Withdrawal of Application 26.23.03

IN THE MATTER of an Adjudication

pursuant to the Construction Contracts

(Security of Payments) Act (NT) (“The Act”)

BETWEEN:

**[Name redacted]** Applicant

and

Respondent

**[Name redacted]**

**WITHDRAWAL OF APPLICATION**

***Introduction***

1. On 23 August 2023 I was appointed by the Master Builders Northern Territory (**MBNT**) to adjudicate a payment dispute between the Applicant and the Respondent in relation to the blockwork construction on each of eight remote houses constructed in [redacted] in the Northern Territory.
2. A letter of appointment was sent to me by email from the MBNT that same day 23 August 2023 and I collected the Application documents from the MBNT offices on 25 August 2023.
3. On 28 August 2023 I wrote to the parties advising my appointment and declared no conflict of interest in the matter. I sought submissions by 3:00pm CST on Thursday 31 August 2023 should either party object to the appointment.
4. In that same letter of 28 August 2023, I sought confirmation from the parties by 3:00pm CST on Thursday 31 August 2023 as to the date of Service of the Application on the Respondent. I also requested confirmation that the parties accept an electronic service process for the documents of the Adjudication under the provisions of the *Electronic Transactions (Northern Territory) Act 2000*. I requested confirmation of that process by 3:00pm ACST on Monday, 4 September 2023.
5. On the evening of 29 August 2023, the Respondent sent me an email which was not copied to the Applicant requesting an extension of time within which to seek some legal advice on the Adjudication.
6. On the morning of 30 August 2023, I wrote to the Respondent, copied to the Applicant, setting out the requirements of the Act for a respondent and reminded the Parties to include all parties to the Adjudication in their communications, as follows:

*“…..Dear Mr* [name redacted]

*Thank you for your email below following receipt of my letter.*

*I do not have any discretion under the Construction Contracts (Security of Payments) Act 2004 (NT) (****Act****) to grant an extension of time to either party.*

*The process to be undertaken in the Adjudication is clearly set out in the Act at Part 3 Division 2, and the obligation of the respondent is found at s.29 – ‘Responding to application for adjudication’ which provides that the respondent must within a period of 15 working days after service of the application serve a response on both the applicant and the adjudicator.*

*If the adjudicator does not receive a response within the prescribed period, the application is determined on an undefended basis on its own merits.*

*I have copied the other party into this email and again request that you include all parties in your communications to me….”*

1. Following my email communication to the parties of 30 August 2023 I received no further communication from either the Applicant or the Respondent and I did not receive a Response to the Application which was due on or before 13 September 2023.

1. Not having received a Response to the Application, on 19 September 2023 I wrote to the parties advising that I would proceed to determine the payment dispute of the Application on an undefended basis under s.33 of the Act, as follows:

*“……Dear Mr* [redacted] *and Mr*[redacted]

*I refer to my letter and email correspondence to the parties in relation to the above Adjudication.  A copy of the email correspondence is below.*

*I did not receive a Response to the Application within the period prescribed by s.29 of the Construction Contracts (Security of Payments) Act 2004 (NT) (****Act****) or at all.*

*I must therefore determine the Application under the provisions of s.33 of the Act on an undefended basis and will provide you with my decision on or before 27 September 2023…….”.*

1. Shortly after sending that email to the parties, I received an email from the Respondent not copied to the Applicant, advising that the payment claim, the subject of the payment dispute in the Adjudication, had been paid on 13 September 2023, as follows:

*“….Mr Perkins,*

*Outstanding Invoice was paid on 13-9-2023. Though* [sic] [Applicant]*advised you about it….”*

1. That same day 19 September 2023 I wrote to the Applicant, copied to the Respondent, to confirm as to whether the payment claim in dispute under the Adjudication had been paid in full by the Respondent and, if so, whether the Application was withdrawn by the Applicant as follows:

*“…..Dear Mr*[redacted]

*I refer to the email below from Mr* [redacted] *in relation to the payment of the payment claim on 13 September 2023.*

*Could you please confirm that payment of the payment claim in the Adjudication has been made in full and whether or not you seek to withdraw the Application.*

*I request your confirmation in relation to these matters or before****10:00am ACST Wednesday, 20 September 2023****….”.*

1. On the morning of 20 September 2023 I received an email from the Applicant confirming that the payment had been made in full and that the Application was withdrawn as follows:

*“……To whom it may concern,*

*I* [the Applicant] *withdraw my complaint against* [the Respondent] *and confirm I have been paid the full amount claimed.*

[Applicants name, business name and telephone No redacted]*.”*

1. There were no objections to the withdrawal of the Application pursuant to s.28A(3) of the Act.
2. I therefore accept the Applicant’s notice of withdrawal of the Application under section 28A(2) of the Act. I release the parties from the Adjudication of the payment dispute.

***Costs***

1. Generally, on Withdrawal of an Application costs follow the Withdrawal. There has been no indication or prior arrangements for costs advised by the parties.
2. In relation to my costs to date, these are to be paid by the Applicant, following the withdrawal of the Application under s.28A, as Costs of the Adjudication under section 46(1) of the Act.
3. I make no decision under section 36(2) of the Act. The parties must bear their own costs.

***Confidential Information***

1. The following information is confidential:
2. the identity of the parties;
3. the identity of the principal; and
4. the location of the works.

DATED: 26 September 2023

Rod Perkins

Adjudicator No. 26