**Adjudication Decision: 58.16.02**

*Construction Contracts (Security of Payments) Act* (NT)

**Adjudicator** (Registration No.) : Chris Lenz (58)

**Applicant’s Name** : [*redacted*]

ACN/ABN : [*redacted*]

Address : [*redacted*]

**Respondent’s Name** : [*redacted*]

ACN/ABN : [*redacted*]

Address : [*redacted*]

**Work**

Nature of work : Mechanical and electrical work [*redacted*]

Applicant’s trade : Mechanical and electrical contractor

Location of the construction site : [*redacted*]

**Payment claims**

Dates : 26 April 2016, 25 May 2016 & 23 June 2016

Due date for payment for claims : 1 June 2016, 30 June 2016, 28 July 2016

Amount of payment dispute : $66,740.88 (excl GST)

**Application Detail**

Application service date : 17 August 2016

Appointment date : 18 August 2016

Response Date : None provided

**Adjudicator’s Determination**

Amount to be paid : **$29,863 including GST**

Due Date for Payment : **24 May 2016**

Amount of interest : **$1,663.64**

Claimant’s adjudication costs : 25%

Respondent’s adjudication costs : 75%

**Determination Date** : **13 September 2016Table of Contents**

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# DECISION

I have made a decision under the *Construction Contracts (Security of Payments) Act* ("the Act”), and in respect of the claimant’s adjudication application:

* the amount to be paid by the respondent,
* the date upon which the amount is to be paid,
* the amount of interest until this determination, and
* the parties are liable to pay the costs of the adjudication in the proportions,

as shown on the first page of this decision.

# REASONS

## Background

1. [*Redacted*] (the “claimant”) was engaged by [*redacted*] the “respondent”, for the design and construction of mechanical and electrical services for the [*project site details redacted*] in DARWIN NT (the “work”).
2. The work involved the design and construction of electrical and mechanical works.
3. There was a written subcontract executed by the parties on 9 January 2015.
4. The payment claim no 10 dated 26 April 2016 for $45,044.00 (excl GST) was the trigger for the payment dispute.
5. Payment schedule number 10, dated 19 May 2016, identified that $24,507 plus GST was payable.
6. The claimant alleged that the due date for payment of payment claim 10 was 1 June 2016.
7. 2 further payment claims, numbers 11 and 12 were made on 25 May 2016 and 23 June 2016 respectively.
8. Payment schedule number 11 dated 9 June 2016 identified that $0 was payable, and payment schedule number 12 dated 20 July 2016 identified that $24,578 plus GST was payable.
9. In the payment schedules, the respondent identified a series of back charges about which there is a dispute:

*Payment schedule 10*

* 1. HB VO 2 $4486 [*redacted*] invoice number 0585;
  2. HB VO 5 $5694 ME load requirement;
  3. HB VO 11 $11,000 CDF variation submission;
  4. HB VO 12 $3000 50-50 split with [*other contractor details redacted*].

*Payment schedule 11*

* 1. No change to the above back charges in dispute;
  2. HB VO 19/20 $1,100 Relocation of return Air T1.

1. *Payment schedule 12*
   1. In addition to the above;
   2. HB VO 14b $2530 Board had to be moved
   3. HB VO 19/20 $1680 T3 alterations & relocation of return air plenum.
2. In addition to the payment disputes emerging from the payment claims and payments schedules, the claimant argued that 50% of the retention moneys, comprising $32,350.88 needed to be returned (the “retention claim”).
3. The claimant lodged its adjudication application with RICS on 17 August 2016.

