

Under the Construction Contracts Act 2002

IN THE MATTER of an Adjudication

BETWEEN **ABC CONSTRUCTION LTD**

Claimant

AND **JOHN DOE**

Respondent

[AND **JANE DOE]**

[Owner] (only relevant to an adjudication brought under a commercial construction contract and then only necessary if a determination that the owner of the construction site who is not the respondent is jointly and severally liable with the respondent to pay the claimed amount and approval for the issue of a charging order over the construction site is sought)

Adjudication Claim
Dated [insert date]

NOTE: THIS SAMPLE ADJUDICATION CLAIM IS MERELY ONE EXAMPLE OF HOW AN ADJUDICATION CLAIM MAY BE PREPARED (THERE IS NO PARTICULAR FORM THAT AN ADJUDICATION CLAIM IS REQUIRED TO TAKE UNDER THE ACT – IT MAY TAKE ANY FORM AS LONG AS IT CLEARLY SPECIFIES THE NATURE OR THE GROUNDS OF THE DISPUTE)

THIS EXAMPLE IS NOT INTENDED TO BE EXCLUSIVE OR COMPREHENSIVE. THE PRESENTATION AND CONTENT OF YOUR CLAIM WILL DEPEND ON THE PARTICULAR FACTS AND CIRCUMSTANCES OF YOUR CASE.

IF YOU HAVE ANY QUESTIONS OR QUERIES, PLEASE TELEPHONE US OR TALK TO YOUR LEGAL ADVISOR **BEFORE** FILING THE CLAIM.

Introduction and Summary of Claim

1. This dispute relates to a contract between the claimant as builder and the respondent as owner for the construction of certain additions and alterations to an existing dwelling at ***** street, *****.
2. The claimant, ABC Construction Limited (**ABC**), is a duly incorporated company having its registered office at ***** and carries on business as a building contractor.
3. The respondent, John Doe, is the registered proprietor of the property at ***** (**the property**)
4. On or about ***** ABC and John Doe entered into a contract for the construction of an extension to the existing dwelling at the property (**the contract works**). The contract price was \$*****. The contract was partly written and partly oral (**the contract**).
5. On or about ***** ABC served a payment claim on John Doe indicating a claimed amount of \$*****.
6. John Doe did not issue a payment schedule within the time required under the Construction Contracts Act (**the Act**), or pay the whole or any part of the claimed amount.
7. Under section 22 of the Act, the respondent has become liable to pay the claimed amount on the due date for payment as the respondent failed to serve a payment schedule within the time require by the Act. Under sections 22 and 23 of the Act the payment has become a debt due and owing by the respondent.
8. The claimant seeks a determination that the respondent is liable to pay the claimant the sum of \$***** claimed in payment claim no.**, or such other sum as the adjudicator may determine, on the basis that no payment schedule was provided by the respondent in response to the payment claim within 20 working days of the date of service of the payment claim.
9. Alternatively, if the adjudicator determines that the respondent did serve a valid payment schedule in response to payment claim no.**, which is denied, the claimant seeks a determination that the respondent is liable to pay the claimant the sum of \$***** claimed in payment claim no.**, or such other sum as the adjudicator may determine, on the basis that the contract works and variations to the contract works requested by the respondent have been properly completed in accordance with the terms of the contract and the amount claimed is due and owing under the contract.

The Contract

10. On or about ***** , the respondent asked the claimant to provide a quote to carry out the following works:

- a. The demolition of the existing carport;
 - b. The foundations for the new extension to the living room;
 - c. All building work associated with the extension to the living room in accordance with the plans and specifications prepared by the respondent's architect, Mr Drafter (a copy of the plans (4 sheets) and specifications (10 pages) is attached and marked A).
11. On or about.***** the claimant submitted a written quotation for the works in the sum of \$***** (excluding GST) which was accepted by the respondent in a phone call that evening (a copy of the quotation is attached and marked B)
12. On ***** the claimant started the contract works.
13. The terms of the contract included the following provisions:
- a. The claimant was entitled to provide progress claims for the work done in any month period;
 - b. The respondent was to pay all progress claims within 20 working days of the date of the claim;
 - c. Any variations were to be ordered in writing by the claimant and the value of any variation was to be agreed by the claimant and the respondent before the work commenced.
14. The claimant issued 3 payment claims for the months of January, February and March***** and the respondent provided payment schedules in response and paid the whole of the amounts claimed. A schedule of these payment claims and payment schedules is set out in the table below (copies of the payment claims and payment schedules are attached and marked C).

Payment Claim	Date submitted	Amount	Payment Schedule Amount	Date received

First Cause of Action: Failure of respondent to provide a valid payment schedule in response to payment claim no.**

15. In accordance with the contract and the Act, the claimant served the respondent with a further payment claim no.** on ***** for the sum of \$***** by registered post (a copy of payment claim no.** is attached and marked D).
16. Payment claim no.** complied fully with section 20 of the Act in that it:
- a. Was in writing;

- b. Contained sufficient details to identify the construction contract to which the payment claim related;
 - c. Identified the construction work and the relevant period to which the progress payment related;
 - d. Indicated a claimed amount and the due date for payment;
 - e. Indicated the manner in which the claimant calculated the claimed amount;
 - f. Stated that it was made under the Act and was accompanied by Form 1 to the Construction Contracts Regulations 2003, i.e. the information that must accompany a payment claim served on a residential occupier.
17. Under section 21(1) of the Act, a payer may respond to a payment claim by providing a payment schedule to the payee. If a payer fails to provide a payment schedule that complies with the mandatory requirements of section 21 of the Act within either the time required by the relevant construction contract or (if the contract does not provide for the matter) within 20 working days after the payment claim is served, then pursuant to section 22 of the Act the payer becomes liable to pay the whole of the claimed amount on the due date for payment.
18. The contract did not specify a date by which a payment schedule was to be provided. Accordingly pursuant to section 22(b)(ii) of the Act, the respondent was allowed to serve a payment schedule in response to payment claim no.** on or before ***** being 20 working days after the date of service on the respondent of the payment claim.
19. No payment schedule was provided by the respondent in response to payment claim no.** within the 20 working day period under the Act.
20. Accordingly, under section 22 of the Act, the full amount of payment claim no.** became due and owing to ABC on ***** without set-off or deduction.
21. Accordingly, ABC seeks a determination from the adjudicator that the respondent is liable to pay the sum of \$***** being the amount claimed in payment claim no.** or such other sum as the Adjudicator may determine.

