

NORTHERN TERRITORY ANTI-DISCRIMINATION COMMISSION

LOCATION: DARWIN

**TRIBUNAL: SALLY SIEVERS
COMMISSIONER**

DATE OF HEARING: 2 September 2013

HEARING NO: H2013007

COMPLAINANTS: Mr Mohibur Rahman and Ms Farhana Islam

RESPONDENTS: Mr Joe Gass

DATE OF DECISION: Written Decision given on 18 December 2013

REASONS FOR DECISION

1. FACTUAL BACKGROUND

- 1.1. The Complainants Mr Rahman and Ms Islam are a married couple who live in Rosebery. They migrated to Australia from Bangladesh as skilled migrants 8 years ago. They both work for the Northern Territory Public Service. Mr Rahman as a prison officer for Corrections and Ms Islam for the Department of Health.
- 1.2. The Respondent Mr Joe Gass operates under the business name Drover Industries and has 30 years' experience in steel fixing, concreting, structural landscape etc. At the time of the hearing Mr Gass was primarily constructing concrete swimming pools and structural landscaping.
- 1.3. Mr Gass has been working in the Northern Territory for the last six years. His wife Mrs Lavinia Gass provides administrative and book keeping support for the business. In particular she prepares email correspondence under Mr Gass' instruction to be sent to his customers.
- 1.4. In February 2012, Mr Gass followed up a referral made by a carpenter, with Mr Rahman and Ms Islam, to construct a pool at their home at 3 Davis Court Rosebery. Mr and Mrs Gass say the contract used was their standard contract. The contract was signed on 12 February 2012 and was for \$17 500.
- 1.5. All parties agree that during the early work under the contract the relationship was very positive; they shared food and play dates occurred between the couple's daughters.
- 1.6. Through staggered or progress payments \$15 500 of the contract price was paid.
- 1.7. The relationship soured as the work progressed slowly with aspects of delay caused by both parties and a dispute over payment and

what was expected to be done under the contract and what was additional work arose.

1.8. The contract was terminated by Mr Gass via email on 9 May 2012.

2. THE COMPLAINTS

- 2.1. A complaint was received at the Anti-Discrimination Commission (the Commission) from Mr Rahman on 11 July 2012. He indicated he had been treated unfairly because of race and harassed because of race. The bulk of the material provided was in relation to the contractual dispute. However the email chain from 7 May 2012 to 9 May 2012 was attached including the termination of the contract and the words "Sorry Rahman, but that's not the way we do things in Australia".
- 2.2. Mr Rahman also added, in answer to Question 12 of the Complaint form, the allegation that "Mr Gass was aggressive and loud" and "I felt threatened".
- 2.3. A further complaint was lodged at the Commission by Ms Islam on 26 July 2012. It details the meeting on 4 May 2012 between Ms Islam and Mr Gass at a coffee shop at the Palmerston Shopping Centre and the conversation which contained the words "I will never deal with Asians". It also contains material in regard to the contractual dispute.
- 2.4. Mr Rahman and Ms Islam, in opening their case and in their final submissions, rely on three key events and the general manner of Mr Gass in dealing with them during the contract to substantiate the allegation of race discrimination in the area of the provision of goods and services.
- 2.5. The key events include a meeting at their home on 1 May 2012 between Mr Gass and Mr Rahman, the lead up to and meeting on 4 May 2012 at Gloria Jean's coffee shop in the Palmerston Shopping Centre, and the email exchange culminating in an email from Mr Gass terminating the contract on 9 May 2012.

- 2.6. There is also the general allegation that they would not have been dealt with in the manner they were by Mr Gass if they were born and bred Australians. This includes the pressure and the approach to negotiations which occurred during the pool construction and negotiations over payment. They allege they were treated in a different way because of their race, in particular because they were from a minority group.
- 2.7. The *Anti-Discrimination Act* (the Act) requires that Mr Rahman and Ms Islam produce evidence to establish the facts that they say establish discrimination as defined by the Act. The requirements of the Act are more onerous and far more specific than the everyday use of these phrases.
- 2.8. The relevant sections are set out in full at Attachment A.
- 2.9. Mr Rahman and Ms Islam must first prove that there was distinction, restriction, exclusion, preference or that they were treated less favourably by Mr Gass.
- 2.10. Mr Rahman and Ms Islam must then prove that there was a link or that this treatment was on the basis of an attribute, in this case race.
- 2.11. Thirdly Mr Rahman and Ms Islam must establish a link to the area of the supply of goods or services; that is that they were treated differently on the basis of their race in the failure or refusal to supply goods or services, or treated less favourably in any way in connection with the supply of the goods or services (s 41 (1) (a) & (d)).
- 2.12. Each of these three areas needs to be proven and importantly the causal links between each must be established.
- 2.13. Mr Rahman and Ms Islam's case, at its highest, is that the contract for their swimming pool was negotiated, administered and terminated differently to others because of their race.
- 2.14. Mr Rahman and Ms Islam bear the onus of proof in establishing this allegation as set out in s 91 of the Act. The standard of proof is the