## Material provided in the adjudication

1. I received electronic documents from RICS from the claimant, which amounted to 1 lever arch folder in the adjudication application dated 17 August 2016, which included the 3 payment claims and payment schedules.
2. In the application, the claimant comprehensively outlined the basis of the payment dispute, and in its submissions it cross referenced the documents that it had provided in the application. I have had regard to all of this material in making this decision.
3. I find that the adjudication application was made on 17 August 2016.
4. There was no adjudication response.
5. However, I have not merely accepted the claimant’s submissions without proper analysis, because in my view, the claimant has the onus of demonstrating that it is entitled to its claim, whether or not there is an adjudication response.
6. On 8 September 2016, I wrote to both parties, because I had been advised by RICS that settlement negotiations between them had been taking place, and requested their advice whether the matter had settled, or whether they wished the adjudication process to be extended, during which these negotiations could continue.
7. The reason for this letter, was that s26 of the Act identified that *the object of an adjudication of a payment dispute is to determine dispute fairly, and is rapidly, informally and inexpensively as possible.* In my view, if the parties had settled the dispute, adjudication would be unnecessary.
8. A series of emails then ensued between the parties, which were copied to me, about a settlement, which included a deed of settlement. I had no regard to the deed of settlement which was irrelevant to the adjudication.
9. However, it was evident that the claimant was not satisfied with the amount of money that had been paid by the respondent, which the respondent said, in its emails, was for the full amount claimed in the adjudication.
10. As a consequence on 9 September 2016, I requested submissions from both parties regarding the dispute between the parties and the request is extracted below:

*“Accordingly, under s34(2)(a)of the Act I request submissions from the parties as follows:*

*1.The claimant advise me and the respondent by 1pm today, Friday 9 September 2016:*

*a. identify how much it has been paid by the respondent in response to the payment dispute;*

*b. whether it has been paid the monies it has claimed under the payment dispute for which it seeks adjudication;*

*c. If payment has been made by the respondent, to provide submissions, as to what is left to adjudicate under the payment dispute.*

*2.The respondent advise me and the claimant by 4pm today, Friday 9 September 2016:*

*a. Its submissions in response to those of the claimant;*

*b. Its submissions as to what is left to adjudicate.*

1. I received submissions from the parties on Friday in response to my request, in which the claimant pressed for the adjudication to continue seeking the sum of $66,740, which was less than the $66,840.88 (excluding GST) originally claimed in the application, due to a typographical error.
2. In its email before 4pm on Friday 9 September 2016, the respondent provided me with evidence of the payments that it had made, and the last payment was $34,400.60 excluding GST made on 24 August 2016. However, it did not provide me with any submissions in response to those of the claimant, nor on what was left to adjudicate.
3. On Friday, 9, September 2016, I then commenced adjudicating in earnest, because I had not commenced earlier, because of the uncertainty as to whether the parties had settled the dispute surrounding the adjudication.
4. On Monday, 12 September 2016, I received submissions from the respondent regarding the claimant’s application. I had regard to those submissions, but only insofar as they demonstrated that the respondent did not consent to adjudication of any dispute apart from payment claim 10. Otherwise, I considered that they were unsolicited submissions because they had been provided too late.
5. There was no utility in seeking submissions from the claimant about the respondent’s late email, because the claimant could not cure the respondent’s lack of consent.
6. The claimant had outlined the basis of its claim in its application, which was further supported by its submissions on Friday, 9, September 2016, and it bore the legal and evidentiary onus of proof in the adjudication.
7. It is important for the claimant to appreciate the reasons for this decision, so I have expanded somewhat in my reasons as to why I consider that, whilst I have jurisdiction to adjudicate the **payment dispute** identified by it in its submission 4; as a matter of mixed fact and law, I have found that there was more than one **payment dispute**, the subject of the application, and the respondent has not consented to me considering more that the payment dispute identified in payment claim 10 and the payment schedule 10.

## Jurisdictional threshold matters

### Is it a construction contract within the Act?

1. Section 33 of the Act provides that an application must be dismissed if it is not a construction contract. Therefore, it must be a *construction contract* to be within jurisdiction.
2. Thereafter, s33 (a)(ii) of the Act requires that the application be prepared and served in accordance with s28 of the Act.
3. Turning firstly to the construction contract and Annexure 1 in particular, it is evident that it is a design and construct sub contract for mechanical and electrical services, and having regard to the design brief “HVAC Design Brief – 2013 – A – 130531 (final), which I find formed part of the construction contract, the work referred to air conditioning, ductwork, electrical, controls and commissioning.
4. In section 6(1)(d) of the Act, there is reference to fixing or installing fittings for air conditioning, heating, ventilation, which falls within the definition of *construction work*.
5. Section 5(1) of the Act provides that a *construction contract* is one where one of the obligations is to carry out *construction work.*
6. Accordingly, I’m satisfied that it is a *construction contract* within the meaning of the Act.

