The Fight To Be Paid

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Much of NZ's economy is driven by the construction, renovation and refurbishment of real estate. This industry has traditionally been one where tradesmen often provide significant value to a customer prior to being paid.

When New Zealand's economy is strong people don't tend to disputes costs and people are prepared to wait until the end of a project to be paid.

However, the market may cool quickly or finance may become tight and tradesmen have trouble receiving payment on time and customers begin to examine what they are paying for in minute detail. Any dispute about the amounts due under a contract will put pressure on

both the tradesman and the customer.

The government enacted the Construction Contracts Act 2002 to create an effective process for managing the payment of construction invoices. However, the processes contained in the Act are compulsory and they system only works if the process is followed correctly.

The Act has a three step process regarding payment:

- a payment claim issued by the contractor wanting to be paid;
- a payment schedule issued by the customer if they don't agree with the payment schedule
- Arbitration if the parties still can't agree.

Payment Claims

A 'payment claim' is issued by a contractor when they are entitled to under a construction contract. It has to be in writing and contain certain minimum information designed to inform the customer of the work which the contractor thinks has been completed. It should allow the customer to establish:

- What the work relates to;
- How much that work costs;
- When the work needs to be paid for;
- How to make payment; and
- How the process under the Construction Contracts Act works.

A payment claim should give a customer enough information to establish whether payment is due and if the amount claimed is correct.

If the customer does not dispute the payment claim by issuing a 'payment schedule' in the timeframe established in accordance with the Act then the customer must pay the contractor the full amount claimed under the payment claim.

The customer can still dispute the amount with the contractor but on a 'pay now argue later'

basis.

Payment Schedules

If the customer is unhappy with the amount set out in a payment claim then they have to respond with a 'payment schedule'. They have a set time to respond to the payment claim which is normally 20 working days.

A payment schedule needs to:

- Identify the payment claim it relates to;
- State the amount that the customer is prepared to pay;
- State how that amount was calculated; and
- The reasons for that calculation.

They are also required to tender the amount that they acknowledge is due under the agreement.

A payment schedule is designed to allow a contractor to receive the funds that all parties acknowledge are due. It allows the contractor to continue to receive cash flow while also allowing the customer some comfort that they are not paying for work that has not been completed.

If the parties are still not satisfied they may either litigate the matter fully in the appropriate court or submit the problem for adjudication under the Act.

Adjudication

The major advantage of adjudication under the Act is that it is a fast and relatively cost effective method of establishing how much is due under a contract. While it does not extinguish either parties rights to pursue their rights elsewhere it does maintain a prompt payment procedure.

The adjudicator is likely to examine the circumstances with care to establish the merits of each party's position. The adjudicator will provide a decision promptly setting out their

decision on the dispute. They will normally also provide for a timeframe for payment.

The adjudicator can also attribute the costs of the dispute to either party which can add to the losing parties costs considerably.

How the Act Benefits You

The Act is a great tool for both the contractor and the customer as it forces both parties to:

- clarify their position,
- explain where they are up to in their work; and
- articulate any performance issues they may have with any work being completed.

For a contractor having the right paperwork can mean that you can be confident of regular payments coming in when you expect them and for a customer it allows you to have a mechanism to avoid payment while any legitimate concern you have is addressed.

What we can do for you

Cooney Lees Morgan acts for a large number of contractors using the Act to collect payment. We can help you to ensure that your documents for payment claims meet the strict criteria of the Act and we can be incredibly effective in recovering money due to you.

If you are a customer facing a construction bill that you weren’t expecting or for work you are not happy with we can help you prepare a payment schedule that complies with the Act and gives you the breathing room required to address any construction dispute.