


**Claimant:** Image Cabinets Pty Ltd

**Respondents:** M&L Lopez Building Pty Ltd

**Adjudicator's Decision under the Building and Construction Industry Payments Act 2004**

I, Chris Lenz, as the Adjudicator pursuant to the *Building and Construction Industry Payments Act 2004* (the "Act"), decide (with the reasons set out below) as follows:

1. The adjudicated amount of the adjudication application dated 10 March 2010 is **\$17,099.42** including GST.
2. The date on which the amount became payable is **31 January 2010**.
3. The applicable rate of interest payable on the adjudicated amount is **10%** simple interest.
4. The Respondent is liable to pay the ANA's fees and the adjudicator's fees

Signed: .....  .....

Date:..... 31 March 2010 .....

Chris Lenz Adjudicator

## Background

1. The Claimant Image Cabinets Pty Ltd (referred to in this adjudication as the "Claimant") contracted to supply and install joinery at 10 Plymouth Court, RABY BAY in Queensland for Niclin Homes (referred to in this adjudication as the "Respondents").
2. The Claimant served a payment claim for \$17,099.42 dated 23 December 2009 (tax invoice number 17404) which was faxed to the Respondent on that date, which was properly endorsed, as it stated that it was a payment claim made under the *Building and Construction Industry Payments Act 2004 (Qld)* (the "Act").
3. On 17 February 2010 the Claimant faxed a notice to the Respondent stating that the Respondents had 5 business days to pay the claim or provide an acceptable payment schedule as it intended applying for adjudication (the "notice").
4. On 25 February 2009 the Respondents emailed with a response.
5. On 10 March 2010 the Claimant lodged an adjudication application with the Queensland Law Society ("QLS") and submissions in support of its application which essentially constituted an index with supporting documents.
6. On 11 March 2010 the QLS nominated me to adjudicate the dispute and on 16 March 2010 I emailed the Claimant and Respondent and faxed and emailed my acceptance notice to both parties.

## Construction contract

7. I find that the quotation dated 4 December 2008 to Niclin Homes formed part of the agreement to supply and install joinery to a property at 10 Plymouth Court RABY BAY which is in Queensland. I find that this falls within the definition of construction contract identified in the next paragraph.
8. Schedule 2 of the Act, defines a *construction contract* as an agreement or other arrangement as follows:

*"**construction contract**" means a contract, agreement or other arrangement under which one party undertakes to carry out construction work for, or to supply related goods and services to, another party.*
9. I have therefore found a construction contract for work carried out in Queensland thereby satisfying s3 of the Act and therefore it is a matter which may be adjudicated.
10. The quotation was sent to Niclin Homes and yet the payment claim was sent to the Respondent which appeared to be inconsistent. However, the references to the licence number of the Respondent permitted me to search the public register of the QBSA licence site (which is a matter of public record to which I may have regard), and the licence search confirmed that the Respondent's trading name was Niclin Homes.

## Service of the payment claim and the adjudication application

11. I find that the payment claim was served on the Respondents by facsimile on 23 December 2009, as there is a facsimile transmittal attached to the supporting documents.