### Has it been prepared and served in accordance with s28 of the Act

1. s28 of the Act provides a number of statutory requirements in order to found jurisdiction in this adjudication. These include:
   1. a written application [s28(1)(a)];
   2. served on the other party[s28(1)(b)];
   3. and served on the prescribed appointer [s28(1)(c)(ii)];
   4. provide any deposit or security that the adjudicator requires.
2. Applying these provisions to the facts in this case, I find that:
   1. there was a written application to RICS;
   2. I am satisfied it was served on the other party on, because the application to RICS identified that it was served on 17 August 2016, which was signed by Peter Pinatos;
   3. it was served on the prescribed appointer RICS because it appointed me as the adjudicator, and then provided me with the documents;
   4. neither RICS nor I required a deposit, and therefore this subsection did not apply.
3. s28(2) of the Act prescribes that:
   * + 1. the information provided in the adjudication application is to be prepared in accordance with and contain information prescribed by the Regulations. [s28(2)(a) of the Act], and
       2. state the details or have attached to it:
          1. the construction contract;
          2. and any payment claim that has given rise to the payment dispute; and
       3. state or have attached to it all the information, documents and submissions on which the party relies.
4. Regulation 6 of the *Construction Contracts (Security of Payment) Regulations* (the “Regulations”) provides that:
   * + 1. the name and contact details of the prescribed appointer;
       2. the applicant’s name and contact details;
       3. the name and contact details of the other party to the contract.
5. Given that the application was made on the RICS application form, and identified both the applicant and the respondent’s contact details, I am satisfied that this provision of the Regulations was satisfied.
6. I have found the construction contract in the application material and it contained payment claims, including payment claim number 10, information, documents and submissions satisfying s28(2)(c) of the Act.
7. Accordingly, I am satisfied that the application cannot be dismissed for want of jurisdiction, which therefore required it to be adjudicated in accordance with my obligations as an adjudicator under the Act.
8. However, there is one aspect of s28 that required further clarification, and that related to the fact that there are 3 payment claims in this **payment dispute**, AND A claim for retention monies.
9. The reason for doing so is that it appears to me that both parties seemed to be at odds as to the extent of the legislation in relation to payment disputes.