civil standard, that is, on the balance of probabilities. As the Commissioner I have to decide what was more likely to have happened: not in a broad sense, but looking at each of the allegations, is it more likely or not that the allegation is made out?

3. RESPONDENT'S CASE

- 3.1 Mr Gass' case is that the dispute is a contractual one; Mr Rahman and Ms Islam wanted more work done than was set out in the standard contract. Mr Gass' case is that Mr Rahman agreed to pay for additional work and then did not pay for the extra work.
- 3.2 The relations between them became strained when money was sought to pay for additional work that had been done. Their relationship deteriorated when payments were not forthcoming.
- 3.3 That the contract was terminated when it became clear Mr Rahman and Ms Islam could no longer pay for the work that had been done. Mr Gass asserts that there was nothing in the way he dealt with Mr Rahman and/or Ms Islam which was done on the basis of race.
- 3.4 However at this point s 20(3) & (4) of the Act should be noted, particularly that motive of the person alleged to have discriminated or their view of whether their treatment was less favourable, is not what determines the matter.

4 ASSESSMENT OF THE EVIDENCE INCLUDING COMMENTS ON INDIVIDUAL WITNESSES.

- 4.1 A few general comments first in regard to assessing evidence. In assessing evidence I do not accept all of one person's evidence, and disbelieve any alternative. The evidence for each issue will be considered and the evidence led and tendered from each witness evaluated for that issue.
- 4.2 Further, even though I am not bound by the rules of evidence in assessing and weighing up the evidence in this hearing, the rules of evidence guide and inform the assessment of evidence and the credibility and weight that it is given. The best evidence or potentially most credible evidence on an issue is the evidence from the parties who were present and directly

involved in an event, e.g. the two parties to a conversation. The people, who directly saw, heard or experienced the event.

- 4.3 The report of a conversation by a third party who was told about the conversation carries less weight and is less reliable than those who were present. It is common knowledge that by the time a conversation has been conveyed through two or three telling's, it is likely to be less accurate, and as evidence carries less weight. There is a real possibility of distortion just as part of the process of retelling.
- 4.4 Further the repeated retellings of the same story, while it has some impact if they are inconsistent, great care needs to be taken in evaluating the weight to attach to this in determining if the event being retold actually occurred.
- 4.5 Further in this case, all witnesses gave evidence of events that occurred over a year and half ago, and I find this affected the accuracy of their recall.
- 4.6 All witnesses also had an emotional response to issues raised by the dispute and it was clear in the manner in which they gave their evidence. Mr Gass was the most dispassionate. Whilst I find that all were doing their best, they were influenced by emotions accumulated over a year and half and entrenched in positions taken.
- 4.7 I do not find that anyone was trying to deceive me; just that there were different recollections of the same events as incidents viewed with different perspectives caused variation in what aspects were recalled.
- 4.8 However I do make the comment that Mrs Gass was prepared to give evidence for the first time in the hearing of matters she was not a direct witness to and which were not included in any other materials. In particular the telephone calls arranging the meeting on 4 May 2012. I do not accept the accuracy of this evidence given very late in piece.

5 AREAS IN DISPUTE

- 5.1 Before I can apply the provisions of the Act, I must make findings in regard to the factual matters which were led in evidence before me. Once the facts are established I will apply the relevant sections of the Act to them and

arrive at a decision in regard to whether prohibited conduct has been established.

