

**IN THE MATTER OF
THE CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2004
AND
IN THE MATTER OF AN ADJUDICATION**

BETWEEN

AC PTE LTD

... CLAIMANTS

AND

AD PTE LTD

... RESPONDENTS

ADJUDICATION DETERMINATION

Before
CHRISTOPHER CHUAH CHEE KIAN
Adjudicator

The Claimant
AC Pte Ltd

For the Respondents
Mr John Chung
M/s Kelvin Chia Partnership

7 February 2006

1. The Claimant is AC Pte Ltd (ACRA Registration Number: XXX). The Claimant was engaged by AD Pte Ltd ("the Respondent") as its subcontractor for the construction of 3 Senior Citizens' Corners at Void Deck of Blk YYY, Blk YYY and Blk YYY "the Project"): The letter of award dated 6 October 2005 issued by the Respondent was not signed as there was a dispute or disagreement as to some of the terms and conditions therein.
2. The Claimant served the following claims on the Respondent for sums allegedly due and owing to them in respect of work carried out for the Project:
 - 4 November 2005: First Payment Claim for S\$22,094.90;
 - 2 December 2005: Second Payment Claim for S\$50,220.57 (including the sum claimed for under the first Payment Claim which has not been paid)
 - 15 December 2005: Received S\$11,419.56 from Respondent
 - 28 December 2005: Received S\$3,000.00 from Respondent
 - 21 January 2006: Received S\$5,000.00 from Respondent
 - 3 January 2006: Third Payment Claim served for S\$58,887.97. After deducting the amounts paid by the Respondent, the net claim remaining was S\$39,849.41.
3. The Claimant subsequently lodged an Adjudication Application with the Singapore Mediation Centres ("SMC") on 26th January 2006, claiming the sum of S\$39,849.41.
4. By a letter dated 2nd February 2006, the Respondent through their solicitors wrote to the Singapore Mediation Centre objecting to the Claimant's entitlement to make the Adjudication Application on the grounds that the Claimant had failed to give notice of intention to apply for adjudication as required by Section 13(2) of the Building and Construction Industry Security of Payment Act 2004 ("the Act").

Preliminary Issue

5. Before the Claimant is entitled to make an adjudication application, he must also by notice in writing containing the prescribed particulars notify the Respondent of his intention to apply for adjudication as provided in s 13(2) of the Act. Section 13(2) of the Act reads:

"An adjudication application shall not be made unless the claimant has, by notice in writing containing the prescribed particulars, notified the respondent of his intention to apply for adjudication of the payment claim dispute."

6. According to rule 7(1) of the Building and Construction Industry Security of Payments Regulations (the "Regulations"), every notice of intention must contain the following particulars:
 - (a) the names and service addresses of the claimant and the respondent;
 - (b) the date of the notice;
 - (c) the particulars of the relevant contract, comprising -
 - (i) the project title or reference, or a brief description of the project;
 - (ii) the contract number or a brief description of the contract; and
 - (iii) the date the contract was made;
 - (d) the claimed amount;
 - (e) the response amount (if any); and
 - (f) a brief description of the payment claim dispute.
7. In their Adjudication application, the Claimant has relied on a letter (ref: SD/205.6TSC/06) dated 19 January 2006 to the Respondent as the requisite notice of intention to refer to adjudication. . The letter concludes with the statement that "if [they] do not hear from [the Respondent] tomorrow, [they] will not hesitate to instruct [their] solicitor to take necessary action to recover payment from [the Respondent's] company."
8. Not only does the letter not contain the particulars listed in rule 7(1) of the Regulations, there is no express reference or intimation by the Claimants that they were intending to refer the dispute to adjudication.
9. I therefore find that the Claimant has failed to comply with s 13(2) of the Act read with Rule 7 of the Regulations. As s 13(2) of the Act makes it clear that an adjudication application "shall not be made" unless the Claimant has notified the Respondent of their intention to adjudicate the dispute, the Claimant's Adjudication Application was premature and must fail.
10. In the circumstances, I hereby determine that:
 - a. There is no amount to be paid by the Respondent to the Claimant.
 - b. Pursuant to s 17(2)(d) and s 30(2) of the Act, I order all costs of the Adjudication to be borne by the Claimant.

CHRISTOPHER CHUAH
Adjudicator

7th February 2006