### What constitutes a payment dispute?

1. s8 of the Act deals with the term **Payment dispute** provides that:
   * + 1. a payment dispute arises if a payment claim under the contract has been made and either:
          1. rejected or wholly or partly disputed; or
          2. an amount claim which is due to be paid, that has not been paid in full; or
       2. when an amount retained by a party under the contract is due to be paid under the contract, and the amount has not been paid; or
       3. when any security of a party under the contract is due to be returned on contract, the security has not been returned.
2. At paragraph 4 of the claimant’s submissions, it refers to payment claim number 10, dated 26 April 2016 which it submitted initiated the **payment dispute.**
3. It argued that the payment schedule 10 was delivered 9 day’s late, on 19 May 2016. In that payment schedule, which accepted an amount of $24,507 as payable, the respondent partly disputed the payment claim, which I find brought it within s8(a)(a)(i).
4. The payment claim identified that payment was due on 26 May 2016. However, clause 37.2 of the subcontract required the *Subcontract Superintendent* to issue a progress certificate within 10 business days after receiving the progress claim.
5. This did not occur, so having regard to the timing for payment under clause 37.2, it was obliged to provide payment within 25 business days after the *Subcontract Superintendent* received the progress claim. I note that therespondent’s, Mr [A] received the payment claim on 26 April 2016. There is nothing in the material to suggest that the *Subcontract Superintendent* also did not receive it, and I have no submissions from the respondent to state that this did not occur. Accordingly, using the 25 business days from 26 April 2016 under the contract, results in a contractual payment due date of 31 May 2016.
6. I am therefore not satisfied with the claimant’s submission that the due date the payment is 26 May 2016, as indicated in its invoice, because the contractual due date for payment was 31 May 2016. However, this could be altered by the timing identified in the Act.
7. I find that the payment schedule no 10 was late, given that the Schedule to the Act, Division 5, s6 (2) requires a *notice of dispute* to be provided within 14 days after receiving the payment claim, which means it was due on 10 May 2016.
8. The claimant submitted [paragraph [29], that the respondent had not provided a *notice of dispute* within 14 days. Accordingly, the respondent did not fit within s6 (2)(a) of the Schedule, so the default provision of s6(2)(a) of the Schedule was engaged; requiring payment be made within 28 days after receiving the payment claim. The payment claim was made on 26 April 2016, which meant that payment was required **on the 24 May 2016**.
9. At paragraph 28 of its submissions, the claimant submitted that the payment schedules failed to comply with the implied provisions of the Schedule of the Act, and at paragraph [30] submitted that the payment schedules were not stated to be a *notice of dispute* under the implied provisions of the Schedule of the Act.
10. Although the payment schedule was not stated to be *a notice of dispute* issued by the respondent, s6 of the Schedule identifies what is required for the notice of dispute, and I find nowhere is it required that it be called a *notice of dispute*.
11. I am satisfied that payment schedule 10 complied with s6 of the Schedule as it:
    * + 1. was in writing;
        2. was addressed to the claimant;
        3. stated that it came from the respondent;
        4. stated the date;
        5. identified the claim to which it related; and
        6. identified each item of claim that was disputed.
12. Accordingly, I am satisfied that the payment schedules are *notices of dispute* under the Act, because they follow the provisions of s6 (3) of the Schedule to the Act.
13. Nevertheless, I am satisfied with the claimant’s submissions contained within its payment claim/payment schedule reconciliation, that payment schedules 11 and 12 were also late, being required to be provided by 8 June 2016 and 7 July 2015 respectively
14. I am satisfied that the claimant issued the payment claim 10 on 26 April 2016, and I have found that the contractual due date for payment was 31 May 2016.
15. I note in the claimant’s reconciliation that it said that it received payment on 13 July 2016 for payment claim 10.
16. It is evident from the respondent’s submissions on 9 September 2016 that payment was made on 31 May 2016 for the sum of $26,957.70, which I find is the scheduled amount plus GST. I am therefore satisfied that the respondent has paid this amount, and prefer its records demonstrating that payment was made on 31 May 2016, which it asserted was payment for this payment claim. I find this is on the contractual due date for payment.
17. The key issue emerging from this analysis is when the **payment dispute** arose. Although neither party provided me with any case authority in support of this proposition, I had regard to the case of *Department of Construction and Infrastructure v Urban and Rural Contracting Pty Ltd & Another* [2012] NTSC 22. At paragraph [20] of this case Barr J held, “*In my opinion, the correct construction of s8(a) is that the due date for payment under the contract is the only date on which a payment dispute may arise.*”
18. Accordingly, the claimant had to wait until the due date for payment before a **payment dispute** arose, which I have found the statutory date for payment claim 10 was 24 May 2016. Accordingly, I find that a **payment dispute** arose on that date.
19. Turning again to s28 of the Act, the claimant was obliged to apply for adjudication within 90 days after the payment dispute arose. I have already found that the application was made on 17 August 2016 , and therefore I find the payment dispute arising out of payment claim number 10 was within 90 days of the date that the **payment dispute** arose.

### Can there be more than one payment dispute in an adjudication?

1. This is a very live issue in this adjudication, and the claimant characterised the **payment dispute** as essentially all the disputes surrounding payment claims 10, 11 and 12, together with a claim for return of retention monies.
2. It is therefore important to decide whether there is more than one **payment dispute** incorporated in this adjudication, as this is a matter of jurisdiction, to which I must have regard.
3. As I have mentioned previously, the claimant bore the legal and evidentiary onus in the adjudication, and it needed to demonstrate that the adjudication related to a **payment dispute**, and if it constitutes more than one, then whether the parties consented to more than one **payment dispute** being adjudicated.
4. It was evident from the emails passing between the parties on 8 and 9 September 2016 that there was a disagreement about what was the subject of this adjudication.
5. The respondent was of the view that it had paid all monies associated with this adjudication, because at 9.43am on 9 September 2016 it stated in its email,