5.2 Extra Work

- 5.2.1 The background to the allegation of discrimination revolves around differing views on the status of the extra work to be done outside the contract, particularly what the cost of this was and whether there was cost over and above the contract for the extra work. Mr Rahman and Ms Islam are very strongly of the view that they did not authorise work that would require extra payment.
- 5.2.2 Mr Rahman clearly disputes the claim made by Mr Gass that extra work was authorised as additional to the contract price. This is clearly set out in his email dated 8 May 2012 (Attachment B), including concrete steel, installing the pool, fence, pool tiles etc.
- 5.2.3 Mr Gass says he explained that extra work cost more money in April/May 2012 (T64), coming up to the last contractually agreed payment. He needed to add on all the extra work that had been done that Mr Rahman had agreed to pay for.
- 5.2.4 Mr Gass (Transcript page reference T 68) explained to Mr Rahman “This is going to cost you this much, this much, and this much”. But nothing was placed in writing. He says nothing in writing but that Mr Rahman kept saying “I will pay you, I will pay you, Joe” (T 69). Mr Gass’ general evidence is that Mr Rahman said “I will pay you I will pay you”. Mr Gass’ evidence was that he trusted that these people would pay him.
- 5.2.5 Mr Gass in his statutory declaration dated 2 September 2012 (Exhibit 5) stated that from the start the work requested varied from what was covered in the standard contract i.e. the request for a rectangular pool. Also at paragraph 4 he states “I also recommended that they complement their chosen design with pool surrounds and after explaining the costs involved, the Complainants agreed for me to start work.”

- 5.2.6 Mr Ovenden (a friend and employee of Mr Gass) agreed when questioned by Mr Gass that they did additional work; 4 or maybe 5 days' worth. He recalled Mr Rahman saying "I will pay I will pay". In his statutory declaration he refers to extra concrete and Mr Rahman agreeing to pay for this (paragraph (c) & (d)). Also to larger tiles, and installing the pool fence. This is hard to assess as it was never raised with Mr Rahman when he was giving his evidence for him to comment on.
- 5.2.7 Mr Ovenden's view was that the work was done on the basis of a verbal agreement and honesty.
- 5.2.8 The alleged extra work was set out for the first time in writing in the invoice attached to the email from Mr Gass dated 8 May 2012. It included extra steel, concrete, pavers, labour and a glass panelled pool fence, calculated at \$7040.
- 5.2.9 Mr Rahman in his statutory declaration dated 10 September 2012, sets out that the amount requested for the extra work was variable across time, \$5000 - \$2500 – \$7040; all in the early days of May 2012.
- 5.2.10 The impression strongly in this case, is of a miscommunication of expectations; Mr Gass viewing it as extra over and above the contract, while Mr Rahman saw it as all part of the work to be done to complete the pool. Sharing food and relationship development was important to Mr Rahman to ensure it all went well. It would have all been much clearer if the material was put in writing and agreed however this was not the way Mr Gass conducted his business.
- 5.2.11 It is not for me to resolve this dispute. However it is very clear even on the limited exploration of this issue during the hearing that it is a very live issue between the two parties, and it is the context in which the allegations of racial discrimination have been made.

5.3 Meeting and Conversation on 1 May 2012

- 5.3.1 The evidence of the two people who were party to the conversation will be considered first.

- 5.3.2 Mr Rahman's evidence (T12), which is consistent with the material in his statutory declaration dated 10 September 2012, is that he organised the meeting as for a long time the work had not been done.
- 5.3.3 Present initially were himself, Mr Gass and Mr Justin Stone. The discussion was how to work together. It first involved Mr Stone then he left. Before he went Mr Gass said to Mr Rahman "I want some extra dollars".
- 5.3.4 Mr Rahman's evidence is that Mr Gass returned and they sat at the outdoor glass table. The discussion included that Mr Gass needed the money to start work. At first he did not mention a figure and then he said \$2500 (an amount consistent across materials provided by Mr Rahman). Mr Rahman refused and asked why he wanted that money, as it was not following the contract (T 12 & T 14).
- 5.3.5 Mr Rahman's evidence is they were sitting at the glass table on his veranda. Mr Gass banged the table (T 14) and said "...he needed the money by tomorrow I can't start work".
- 5.3.6 Mr Rahman's evidence was his wife was in the kitchen, his child in the area and friend Mr Abedin in the lounge on a couch. The arrangement was illustrated by a diagram and photos tendered during the hearing (Exhibit 1 & discussed at T 13).
- 5.3.7 The conversation proceeded with Mr Rahman asking Mr Gass on a number of occasions if he is threatening him; he said no. Mr Gass was loud. Mr Rahman gave evidence that he felt threatened and intimidated (T 15).
- 5.3.8 Mr Rahman left the conversation, believing if he transferred \$1000 the next day that Mr Gass had promised to start working.
- 5.3.9 Mr Rahman's evidence in regard to what occurred in this conversation varies from the material in his email to Ms Ghule (dated 24 July 2012, Section 77 report at folio 2 – exhibit 2). In the email he set the scene of Mr Gass asking for money and him refusing.

