

# 4<sup>th</sup> National Conference on Construction Adjudication

## Session 3 – Latest Developments in Adjudication and their Implications

**Topic:**

**Its About Time – Payment Claims & Responses**



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# Early Payment Claim

## A Trap for the Respondent?



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# Hiap Seng Building Construction v Hock Heng Seng Contractor [2024] SGHC 50

- 5 July 2023 – HHS submitted Payment Claim
- 27 July 2023 – Hiap Seng issued Payment Response certifying \$16,861.60
- 1 August 2023 HHS issued Tax Invoice for \$16,861.60
- 7 August 2023 Hiap Seng issued Final Accounts for \$16,861.60
- HHS waited 30 days for payment of its invoice.

# Hiap Seng Building Construction v Hock Heng Seng Contractor [2024] SGHC 50

- No payment
- 8 Sept 2023 HHS commenced adjudication
- Won – Adjudication in HHS's favour
- Hiap Seng challenges adjudication decision.

# Hiap Seng Building Construction v Hock Heng Seng Contractor [2024] SGHC 50

- Hiap Seng argued its own payment response was invalid!

# Hiap Seng Building Construction v Hock Heng Seng Contractor [2024] SGHC 50

- Sub-contract did not prescribe a date for service of a payment claim.
- Regulations 5(1) & 5(3): where the contract does not contain any provision specifying when a payment claim must be served, then it must be served by the last day of the calendar month
- Section 10(3): A payment claim that is served **before** the prescribed date is deemed to have been served on that date

# Hiap Seng Building Construction v Hock Heng Seng Contractor [2024] SGHC 50

- Payment claim was therefore **deemed served** on the last day of the calendar month in which it was served, regardless of when it was actually served.
- Payment claim was served on 5 July 2023.
- Therefore deemed to have been served on 31 July 2023.
- But payment response was served on 27 July 2023.
- No payment response could have been validly served before payment claim was served.
- Hence payment response was invalid

# Risk:

- Subcontractors can serve an early payment claim
- If payment response is issued before the actual deadline for payment claim, they can then argue there was no valid payment response
- And then apply for adjudication on the basis of there being no payment response

## • Solution?



# THANK YOU



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