

IN THE MATTER OF

SECURITY OF PAYMENT ACT 2004
THE BUILDING AND CONSTRUCTION INDUSTRY

And

IN THE MATTER OF AN ADJUDICATION

Between

D trading as *AE*
(ACRA NO. XXX)

... Claimant

And

E trading as *AF*
(NRIC No. Unknown)

... Respondent

ADJUDICATION DETERMINATION

THE CLAIMANT AND/OR THEIR
SOLICITORS

THE RESPONDENT AND/OR THEIR
SOLICITORS

AE

AF

Tel : XXX
Fax : XXX

Tel : XXX
Fax : XXX

TAN KEOK HENG GEORGE
Adjudicator

03 March 2006

DETERMINATION

1. This is a determination made on 3 March 2006 under the Building and Construction Industry Security of Payment Act 2004 (No. 57 of 2004) (hereinafter "the Act").
2. The Claimant in this matter is *D* trading as *AE* (hereinafter "the Claimant") and the Respondent is *E* trading as *AF* (hereinafter "the Respondent").
3. I determine that:
 - 3.1. The Respondent shall pay to the Claimant the sum of S\$147,200.00. This is hereby recorded as the Adjudicated Amount of this determination.
 - 3.2. The date on which the Adjudicated Amount became due is 13 March 2006. This is hereby recorded as the Due Date for Payment of the Adjudicated Amount.
 - 3.3. The rate of interest payable is 6% per annum compounded on an annual basis payable from 17 February 2006.
 - 3.4. The Respondent shall bear 100% of the fees of the Adjudication Nomination Authority and Adjudicator.

RECORD

The Parties

4. The Claimant is a general contractor carrying on the business of building construction and upgrading works.
5. The Respondent is the owner of a 2-Storey Semi-Detached Dwelling House on *YYY* (hereinafter "the Premises").

The Construction Contract

6. By a quotation dated 31 May 2005 (hereinafter "the Construction Contract"), the Claimant was engaged by the Respondent as the contractor to carry out Additions and Alteration works (hereinafter "the Works") on the Premises for a total price of S\$168,000.00. The Respondent indicated his acceptance of the terms by signing a copy of the Construction Contract.
7. By a further quotation dated 1 July 2005, the Claimant was instructed by the Respondent to carry out additional works to the Premises (hereinafter "the Variations") in order to meet the structural safety requirements of the authorities for a total price of S\$130,000.00. The Respondent again indicated his acceptance of the terms by signing a copy of this quotation.
8. A Notice of Approval dated 23 May 2005, a Permit to Carry Out Building Works dated 24 June 2005 and a Notice of Approval dated 7 September 2005 from Building and Construction Authority regarding the proposed additions and alterations to the Premises were given. In these documents, the Respondent was named the Applicant.

Proceedings

9. On 23 January 2006, the Claimant served a Payment Claim on the Respondent for a sum of S\$147,200.00, the breakdown of which is as follows:

S/N	Head of Claim	Amount Claimed (S\$)
9.1.	Balance payment due upon certified completion of the Works by the Qualified Person (hereinafter "the QP")	67,200.00
9.2.	Balance payment due for Variations	100,000.00
9.3.	<u>LESS</u> : Amount previously paid	20,000.00
	Total (S\$)	147,200.00

