Managing Payment Disputes through legislation and contract – a comparative analysis

by

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Topics

• Payment disputes
• The “IND Wallace standard form” aka the Singapore Institute of Architects (SIA) Form
• Statutory Adjudication in Singapore
• Payment Bonds and more in USA
Payment disputes - 1

- Promise of Payment – consideration
- Frequency of payment – entire contract
- Payment for work done – entitlement & scope
- Valuation of work done – amount due
- Honouring payment – right to set-off
Payment disputes - 2

1. Promise of Payment as part of consideration
2. Frequency of payment affects entitlement to payment
   - Entire contract: precise & exact performance [substantial performance / de minimis rule]
   - Interim payment
     - Monthly
     - Milestone
Payment disputes - 3

3. Payment for work done

• Verification by certifier of amount of work properly done as at a particular date – entitlement

• Provision for materials on site

• Provision for defective works
Payment disputes - 4

4. Valuation of work done

• Contract sum / rates
• Common law: star rates / Quantum meruit
5. Honouring payment

1. Right to set-off
2. Right to interest
   • Non-payment
   • Late payment
   • Reduced payment [withholding]
1. **Promise of Payment** as part of consideration – cl 31(1)

2. **Frequency of payment** affects entitlement to payment – cll 31(1) & 31(3): dates or stages

3. **Payment for work done** – cl 31(2)

4. **Valuation of work done & sums certified** – cll 31(2) & 31(5)

5. **Honouring payment** – cl 31(1)
Consequences of breaches - 1

1. Failure to issue certificate

1. Power to “suspend all work” – cl 33(4);

2. Ground for termination: “Er improperly or fraudulently interferes with or influences or obstructs the issue of A’s cert or there is fraudulent collusion bet the Er & A” – cl 33(1)(c)
Consequences of breaches - 2

2. Failure to make payment to C

1. “full effect by way of Summary Judgment or Interim Award shall” “be given” “until such final judgment or award such decision or certificate shall be binding” – cl 31 (11);

2. Ground for termination – cl 33(1)(b)
   - Remove unfixed goods & matls except those already paid for [cl 33(3)(a)]
Consequences of breaches - 3

2. Failure to make payment to NSC/DSC

1. “Er may pay some or all of any sums certified directly to the NSC/DSC” – cl 30 (4)
   - C Deemed to have received payment [cl 30(2)]
1. **Statutory Entitlement** to Progress Payment – s 5
2. **Frequency of payment** found in definition of Progress Payment – s 2: single/one-off or event or date
3. **Payment for work done** – s 5
4. **Amount/Valuation** of Progress Payment – ss 6 & 7
5. **Statutory due date** – s 8
Statutory Adjudication in Singapore - 2

Consequences of breaches - 1

1. Failure to pay on due date under s 8
Statutory right to serve Payment Claim

• Contains Claimed Amount – outstanding PP + Interest [s8(5)]

2. Failure to pay Response Amount under s 12
Statutory right to apply for Adjudication
Consequences of breaches – 2

3. Failure to pay Adjudicated Amount under s 12

Statutory remedies

- Right of lien on goods – ss 23(1)(a) & 25
- Right to suspend work/supply – ss 23(1)(b) & 26
- Right to enforce AA as judgment debt – ss 23(2) & 27
- Right of principal to make direct payment to claimant - s 24
Payment Bonds and more in USA

• Mechanics Lien Law – Maryland Statute 1791
• Miller Acts – bonds: performance & payment [response to certain public project not caught by ML]
• Prompt payment statutes – interest penalty & limited right to withhold in the event of dispute [backcharges]
• Stop payment statutes – lien
• Construction trust funds statute – moneys paid to contractor to be held as trustees
Observations & Conclusions

• Payment disputes all over the world are the same: liability, quantum & timing of payment

• Freedom of contract is not about fairness: it works for those who have a greater bargaining power

• Statutory regulation ensures widespread application
The End

Thank You