*“This is an adjudication under the payments act.  We are not looking to settle.*

*Payment has been made under the act.”*

1. It was this email that prompted me to seek submissions from the parties about the adjudication, because it appeared that the parties were at odds about what constituted the adjudication.
2. The claimant’s submissions shortly after 1pm maintained that the payment dispute comprised what it had stated earlier in paragraph 6 of its submissions that:

*“6. The Payment Dispute the subject of this adjudication application is summarised as follows;*

* *Contract Sum $5,000.00*
* *Variations (2 Nr.) $2,780.00*
* *Back-charges (5 Nr) $26,710.00*
* *Security (50% Cash Retention) $32,250.88*”

1. In its submissions at 3.34pm on 9 September, the respondent provided 2 payment amounts in which it said that

*“Attached invoice number 66689 that the Adjudication Application is based on for $45,044.00 + GST*

*The above information provides evidence that invoice 66689 has been paid for and in fact over the invoiced amount”*

1. It was evident from these submissions that the claimant maintained its claim that the **payment dispute** was wider than payment claim no 10, and the respondent maintained its position that the adjudication was only over payment claim no 10.
2. I therefore need to establish precisely the extent of the **payment dispute** in this context.
3. This requires a matter of statutory interpretation, which requires me to construe the Act as a whole.
4. I have already found that the payment claim 10 and the payment schedule 10 (*notice of dispute*) constituted a **payment dispute**.
5. Turning to payment claim number 11 dated 25 May 2016 for the sum of $18,292, it had a payment schedule on 9 June 2016, stating that nothing was payable. I find that falls within section 8(a)(1) of the Act’s definition of **payment dispute**.
6. Accordingly, it is a **payment dispute** that could be adjudicated, as it was also made within 90 days of the payment dispute arising.
7. In relation to payment claim number 12 dated 23 June 2016 for the sum of $9721, which had a payment schedule dated 20 July 2016 identifying that $25,458 was payable. I find that this *notice of dispute* (payment schedule) should have been provided on 7 July 2016, which meant that it was late.
8. Accordingly, the respondent did not fit within s6 (2)(a) of the Schedule, which meant that the default provision of s6(2)(a) of the Schedule was engaged, requiring payment be made within 28 days after receiving the payment claim, which works out to be 21 July 2016.
9. The respondent’s submissions on 9 September 2016 identified that payment was made on 24 August 2016 in the sum of $37,840.66 including GST.
10. This payment was therefore outside the statutory 28 day requirement.
11. This means that it fell within s8(a)(ii) of the Act, which therefore, also constituted a **payment dispute** that could be adjudicated, as it was also made within 90 days of the payment dispute arising.
12. Furthermore, the claim for return of retention, fell within s8(b) or (c) of the Act, depending whether the retention was cash or a security. In either event, it constitutes a **payment dispute** that also could be adjudicated, as it was also made within 90 days of the payment dispute arising.
13. The key question becomes whether they are all **one payment dispute,** as submitted by the claimant, or a number of payment disputes. This is a matter of jurisdiction.
14. As I mentioned previously, I had waited to be advised about whether the parties had settled the matter. It was evident from the respondent’s 9 September 2016 3.34pm submission (identified below) that further payment had been made after the adjudication application had been served, and 5 business days before the respondent was required to provide an adjudication response:

*“Attached progress payment 02 - For the payment made 24/08/16 after Adjudication application for $34,400.60 + GST”*

