

CITATION: *Jemena Northern Gas Pipeline Pty Ltd v Civmec Constructions & Engineering Pty Ltd & Smith* [2019] NTSC 54

PARTIES: JEMENA NORTHERN GAS PIPELINE
PTY LTD (ABN 12 607 928 790)

AND:

CIVMEC CONSTRUCTIONS AND
ENGINEERING PTY LTD (ABN 98 137
816 025)

AND:

SMITH, Gordon

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory
jurisdiction

FILE NO: No. 59 of 2019 (21924329)

DELIVERED ON: 10 July 2019

HEARING DATE: 27 June 2019

JUDGMENT OF: Graham AJ

CATCHWORDS:

CONSTRUCTION CONTRACTS (SECURITY OF PAYMENTS) ACT 2004 (NT)
– PAYMENT CLAIMS – COSTS

Contracts (Security of Payments) Act 2004 (NT)

REPRESENTATION:

Counsel:

Plaintiff: J Pizer SC & G Crafti
First Defendant: A Wyvill SC & D Alderman

Solicitors:

Plaintiff: Ward Keller as town agent for Hall & Willcox
First Defendant: Hunt & Hunt as town agent for Mills Oakley

Judgment category classification: B
Judgment ID Number: Grah1906
Number of pages: 3

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

*Jemena Northern Gas Pipeline Pty Ltd v Civec Constructions &
Engineering Pty Ltd & Smith* [2019] NTSC 54
No.59 of 2019 (21924329)

BETWEEN:

**JEMENA NORTHERN GAS PIPELINE
PTY LTD**
Plaintiff

AND:

**CIVMEC CONSTRUCTIONS AND
ENGINEERING PTY LTD**
First Defendant

AND:

GORDON SMITH
Second Defendant

CORAM: GRAHAM AJ

RULING
(Delivered 10 July 2019)

Introduction

- [1] I delivered a judgement in this matter on Monday 1 July 2019, but reserved the issue of costs and requested the parties to file written submissions on costs by Wednesday 3 July 2019. These submissions are now filed.
- [2] It is not in dispute that the plaintiff should be ordered to pay the taxed costs of the first defendant. The issue before me is whether the plaintiff should be

ordered to pay costs on an indemnity basis and it is this issue that I will deal with in the ruling.

- [3] I make no order in regard to the costs of the second named defendant who filed no appearance and took no part in the hearing.
- [4] The first defendant argues that it was not reasonable for the plaintiff to make the application to the court. It was submitted that applications of the kind in question should not be brought unless there are exceptional circumstances. The purpose of the legislation¹ is to enable the rapid and informal determination of payment disputes. It was submitted that an indemnity costs payment would deter others from making similar applications.
- [5] The exercise of discretion to order costs on an indemnity basis is restricted to cases where a party has been engaged in unmeritorious, high-handed or improper conduct. A court by ordering indemnity costs is showing its disapproval of the conduct of the unsuccessful party whilst ensuring the successful party is not out of pocket.
- [6] I do not find that this is a case where I should exercise my discretion to order indemnity costs. The plaintiff conducted the litigation in a prompt and targeted manner and at the final hearing was seeking to support an interim injunction that had been awarded in its favour. I do not conclude that the litigation falls within the ambit of cases where indemnity costs are ordered.

¹ *Contracts (Security of Payments) Act 2004 (NT)*.

[7] I will order that the plaintiff pay the costs of the first named defendant, such costs to be taxed in default of agreement. I further certify that this was a matter fit for the attendance of two counsel.
