

The claimant to pay the respondent? A twist to the SOP Act

February 1, 2015

Introduction

All, something, or in the worst case, nothing - this must be the thinking of a claimant seeking relief under the Building and Construction Industry Security of Payment Act (the "SOP Act").¹

In many adjudication applications under the SOP Act, adjudicators have to determine, apart from a claimant's claims, whether any set off and/or backcharges claimed by a respondent are valid. In some cases, the adjudicator may have to consider whether there has been overpayment by a respondent and this appeared to have been the case in *Quanta Industries Pte Ltd v Strategic Construction Pte Ltd* ("Quanta").

Quanta has two unusual features: (i) the claimant was ordered by the adjudicator to pay an adjudicated sum to the respondent; and (ii) the respondent agreed that such an order was made outside of the adjudicator's powers.

Quanta - the adjudication determination ("AD")

The adjudicator ordered the subcontractor-claimant to pay the main contractor-respondent a sum of S\$141,508.56. Unhappy with the AD and given the respondent's refusal to consent to an intended application by the claimant to set aside the AD, the claimant applied to set aside the AD on the basis that the adjudicator had acted outside the powers afforded to him under the SOP Act, which incidentally was not denied by the respondent.

The decision of the Singapore High Court

The adjudicator had exceeded his jurisdiction in determining that the claimant had to pay the respondent

The Singapore High Court held that, pursuant to section 17(2)(a) of the SOP Act, the adjudicator may determine the amount to be paid by the respondent to the *claimant*. By determining that the claimant should make payment to the respondent, the adjudicator had acted in excess of the powers conferred upon him by the SOP Act.

Any party to the adjudication may apply to set aside the AD

The Singapore High Court also made it clear that section 27(5) of the SOP Act applied to both claimants and respondents in that "*any party to an adjudication*" may apply to set aside an adjudication determination. The Court also confirmed that (in an application to set aside), only the respondent had to pay into Court the unpaid portion of the adjudicated sum as security. As a corollary, there is no requirement for a claimant to pay into Court any security

pursuant to Section 27(5) of the Act if it is the claimant who applies to set aside an adjudication determination.

Comments

The decision is a welcome move that confirms the position of a claimant under the SOP Act, i.e. to afford contractors and industry stakeholders who have undertaken or supplied construction services the right to claim progress payment for work done. The SOP Act was not intended to allow a respondent, usually Employers or main contractors, a right to any adjudicated sum payable by the claimant to it, i.e. the worst case scenario for a claimant is a NIL adjudicated amount² in respect of its claims.

¹ This does not consider legal costs payable to the claimant's legal counsel and adjudication application fees and adjudicators' fees and expenses, all of which the claimant will invariably bear if it does not succeed on all of its claims.

² See footnote 1.

Your Key Contacts



Kia Jeng Koh

Senior Partner, Singapore

D +65 6885 3698

kiajeng.koh@dentons.com