10. In accordance with section 11 (1) of the Act, the Respondent (who is the person named in the Payment Claim) must respond to the Claimant. However, there is nothing on record to show that the Respondent had done so.
11. On 10 February 2006, the Claimant gave notice to the Respondent of his intention to apply for adjudication in respect of the Payment Claim.
12. On 17 February 2006, the Claimant lodged an Adjudication Application with the Singapore Mediation Centre (hereinafter "SMC"). SMC is the Authorised Nominating Body under the Act.
13. On 20 February 2006, SMC served on the Respondent by courier the Adjudication Application together with the related annexes and Adjudication Response Form, which was duly acknowledged by the Respondent.
14. On 22 February 2006, SMC invited me, TAN KEOK HENG GEORGE, to be the adjudicator. On 24 February 2006, I accepted the appointment as adjudicator. SMC also served on the parties a notice of my acceptance of appointment as adjudicator on the same day.
15. In accordance with section 15(1) of the Act, the Respondent must, within 7 days after receipt of a copy of an Adjudication Application, lodge with SMC a response to the Adjudication Application. The Respondent therefore had up to 27 February 2006 (i.e. 20 February 2006 + 7 days) to lodge with SMC an adjudication response.
16. On 28 February 2006, I was informed by SMC that, as at 4:00pm on 27 February 2006, no adjudication response had been lodged by the Respondent. In accordance with section 15(1) of the Act, the time for lodgement of the adjudication response had expired.
17. In accordance with section 16(1) of the Act, adjudication commenced immediately (i.e. on 27 February 2006) upon the expiry of the period within which the Respondent may lodge an adjudication response.

The Submissions

18. The Claimant's submissions are made by way of his Adjudication Application. In his Adjudication Application, the Claimant submits the following correspondence and/or documents for my review:
- 18.1. Claimant's quotation dated 31 May 2005 to the Respondent;
- 18.2. Claimant's quotation dated 1 July 2005 to the Respondent;

- 18.3. Claimant's Payment Claim served on the Respondent on 23 January 2006 accompanied by various documents;
 - 18.4. Claimant's notice of intention to apply for adjudication served on 10 February 2006; and
 - 18.5. Letter dated 15 February 2006 from AG & Associates to the Claimant.
19. Other than submitting the above correspondence and/or documents, the Claimant does not advance any reason as to why he is entitled to claim the said sum of S\$147,200.00.

REASONS

20. While the Claimant, in his Adjudication Application, did not advance any detailed argument or reason for his claim of S\$147,200.00, the Progress Claim contains sufficient details to identify and describe the items which the Claimant is claiming.
21. I have studied the Payment Claim and it is clear to me that the items claimed by the Claimant constitute the unpaid portions of the Works as well as the Variations. The descriptions in the Payment Claim are very specific and include particulars- making reference to other supporting documents.
22. Moreover, I note that items relating to the Variations are based on the Respondent's instructions, or at least, with his agreement. The purpose of these works, apparent from the documents submitted, is to ensure the structural works meet safety requirements set by the authorities. This is recorded in the Claimant's quotation dated 1 July 2005 to the Respondents. I note that the Respondent had acknowledged and signed every page of the Claimant's said quotation dated 1 July 2005.
23. On close examination of the Claimant's Adjudication Application, I notice what appears to be an error in the breakdown of the claim amounts provided under "Note A" at the bottom of page 3 of the Adjudication Application form. The sums of the respective items in the breakdown add up to S\$142,000.00 instead of the claimed amount of S\$147,200.00.
24. There is a discrepancy of S\$5,200.00 (i.e. S\$147,200.00 - S\$142,000.00), which appears to be at item (a) under "Note A":

S/N	Stage Payment for Contracts Sum	Part payments according to Payment Claim (Dated 23 Jan 06)	Amount Due after deduction of part payments (as set out in Payment Claim)	"Note A" (page 3 of Adjudication Application form)
<u>Works under the Construction Contract</u> (Claimant's letter dated 31 May 2005 to Respondent)				
24.1.	S\$50,400	S\$50,400	-	-
24.2.	S\$109,200	-	S\$67,200	S\$62,000 (a) \$53,600 + (b) \$8,400
24.3.	S\$8,400	-		
<u>Variations</u> (Claimant's letter dated 1 July 2005 to Respondent)				
24.4.	S\$30,000	S\$30,000	-	-
24.5.	S\$100,000	-	S\$100,000	S\$100,000
	Sub-total:		S\$167,200	S\$162,000
24.6	<u>LESS:</u> Partial Payment		S\$20,000	S\$20,000
	Amount Claimed		S\$147,200	S\$142,000

