part of the claim.*

(2) *The party must:*

- (a) *within 14 days after receiving the payment claim:*
 - (i) *give the claimant a notice of dispute; and*
 - (ii) *if the party disputes part of the claim – pay the amount of the claim*

that is not disputed; or

(b) within 28 days after receiving the payment claim, pay the whole of the amount of the claim.

(3) The notice of dispute must:

(a) be in writing; and

(b) be addressed to the claimant; and

(c) state the name of the party giving the notice; and

(d) state the date of the notice; and

(e) identify the claim to which the notice relates; and

(f) if the claim is being rejected under subclause (1)(b)(i) – state the reasons for believing the claim has not been made in accordance with this contract; and

(g) if the claim is being disputed under subclause (1)(b)(ii) – identify each item of the claim that is disputed and state, for each of the items, the reasons for disputing it; and

(h) be signed by the party giving the notice.

(4) ...'

- 22) The respondent was required to provide its response to the payment claim within 14 days after the date that the payment claim was submitted, which is 26 July 2016 (12 July 2016 +14 days is 26 July 2016).
- 23) The respondent failed to provide its response by 26 July 2016. Since there is no provision in the Contract in relation to such failure, Division 5 of the Schedule to the CCA is implied into the Contract.
- 24) Accordingly, the respondent was required to pay the whole of the amount claimed within 28 days of the date of the payment claim, which is 9 August 2016 (12 July 2016 + 28 days is 9 August 2016).
- 25) The payment claim was due to be paid on 9 August 2016³, which is the date that the payment dispute arose for the purposes of this determination.

³ *Department of Construction and Infrastructure v Urban and Rural Contracting Pty Ltd [2012] NTSC 22 at 20.*

- 26) As the respondent failed to provide its notice of dispute within the time required by Division 5 of the Schedule to the CCA and the respondent has not provided any information that is material to this determination, I must accept the reasonable information provided by the applicant for the purposes of making this determination.

APPLICATION FOR ADJUDICATION

- 27) Section 28(1) of the CCA entitles an applicant to make an application for adjudication of a payment dispute within 90 days of the occurrence of the payment dispute.
- 28) For the reasons set out above in paragraphs 17) to 25), I have determined that the payment dispute arose on 9 August 2016.
- 29) The applicant applied for adjudication of the payment dispute on 7 November 2016, which is within the time permitted by and in accordance with section 28(1) of the CCA. Specifically;
- a) The application is in writing as required by section 28(1)(a) and 28(2) of the CCA.
 - b) The application was served on the respondent on 7 November 2016, pursuant to section 28(1)(b) of the CCA.
 - c) The application was served on RICS Dispute Resolution Service on 7 November 2016, pursuant to section 28(1)(c)(iii) of the CCA.
- 30) I am, therefore, satisfied that the adjudication application satisfies the requirements of section 28 of the CCA.

ADJUDICATION RESPONSE

- 31) The applicant served the application for adjudication on the respondent on 7 November 2016.
- 32) Pursuant to section 29(1) of the CCA, the respondent has 10 working days after the date on which it is served with an application for adjudication to prepare and serve its written response on the adjudicator and the applicant. In other words, the respondent had until 21 November 2016 to submit its response to the application for adjudication (7 November 2016 + 10 working days is 21 November 2016).
- 33) The respondent has not served any response on the adjudicator or the applicant.

REASONS FOR THE DETERMINATION

- 34) Pursuant to section 34 of the CCA, I have considered the following matters in making this determination:

- a) the adjudication application and its attachments;
- 35) The respondent failed to provide a notice of dispute in accordance with Division 5 of the Schedule to the CCA, which is a term implied in the Contract by the operation of law for the reasons set out above in paragraphs 19) to 22).
- 36) Accordingly, on 9 August 2016, the respondent became liable to pay the whole of the amount claimed.
- 37) Notwithstanding the respondent’s liability, the applicant is only entitled to payment for work carried out under the Contract. Accordingly, provided the payment claim relates to work the applicant was required to perform under the Contract, then the applicant’s assertion that the claimed work was completed will be sufficient evidence for me to determine the applicant’s entitlement pursuant to Division 5 of the Schedule to the CCA.
- 38) Accordingly, I have only considered the applicant’s payment claim, the application and the submissions attached thereto.
- 39) By way of summary, the table below sets out the elements of;
 - a) the payment claim for work carried out under the Contract during March to July 2016; and
 - b) my determination of the parts of the claim that are in dispute as follows:

	Applicant - Payment Claim incl GST	Respondent – Notice of dispute incl GST	Amount Determined incl GST
applicant’s quotation referenced ‘PAJ23032016 V1’ dated 23 March 2016;	\$6,897.00	Not disputed	\$6,897.00
a [redacted] test carried out on 20 June 2016 notified to the respondent by way of email on 20 June 2016	\$126.50	Not disputed	\$126.50

- 40) I have determined that the applicant is entitled to payment of \$7,023.50 incl. GST.

THE DETAILS OF THE DETERMINATION

- 41) Pursuant to s 34(1)(a) of the CCA, I have made this determination on the basis of the application and its attachments but I have not considered the respondent's reasons for withholding payment in the payment schedules and the response because none have been submitted.
- 42) I have, however, also considered the quotation and emails sent by the applicant to the respondent that proved the applicant's entitlement under the Contract to various parts of the payment claim.
- 43) Pursuant to s 33(1)(b), I have determined that:
 - a) the value of completed work as at 12 July 2016 is; \$7,023.50 incl. GST;
 - b) the respondent must pay to the applicant the sum of \$7,023.50 incl. GST. within 7 days after the release of the determination;
 - c) in accordance with clause 35(1)(b) of the CCA, I determine that interest is payable on the amount the respondent must pay to the applicant is 8.0% per annum from 10 August 2016 until and including the date of payment.
- 44) The respondent has not complied with its obligations under the Contract in terms of providing a notice of dispute, payment of any undisputed portion of the work under the contract, a response to the adjudication application or providing any response to the payment claim whatsoever.
- 45) Accordingly, pursuant to section 36(2) of the CCA, I have determined that the respondent's conduct is frivolous or vexatious and the respondent shall bear the applicant's costs of this adjudication.
- 46) The costs of the adjudication are 3.5 hours @ \$305.00 plus GST, which is; \$1,342.00 incl. GST.
- 47) I have issued a single Tax Invoice to the applicant for my fees in making this determination.
- 48) Accordingly, in addition to payment of the amounts that the respondent must pay to the applicant that are set out above in paragraphs 43)b) and 43)c), the respondent must also pay the applicant my fee, which is \$1,342.00 incl. GST.

CONFIDENTIAL INFORMATION

- 49) The parties have not indicated which parts of the information provided to me with their submissions are to be treated as confidential.
- 50) If either party considers any part of their submissions confidential or any part of this determination as confidential, I request that they notify me

accordingly within 2 working days of release of this determination.



Signed:

John Tuhtan⁴

Date: 25 November 2016

⁴ Registered Adjudicator Number 35