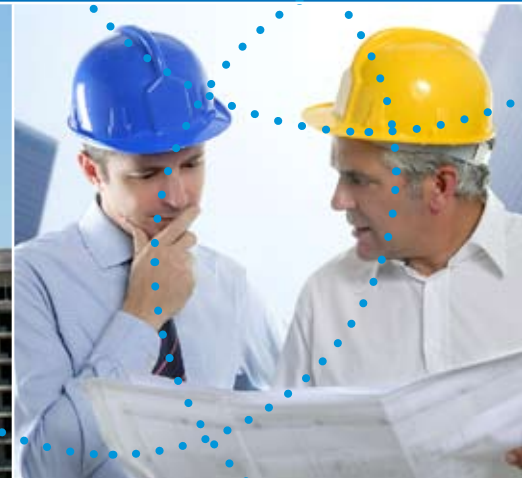


ADJUDICATE TODAY CASE STUDY



CLIENT Contractor vs. Developer

Lengthened preparation time thanks to ANA's progressive approach to efficient file sharing technology

Background

A construction contract was entered into by a large construction company and a very large developer – both organisations were Sydney based. A progress claim for several million dollars was made by the construction company (claimant) involving the design and construction of a multi-level mixed development in Sydney.

The claimant used the provisions of the Security of Payment Act to have the progress claim valued by an independent adjudicator. During this process, an adjudication application was made to Adjudicate Today as the Authorised Nominating Authority (ANA) to administer the adjudication process.

The Process

The adjudication application of the claimant consisted of 40 lever-arch folders including a submission and documents in support of the payment claim, copy of the contract, the respondent's payment schedule, drawings and specifications.

In turn, the adjudication response of the developer (the respondent) consisted of 30 lever-arch folders including a submission

and documents in support of the payment schedule and various contract documents. The developer's response to the claim raised numerous reasons for non-payment including variations, delay costs, latent conditions, defective work and liquidated damages. When replying the respondent initially forwarded electronic copies of all documents. As their size was far in excess of normal email limits the respondent utilised Adjudicate Today's Lockbox, a custom designed, online file transfer system accessed from the organisation's website. The Lockbox allows for the timely, secure transmission of parties' submissions to the adjudicator and effectively provided the respondent with an extra day to prepare the adjudication response.

Following receipt of the adjudication application, Adjudicate Today's first, fast action was to nominate a suitable adjudicator from its panel of highly professional, knowledgeable adjudicators to receive both parties' documents and determine a fair outcome.

On this occasion, the nominated adjudicator was based outside Sydney. Normally, with such a considerable geographical distance

The **efficient management** of this process by **Adjudicate Today** negated the **time and expense** of having the matter **determined** by the courts.



between the adjudicator and representatives of the claimant and respondent, the timeframe to transport documents and additional correspondence would result in the adjudicator losing two days of the 10 business days available to determine the outcome of an adjudication application. However, use of the Lockbox meant that the files could be immediately transmitted to the adjudicator and the application determined within 10 business days without the need for the adjudicator to seek an extension of time.

The Determination

After considering information submitted by both parties, it was decided that the claimant be awarded a substantial progress payment – if not quite the amount it had originally attempted to accrue. The adjudicator's determination also included the due date for payment and the rate of interest to be applied to the overdue amount – all up, in excess of 100 pages and disseminated, electronically, in real time.

For such a case to be heard in a court of law, given the volume of submissions and disputed issues, the legal costs to each of the parties would have been in

Security of Payment

'Security of Payment' is legislation that provides for the entitlement of contractors, subcontractors, consultants or suppliers in the contractual chain to receive payment due under the terms of their contract from the party higher in the chain. Arbitrary devaluation, late payment and non-payment of progress claims are persistent problems for those who perform construction work or supply goods and services in the construction industry.

Claimants have statutory rights: to progress payments; to claim interest on late payments; to suspend work; and to retain a lawful hold on property.

They also have the right to 'rapid adjudication' of disputes over progress payment amounts. This means an independent adjudicator makes an

interim determination as to the amount of progress payment, if any, to be paid to a claimant by a respondent. The respondent is only entitled to make a submission to the adjudicator on the application if they provided a written response to the payment claim.

The role of the Authorised Nominating Authority (ANA)

An adjudicator can only be appointed by an Authorised Nominating Authority (ANA) chosen by the claimant. The procedures and timeframes of the adjudication process are strict. An adjudicator's determination, while not final, is an enforceable judgment. If the respondent does not pay the adjudicated amount by the relevant date, the adjudicator's determination can be registered as a judgment in a court of competent jurisdiction.

excess of \$200,000. On this occasion, the adjudication fees were less than \$20,000. The efficient management of this process

by Adjudicate Today negated the time and expense of having the matter determined by the courts. ■

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