“Then he suddenly stood up from the chair and demanded the money in agitated mood as well as in threatening manner by tapping his hand on the table saying “I want the money by morning....”.”

5.3.10 Mr Rahman gave evidence that the next day he did transfer the money but no further work was done. In fact Mr Gass came and removed his tools and equipment from their home.

5.3.11 Mr Rahman says he felt threatened, intimidated and insecure which is why he went to the police before the meeting on 4 May 2012. He initially went on 2 May 2012 to report Mr Gass' missing tools from his home; they were actually collected by Mr Gass.

5.3.12 Mr Gass' evidence in this area is that he went to the client's house to try and explain he could not do more work, what work had been done had to be paid for. So he initiated the meeting.

5.3.13 Mr Gass' evidence was that Mr Gary Ovenden who worked for him on this job was present and Justin Stone and Mr Rahman. It is clear from the later evidence of Mr Ovenden and others that Mr Gass is mistaken about Mr Ovenden being present.

5.3.14 Further also tendered was a brief letter from Mr Stone (exhibit 3), that only himself, the pool contractor and Mr Rahman were present; no mention of anyone else.

5.3.15 Mr Gass' evidence on this meeting (T 65) was that he had a conversation with Mr Rahman after the pool fencer left and after the outside conversation with the contractor; it was only 5 minutes, and he showed Mr Rahman a paper of added work to the end of the contract.

5.3.16 Mr Gass said there was no aggressive behaviour. He agrees they were sitting in the place shown in the photo provided in Mr Rahman's case.

5.3.17 Mr Gass' view was that not much was achieved, nothing put on paper. He would not do any more work or continue until paid \$3500

and Mr Rahman agreed (T65). He would continue when the money was in his account.

5.3.18 Mr Gass denies that he ever banged the table.

5.3.19 Also Mr Gass denies that he raised his voice, was agitated or that he demanded money. He also denies Mr Rahman offered to pay him \$1000. Mr Gass accepts that Mr Rahman did say he would put money in his account the next day but not how much. It is clear from other material that Mr Gass received \$1000 on 2 May 2012.

5.3.20 Ms Islam also gave brief evidence about this meeting (T47). She was in the kitchen at the time preparing dinner. She was watching from inside and knew something was going on.

“Ms Islam: but when Joe left I asked for him, my husband, that, “What happened? Is there anything wrong?” He says, “It seems to me that Joe is trying to change his mind and he’s putting more pressure on me and he’s being a bit intimidating in today’s conversation and he has been asking for more money”, and he got really concerned and really, you know, worried about how he’s going to manage this issue”.

They discussed the matter later and decided to give Mr Gass more money hoping that he would finish the pool.

5.3.21 Ms Islam’s statutory declaration dated 5 September 2012 (Folio 7 section 77 report exhibits 2) includes the allegation “he showed visible aggression to my husband by banging on the table to get the point across, agitated and generally raises his voice and his stance very dominating”. However there is no detail of whether she saw this or was told this by her husband etc., or detail of the sequence.

5.3.22 The statutory declaration of Mr Imran Abedin dated 21 September 2012 (exhibit 4 he was not available to be called as he was overseas) supports Mr Rahman’s version of the conversation. It states it had the tone of an aggressive argument taking place; the body language was aggressive and not appropriate.

“While I couldn’t necessarily hear all the words clearly the high pitch tone in Mr Joe’s voice was evident and it was very obvious that an aggressive argument was taking place. I tried to observe though (sic) the mesh net door between the veranda and Lounge what was going on and felt the body language of Mr Joe was aggressive and less than appropriate”.

5.3.23 He did not hear a thump on the table but mentions that his friend Mr Rahman “...mentioned that at one point he (Mr Joe) had thumped on the table as he demanded additional payment”.

5.3.24 Mr Gass’ friends say he is not aggressive. Mr Ovenden (who is a friend of 25 years and at the time of the pool building, an employee) said Mr Gass is not aggressive and in his statutory declaration dated 16 August 2012, Mr Ovenden says Mr Gass has never shown aggression to the Mohiburs.