25. It is unclear why there is this discrepancy. However, as it appears only in the note to the answers provided in the column requiring information as to "due date for payment to be made", it may be the case that nothing of significance attaches to the discrepancy.
26. I note that the payment claim details, indicating how the sum of \$147,200 is made up, can be found at page 2 of the Payment Claim. In the absence of any contrary argument or evidence, I accept the claimed amount of S\$147,200.00 as correct.
27. This aside, I also note that the Claimant is claiming a balance sum of S\$67,200.00 (see Payment Claim and above) for the Works under Construction Contract (see s/no. 24.2 - 24.3, 4th column of the above table) instead of S\$117,600 (i.e. S\$109,200.00 + S\$8,400.00) (see s/no. 24.2 - 24.3, 2nd column of the above table). No explanation was given by the Claimant for the reduction. However, since the Claimant is claiming a lower sum than that provided for in the Construction Contract, I accept the claimed amount of S\$67,200.00 for original works under the Construction Contract as correct, in the absence of contrary or rebuttal evidence or arguments indicating that I should take into account some other sum.
28. In my review of the Claimant's submissions, I observe that the Claimant does not submit the QP's completion certificate though the Claimant claims that completion of the Works, including the Variations, was certified by the QP. Nonetheless, in the absence of any contrary evidence or challenge from the Respondent, I accept the Claimant's position that the Works, including the Variations, was completed as certified by the QP.
29. Besides, while I do not have the benefit of inspecting all the correspondence between the parties during the course of the Works, I note that by a letter dated 15 February 2006 from AG & Associates, the QP, Mr F, confirmed he had not received any written complaint from the Respondent "pertaining to the house defects and the performance" of the Claimant.
30. On the whole, with the material, information and evidence before me, I find no reason to reject the Claimant's Payment Claim for purposes of the Act. In the absence of a payment response or adjudication response, there is nothing to suggest that the claim does not comply with sections 10(2) and (3) of the Act.

Adjudicated Amount

31. In the circumstances, it is my determination that, the Claimant succeeds in their total claim of S\$147,200.00 (Dollars One Hundred and Forty Seven Thousand and Two Hundred only) made up as follows:

S/N	Head of Claim	Amount Claimed (S\$)	Adjudicated Amount (S\$)
31.1.	Balance payment due upon certified completion of Construction Contract	67, 200.00	67, 200.00
31.2.	Balance payment due for Variations	100, 000.00	100, 000.00
31.3.	<u>LESS:</u> Amount previously paid	20, 000.00	20, 000.00
	Total (S\$):	147, 200.00	147, 200.00

Due Dates for Payment

32. In the Adjudication Application, the Claimant states that the due dates for payment of various sums are as follows (in Note A):

- 32.1. S\$53,600.00 due on 14 September 2005;
- 32.2. S\$8,400.00 due on 14 January 2006; and
- 32.3. S\$100,000.00 was due on 1 July 2005*.

* less part payment of S\$20,000.00.

33. The sum of S\$53,600.00 appears to be erroneous as I have explained above.

34. "Note A" also contains the phrase "less part payment of \$20,000." It is not stated when the part payment was made. It is also not clear whether the part payment was made towards payment of any of the sums listed or towards the total claim amount.

Interest

35. In accordance with section 17(2)(c) of the Act, the Claimant is entitled to interest on the due payment amounts. However, the Construction Contract is silent on determination of the rate of interest to be applied.

36. In fixing the rate of interest, I have considered the rate as prescribed in the Rules of Court as a basis. Under the Rules of Court, the court may award interest at the rate of 6% per annum or at such other rate as the Chief Justice may from time to time direct or at such other rate as the court directs.

37. In view of the discrepancies explained above, I am not prepared to allow interests to run from the alleged due dates for the respective sums stated under "Note A".

38. I therefore determine interest on the due payment amounts to run at the rate of 6% per annum from the date of the lodgement of the Adjudication Application, i.e 17 February 2006.

Adjudication Fee

39. Taking into account the Claimant is fully successful in his claim, I determine the Adjudication Nomination Authority's Fee and Adjudicator's Fee to be fully borne by the Respondent.

Place of Adjudication: Singapore

Date:

Signature:

TAN KEOK HENG GEORGE
ADJUDICATOR