# CONSTRUCTION CONTRACTS (SECURITY OF PAYMENTS) ACT, 2004

DETERMINATION

\*This determination has been redacted as per the requirements of section 54 of the Construction Contracts (Security of Payments) Act 2004\*

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| Adjudication Identification Number: | 07-24-02 |
| Adjudicator: | DS ELLIS |
| Applicant’s Name: | **[Redacted]** |
| Respondents’ Name: | **[Redacted]** |
| Date of Adjudication Application: | 28 October 2024 |

Pursuant to s 33 of the Act, I determine that the amount payable by the respondent to the applicant in respect of the adjudication application made on 28 October 2024 is $118,636.17 being as to:

1. $106,560.00, the amount of the payment claim;
2. $10,656.00, GST thereon; and
3. $1,420.17 interest on the payment claim from 11 October 2024 to the date of the determination.

These amounts are payable forthwith.

The respondent should pay the costs of the adjudication of $2,860. The reasons for my determination are annexed as Schedule 1.

Date: 27 November 2024

DS Ellis

Registered Adjudicator no 07

Reasons for determination

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# Schedule 1: Reasons for Determination

1. This application was made on 28 October 2024 seeking $106,560.00 (excluding GST), together with interest, the costs of the adjudication and the claimant’s legal costs associated with the application.
2. I was appointed adjudicator in this matter by the Law Society of the Northern Territory, a nominating body under the Act on 5 November 2024
3. The application comprised an application, including submissions and a book of papers (‘Evidence Book’).
4. I was appointed on 28 October 2024.
5. I emailed the parties on 5 November 2024, informing them of my appointment.
6. On 22 November 2024, I received an email indicating that the respondent did not intend to contest this adjudication application. I have, therefore, accepted the factual assertions made by the applicant in connection with the application and relied on the ‘Evidence Book’.
7. The adjudication arises out of a payment claim for $106,560.00 (excluding GST) delivered to the respondent dated 25 June 2024. It was issued in connection with a contract made up of a purchase order issued and the claimant’s ‘Terms of Sale’.[2](#_bookmark1) I am satisfied that it is a construction contract for the purposes of the Act.
8. The payment claim took the form of invoice. I am satisfied that the invoice is a ‘payment claim’ for the purposes of the Act.
9. The applicant contended that the due date for payment was that set out in the payment claim itself. However, payment terms are not determined by one party’s invoices, delivered after the contract has been made and the terms of the

1 Evidence Book, p1.

2 Evidence Book, pp 2 to 6.

3 Evidence Book, pp 21 and 22 in the Book of Papers (Book) provided by the applicant.

Reasons for determination

contract have been set. Payment terms are determined by the contract itself, and, in the case of a construction contract, the Act. The contract did not have a written provision dealing with the time for payment within s 20 of the Act. Accordingly, the invoiced sum was due 20 business days after the payment claim was made on 13 September 2024, that is, 11 October 2024, pursuant to clause 6(2) of the Schedule to the Act. The respondent did not pay the payment claim. Accordingly, a payment dispute arose on 11 October 2024.

1. I accept that the application was served on 28 October 2024. The application was made within 65 business days after the payment dispute arose.
2. There is nothing to suggest that the claim has been the subject of an order finding or judgment within s 33 or that there has been another adjudication in respect of the payment claim. The application appears to have been prepared in accordance with the Act and it is possible to make a determination in respect of the matter. There is no reason to dismiss the application.
3. As I mentioned above, the respondent did not dispute that it was liable to pay the amount claimed. I find that the respondent is liable to pay the claimed amount of

$106,560.00, plus GST.

1. The applicant is entitled to interest on unpaid amounts to the date of the determination pursuant to s 35 of the Act. The rate of interests was determined by clause 4.8 of the claimant’s terms, at the prescribed rate for the Supreme Court of the Northern Territory, which is the RBA cash rate, of 4.35%, plus 6%, or 10.35%. Interest on

$106,560.00 from 11 October 2024 to the date of this determination is $1,420.17.

1. The respondent did not dispute the applicant’s entitlement to payment, nor did it provide any reason why it did not admit liability before putting the claimant to the expense of the making this application. The respondent should bear the whole of the costs of the adjudication pursuant to s 36 of the Act.
2. The applicant also claimed its legal costs for preparing this application. It claimed $4,500. I am unable to include this sum in the determination. It was not part of the payment claim which is the subject of the determination. It is a payment in respect of an ‘obligation’ within the definition of that term in the Act.

Reasons for determination

1. Pursuant to s 33(1)(b) of the Act, I find that that the respondent is liable to make a payment of the full amount claimed by the claimant, together with GST and interest on the payment claim of $1,420.17.

Date: 27 November 2024

DS Ellis Adjudicator

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