

CONSTRUCTION LAW

Adjudication – Dispute over interim payment claims on works done –Application to set aside adjudication decision –Whether the adjudication decision was tainted– Construction Industry Payment and Adjudication Act 2012

Bina Puri Construction Sdn Bhd v Hing Nyit Enterprise Sdn Bhd

[2015] 8 CLJ 728, High Court

Facts The applicant was the main contractor of a project, and had engaged the respondent as a subcontractor. A dispute arose between the parties over interim payment claims, where a payment claim was served on the applicant who did not file a payment response. Subsequently, the respondent served a notice of adjudication and adjudication claim on the applicant. The applicant disputed the adjudication claim, contending that the respondent had, in fact, been overpaid. Meanwhile, the overpayment was counterclaimed by the applicant in a separate ongoing civil suit between the parties. The adjudicator decided that the civil suit would not affect the current adjudication proceedings as that suit had not been disposed of. The adjudicator further stated that he had no jurisdiction to decide on the overpayment issue in the current adjudication proceedings because the applicant had failed to file any payment response to raise the issue of overpayment. The adjudicator then proceeded to rule that the respondent was entitled to receive payment from the applicant. Dissatisfied, the applicant applied to set aside the adjudication decision.

Issue The issue was whether the adjudication decision was invalid due to the refusal of the adjudicator to decide on the issue of overpayment.

Held In dismissing the application, the court held that the adjudication decision was valid, and that the jurisdiction of an adjudicator was limited to the disputes relating to payment claim and payment response. Since the applicant did not file any payment response to raise the issue of counterclaim, the adjudicator, therefore, did not possess jurisdiction to consider such counterclaim.