Second and Alternative Cause of Action: Amount claimed is due and owing on the merits of the claim

22. In addition, and as an alternative to the first cause of action above, ABC seeks a determination from the adjudicator that the respondent is liable to pay the sum of \$***** under the contract for the following reasons:

Variations to the contract works

- a. The quotation provided by ABC and accepted by Mr Doe provided that the works to be completed for the sum of \$***** was the work as set out and detailed in the plans and specifications provided to the claimant for pricing on or about *****. The plans and specifications were prepared by Mr Drafter, the architect employed by the respondent.
- b. During the course of the contract works, Mr Doe asked the site manager for ABC to construct a 1.8m high timber fence around the entire property.
- c. The site manager advised Mr Doe that ABC would be agreeable to carrying out the fencing work and provided a quotation for the fencing variation dated ***** in the sum of \$5000.00 inclusive of GST to Mr Doe at a subsequent site meeting on *****. Mr Doe read the quotation in the presence of the site manager and advised him that he accepted the quotation and instructed him to complete the fencing work as soon as possible (a copy of the quotation for the fence is attached and marked E).
- d. Once the work was completed and the cost of the fencing claimed in our payment claim no.**, Mr Doe queried the cost. He said that he was not aware the fencing was additional work and denied agreeing to the works as a variation.
- e. We have since met with Mr Doe and explained the situation but he continues to believe that there was no agreement for the fence to be built as a variation to the contract and insists the thin line drawn on the plans along the boundaries of the property is a fence.
- f. The contract and plans were clear and do not provide for the erection of a fence on the boundary. The thin line on the plans is simply the boundary line of the property, not a fence. There is no detail or specification provided for a fence and the line is drawn across the driveway. We provided a quotation for the fencing work as a variation which quotation was accepted orally by Mr Doe at the meeting on ***** and thus the work is clearly an extra to the quoted price for which ABC is entitled to be paid.

The works have all been completed properly and in accordance with the contract documents

- g. The contract required ABC to complete the works in a proper and workmanlike manner and to have the works inspected and signed off by the Architect.
- h. This has happened and no issues with the work have been raised and no defects list has been provided by the Architect.
- i. Mr Doe is now seeking to raise issues with the quality of workmanship but such complaints are unfounded and without any merit whatsoever.

No payment has been made for the works

- j. Mr Doe has had the benefit and use of the works even though he has not paid for the works as required under the contract.
- k. The claimant has demanded payment from Mr Doe on numerous occasions (copies of these letters are attached and marked F) but no response has ever been received.

Interest

23. Clause*** of the contract provides that:

The Owner shall pay the Contractor interest at 1.25 times the interest rate paid, or that would be paid by the Contractor for an overdraft facility, compounding monthly, on all monies due and owing and remaining unpaid from the date of default until the date of payment in full.

24. ABC seeks a determination that the respondent is liable to pay interest on the GST exclusive amount claimed of \$***** from ***** being the date the payment claim was due for payment at the contractual rate in accordance with clause*** of the Contract.

25. ABC attaches a letter from its bank confirming the applicable overdraft interest rate for the relevant period (a copy of the letter is attached and marked G).

Costs

26. ABC seeks a determination that the respondent is liable to meet its legal costs and expenses in the amount of \$***** under section 56 of the Act on the basis that those costs have been incurred unnecessarily by bad faith on the part of the respondent and/or allegations and objections on the part of the respondent that are without substantial merit.

27. ABC attaches an invoice from its lawyers as evidence of the costs incurred in this adjudication (a copy of the letter is attached and marked H).

28. ABC also seeks a determination that the respondent is liable to pay the whole of the Adjudicator's fees and expenses in accordance with s57 of the Act.

The claimant therefore claims:

29. A determination that no payment schedule was provided by the respondent in response to payment claim no.** and accordingly the respondent is liable to pay the claimant the sum claimed in payment claim no.** being \$*****, or such other sum as the adjudicator may determine, as a debt due and owing under sections 22 and 23 of the Act with no set-off or deductions permitted.

30. Alternatively, a determination that the respondent is liable to pay the claimant the sum of \$****, or such other sum as the adjudicator may determine, on the merits of the claim.
31. That the respondent must pay interest in the sum of \$*****, or such other sum as the adjudicator may determine, calculated in accordance with clause*** of the Contract from the date of default until the date of the determination.
32. That the respondent must pay the claimant's legal costs and expenses associated with the adjudication proceedings in accordance with section 56 of the Act in the amount of \$***** (exclusive of GST), or such other sum as the Adjudicator may determine.
33. That the respondent must pay the whole of the Adjudicator's fees and expenses in accordance with section 57 of the Act.
34. ***If you are seeking approval for a charging order in respect of the construction site owned by the respondent under section 49 of the Act, or a determination of liability of an owner who is not a respondent and approval for the issue of a charging order in respect of the construction site, include relevant details here.***

DATED at ***** this *** day of *****

Name/Position or role