12. I find that the **payment claim** was suitably endorsed and identified the work carried out as the kitchen supply and installation as per the quotation that had been provided to the Respondent and the **amount being claimed**, thereby satisfying s17(2) of the Act.
13. The payment claim did not identify the time for payment. On the quotation there is reference to payment strictly within 14 days of the date of invoice. However, in the adjudication application, the Claimant stated that payment was due at the end of the following month. I draw the inference that the Claimant and Respondent had arranged for payment in this longer time frame, rather than the 14 days identified in the quotation and that such a payment timetable is reasonable for the due date for payment.
14. Accordingly, I find the **due date for payment is 31 January 2010**.
15. There is no evidence in the material of a payment schedule from the Respondents, and there has been no adjudication response. There was an email on 16 November 2009 from the Respondent indicating it had difficulty in paying outstanding monies
16. I find that the notice dated 27 February 2010 satisfies s21(2) of the Act because it was given 13 business days after the due date for payment, which is within 20 business days provided by s21(2)(a) of the Act, and it stated that the Respondents had 5 business days within which to provide a payment schedule.
17. On 25 February 2010 the Respondent replied to the Claimant's email in which it intimated that there were financial difficulties. I do not consider that this was a payment schedule as it did not satisfy s18 of the Act because it did not:
  - a. identify the payment claim; or
  - b. identify the amount proposed to be paid;
  - c. or provide the reasons for paying any lower amount
18. I find that the Claimant made an adjudication application on 10 March 2010 to the QLS, which is within 10 business days after the payment schedule should have been delivered.
19. I have therefore found that the basic and essential requirements of the Act having regard to the case of *Brodyn Pty Ltd t/as Time Cost and Quality v Davenport & Anor* [2004] NSWCA 394 have been satisfied by my finding a construction contract, the service of a payment claim, the making of an adjudication application, and the reference to an eligible adjudicator and therefore I proceed to adjudicate the amount of the payment claim.

### **Amount of the payment claim**

20. The Respondents did not provide a payment schedule, which precluded them from identifying in any adjudication response reasons for non-payment regarding the quantum of the claim because this would have contravened s24(4) of the Act. This means I have nothing from the Respondents to provide alternative values for the work.
21. I am satisfied that the cost of the supply and install of the kitchen under the contract was \$17,984.50 and that the payment claim for \$17,099.42 does not exceed the agreed amount that was agreed. There is nothing from the Respondent to controvert that amount, and the fact that it is less than the agreed amount may be as a result of an error of the Claimant, but does not detract from my finding that this amount is payable.

22. Accordingly, I find that the amount of \$17,099.42 including GST is the amount for the work carried out by the Claimant.

#### Due date for payment

23. I have already found the **due date for payment to be 31 January 2010.**

#### Interest

24. The Claimant makes no claim for interest, but I am obliged to determine interest under the Act and need to embark on an analysis to determine whether the penalty rate of interest is payable if I find that it is a *building contract* to which s67P of the QBSA Act applies. This provision is in Part 4A of the QBSA Act which deals with building contracts other than *domestic building contracts*. A *domestic building contract* is defined in Schedule 2 of the QBSA Act as having the meaning in the *Domestic Building Contracts Act 2000*.
25. s7(1)(a) of the *Domestic Building Contracts Act 2000* ("DBCA") provides that a *domestic building contract* is a contract to carry out *domestic building work*. *Domestic building work* is defined in s8 of the DBCA as *the renovation, alteration, extension, improvement or repair of a home*. A *detached dwelling* is defined in Schedule 2 of the DBCA a single detached dwelling or a duplex, and I find by inference that 10 Plymouth Court in Raby Bay is a *detached dwelling*. This means that it is a *domestic building contract* and s67P of the BSAA does not apply.
26. Accordingly, s15(2)(a) of the Act applies because I find that there is no rate of interest under the contract. The Supreme Court rate of 10% is prescribed under s48(1) of the *Supreme Court Act 1995* as regulated by Regulation 4 of the *Supreme Court Regulations*.
27. I therefore find interest at the **rate of 10% on the unpaid payment claim.**

#### Authorised Nominating Authority and Adjudicator's fees

28. s34 and 35 of the Act refer to equal contributions from both parties for both these fees unless I decide otherwise. I have found that the Claimant has succeeded in the quantum of its claim and the Respondent provided no payment schedule which meant that the Claimant has been forced to have the matter adjudicated. Even after being invited to do so, the Respondent did not provide a payment schedule.
29. Accordingly, I am prepared to decide otherwise than the default provision in ss34(3) and 35(3) of the Act and decide that the Respondent should pay all the ANA's fees and all my fees.

Chris Lenz  
Adjudicator



31 March 2010