1. In the short time before a decision was due, and having given the opportunities for the parties to provide submissions, I did not think it was appropriate to ask for further submissions from the parties on this issue.
2. I find that the adjudication regime in the Act connotes adjudication of **one discrete** **payment dispute** for a number of reasons.
3. *Firstly*, s8 refers to a number of possibilities for a payment dispute to arise, and each possibility under (a), (b) or (c) is separated by the word “**or**”, which suggests to me that each one is a discrete payment dispute.
4. I have found 4 discrete **payment disputes** above:
   1. payment claim 10 and its payment schedule;
   2. payment claim 11 and its payment schedule;
   3. payment claim 12 and its payment schedule; and
   4. the claim for the return of the security.
5. However, having made this finding does not necessarily mean that more than one **payment dispute** cannot be adjudicated together.
6. *Secondly*, s26 refers to adjudication of *a payment dispute* which connotes one dispute.
7. *Thirdly*, s27 refers to *a payment dispute* arising under a construction contract, and it is evident that the first payment dispute in this case arose on 24 May 2016.
8. *Fourthly*, s28(1) refers to have *a payment dispute* adjudicated.
9. In all of these instances, the payment dispute is **a discrete payment dispute**.
10. *Finally*, s34(3)(b) refers to consent of the parties being required for adjudication of **2 or more payment dispute simultaneously**.
11. To my mind this means that the Act recognises that there may be a series of payment disputes, and provided they fit within s28, *within 90 day* requirement, AND WITH CONSENT OF THE PARTIES, then adjudication of more than one could proceed.
12. I have found from the series of emails on 8th and 9th September 2016 that no such consent was evident, and therefore I am only empowered to adjudicate the first **payment dispute**.
13. **This means I am unable to consider payment claims and schedules 11, 12 and the retention claim, as they are outside my jurisdiction.**
14. As a matter of practicality, as regards the amounts in issue, most of the back charges were contained in payment schedule 10, such that the only matters to which I could not have regard were some of the backcharges (HB VO’s below) and the claim for:
    1. $32,350.88 for the return of retention; and
    2. HB VO 19/20 of $1,100 for the relocation of return Air T1
    3. HB VO 14b, amounting to $2530 regarding a Board that had to be moved
    4. HB VO 19/20 of $1680 for the T3 alterations & relocation of return air plenum.

## The payment dispute

1. This dispute comprised:
   1. The contract sum amount of $1,248,000
   2. Variations of $48,254.00

Totalling $1,296,254.

1. Within the payment schedule, it certified $1,245,000 contract sum to date, from which I can draw the inference that it was subtracting $3,000 off the subcontract sum. No reason was provided for this deduction in this payment schedule.
2. I have regard to the claimant’s submissions, paragraph 52 through to 58, in which it also made reference to *a later reason* from the respondent about the claimant not providing a O&M manual to which I have had no regard.
3. I am satisfied from the claimant’s submissions that it had provided a second draft copy of this O&M manual and that no feedback or comments from the respondent were provided on 29 February and 22 March 2016.
4. Given that there were no reasons in this payment schedule for the deduction, and having found that the claimant had provided the O&M manual, in draft for the second time without any comment from the respondent, and the fact that the claimant had not claimed the full $1,250,000 for the contract sum, but only $1,248,00; I am satisfied that it was entitled to claim for this item.
5. I find that this amount was claimable. However, this meant that it was only a $3,000 deduction in this payment schedule, because the claimant had not claimed the full amount for this manual. I infer that this was because it had been provided in draft.
6. **I therefore find that $3,000 was incorrectly back-charged for this item**.

*HB VO’s*

1. I accept the claimant’s submission at paragraph [47], that the respondent had no right under the sub contract agreement to back-charge the claimant, unless the *Subcontract Superintendent* had issued certificates identifying sum is payable by the claimant to the respondent. There is no evidence of any such certificates in the adjudication material, which prevented the respondent from making these back charges unless it had submissions in support thereof. It chose to provide no adjudication response submissions.
2. In any event, I will have regard to the merits of each particular back charge because the claimant has provided specific submissions in relation to each.
3. HB VO 2 for $4486 regarding [*redacted*] invoice number 0585 contained no further explanation. There was no further reason provided in the payment schedule, and no adjudication response submissions about it. I am satisfied from the claimant’s submissions in paragraphs 81 through to 93 of its submissions that there was no basis for this deduction in payment schedule number 10, and it articulated clearly that the plant access platform was the responsibility of the respondent, particularly in paragraphs [90] through to [92]. **Accordingly, I reject this deduction of $4486**;
4. HB VO 5 amounting to $5694 regarding the ME load requirement. Again there was no further reason provided in the payment schedule, and no adjudication response submissions about it. Having regard to paragraph 94 through to 109 of the claimant’s submissions, I am satisfied that the claimant provided the correct load requirement for the MSSB to the respondent, which I find was the extent of its responsibility to satisfy clause 8.5 of the design brief. **Accordingly, I reject this deduction of $5694**;
5. HB VO 11 amounting to $11,000 regarding the CDF variation submission. There was no further reason provided in the payment schedule, and no adjudication response submissions about it. Having regard to the claimant’s submissions 110 through to 116. I am satisfied that there is no basis for the respondent to make this deduction because there was no demonstrable entitlement to do so. **Accordingly, I reject this deduction of $11,000**;
6. HB VO 12 amounting to $3000 regarding a 50-50 split with [*redacted*]. Yet again there was no further reason provided in the payment schedule, and no adjudication response submissions about it. Having regard to the claimant’s submissions 117 through to 124. I am satisfied that there is no basis for the respondent to make this deduction because I find that the testing of the smoke exhaust fan was the responsibility of the fire service contractor. **Accordingly, I reject this deduction of $3000**.
7. I therefore summarise that the following deductions by the respondent were incorrect:
   1. $3000 for the O & M manual;
   2. $4446 for the [*redacted*] invoice;
   3. $5694 for the ME load requirement;
   4. $11,000 for the CDF variation submission;
   5. $3000 for the 50-50 split with [*redacted*];
8. This total is the sum of $27,140.
9. Again, given that I merely adjudicated payment claim 10 and payment schedule 10, I have no regard to the amounts that the respondent claimed it had subsequently paid to the claimant, because I am dealing with the claimant’s entitlement for the **payment dispute.**
10. **I find the overdue payment amount is $27,140 plus GST resulting in a figure of $29,863 including GST.**

## Due date for payment

1. .I have already found the **due date for payment** **is 24 May 2016**, which was based on the statutory time under s6 of the Schedule

## Rate of interest

1. The claimant submitted that I could award the contractual rate of interest of 18% [Item 39 of Annexure Part A of the sub contract agreement], as provided by s35 of the Act.
2. s35 (1)(a) allowed me to make a determination on the interest for any overdue payments.
3. The due date the payment for payment claim 10 is 24 May 2016
4. The overdue payment of **$29,863 including GST**, to which is applied the interest rate of 18% on the overdue payment for the period up until the date of this adjudication of 13 September 2016, which amounted to 113 days resulting in an interest amount of $1663.64 inc GST.
5. **I find the amount of interest is $1663.64 payable on the overdue amount**.

## The costs of the adjudication

1. The default provision contained in s36(1) of the Act makes the parties liable to bear their own costs, including the costs that they are liable to pay the adjudicator.
2. s 46(4) of the Act provides that the parties are jointly and severally liable to pay the costs of the adjudicator in equal shares, but this can be altered if I am satisfied that a party has incurred costs of the adjudication because of unfounded submissions by a party, in which case I may decide that the other party pay some or all of those costs.
3. The claimant has succeeded in its one **payment dispute**, which consisted of objections to all the back charges, except three. However, it claimed for return of the retention moneys, which was in another payment dispute, to which I could not have regard and it failed to recognise this issue during the flurry of emails on 8 and 9 September 2016.
4. Nevertheless, the respondent failed to provide an adjudication response, and its objection to the **payment dispute** surrounding payment claim 10 and payment schedule 10, on the basis that it had paid all these monies was unfounded, because it contained the unjustified back charges for which it provided no reasons, and for which it chose not to provide the adjudication submissions in response.
5. This meant that I had to very carefully construe the legislation and analyse the jurisdictional point regarding more than one payment dispute, because I felt it was something to which I needed to have regard. However, I had no assistance from the respondent in submissions, which could have shortened the adjudication.
6. This meant the applicant was put to the expense of having to have the matter adjudicated, for which it attracted a liability to pay the costs of the adjudication.
7. Accordingly, I exercise my discretion in this case to find that the respondent is liable to pay 75% of my fees and the claimant 25%, which are part of the costs of the adjudication under s36(3) of the Act.

Chris Lenz

Adjudicator 13 September 2016