5.3.25 Also Mrs Gass in evidence and in her statutory declaration 20 August 2012 stated “Joe would never and has never been aggressive in nature towards all people in general”.

5.3.26 Also the statutory declaration of Damien Tonson dated 2 September 2013 (Exhibit 6), states “...known Joe 8 years helped out family, never seen be aggressive or bad mannered towards any person. Family friends Asian Aboriginal and Greek”.

5.3.27 I find that at this meeting Mr Gass conducted himself in a manner that Mr Rahman interpreted as aggressive and felt threatened by the content and manner of what was said. I am unable to find that the table was thumped or banged by Mr Gass as the payment of money was discussed. There is only the evidence of Mr Rahman of the thump or bang and this has changed and varied over time from a tap, to a slap to a bang. No one else at the house heard or gave evidence of hearing the bang.

5.3.28 However, supporting the finding that Mr Rahman felt threatened is his conduct over the next week in involving the police; initially around the missing tools but later to attend the meeting on 4 May 2012.

5.4 Arrangements and lead up to the meeting on 4 May 2012.

- 5.4.1 Mr Rahman's evidence is that Mr Gass did not return his phone calls after the 1 May 2012 meeting. He called to tell him about the missing equipment (T48). Mr Gass did not answer his calls and Mr Gass did not want to meet with him (T28) and in cross-examination (T35-6), Mr Rahman said he thought he called about five times. So his wife took the initiative to talk to Mr Gass.
- 5.4.2 Further when Mr Rahman was cross-examined as to why his wife attended the later meeting at the café, he emphasised that he had tried to call repeatedly and left messages. Mr Gass had not returned his calls and did not want to talk.
- 5.4.3 Ms Islam after calls by her husband were not returned by Mr Gass rang and left a message (T 49) and Mr Gass got back to her. The meeting was originally planned for Mr Gass' home. It was later changed to the shopping centre café.
- 5.4.4 Ms Islam's evidence is that she tried to talk to "Mr Joe" (T 48). She left messages and Mr Gass got back to her on 4 May 2012 in the morning. In this conversation Mr Gass asked her to come to his house and sit down. He was to text the address. Ms Islam discussed this with her work colleague and took their advice to meet in a public place. She called him back and suggested meeting in a public place between 5 to 6 pm.
- 5.4.5 Ms Islam's impression and description of Mr Gass' manner in the telephone conversations was that he was argumentative and strong in his voice. She conveyed this to Mr Rahman, and he arranged for the police to attend.
- 5.4.6 Ms Islam was clear in her evidence in chief and when cross-examined (T 53) that she called and dealt with Mr Gass because he was not returning her husband's phone calls and he had returned hers. She wanted to discuss the work on the pool with him.

- 5.4.7 Mr Gass in his material including his statutory declaration (exhibit 5) and evidence maintains that he initiated the meeting to discuss the money outstanding.
- 5.4.8 Mr Gass' evidence is that in the lead up to the meeting he tried to contact Mr Rahman to set up a meeting for him to come over to his house with his wife and discuss what to do further (T 66). In his view that's basically what happened with Ms Islam - over the phone arrangements to go to his house, and then this was changed by Ms Islam, to meet at the shopping centre at about 5.30pm.
- 5.4.9 This is consistent with Mr Gass' response filed 20 August 2012; he initiated the meeting to discuss payment of additional work and Mr Rahman was unable to attend. Mr Rahman was cross-examined on the issue that he had said he could not attend the meeting as he was working. Mr Rahman did not believe this was true; Ms Islam was involved as Mr Gass would not meet him so Ms Islam took the initiative (T 45).
- 5.4.10 Mrs Gass also gave evidence about the arrangements for the meeting; that Mr Gass suggested that it be at their place to make Ms Islam more comfortable. Also that Mr Rahman did not attend as he couldn't get away from work. Her evidence and cross-examination was focussed on her view that Mr Rahman had sent Ms Islam to this meeting (T 49).
- 5.4.11 I find that Ms Islam initiated the meeting with Mr Gass via her phone calls to him with the aim being to progress the building of their pool.

5.5 Meeting on 4 May 2012

- 5.5.1 The two people present at the meeting were Ms Islam and Mr Gass. Their evidence will be considered first as it is the only firsthand account of what occurred.
- 5.5.2 Ms Islam's evidence is that she came home from work and then attended the meeting at the shopping centre. She arrived before Mr Gass, and she was aware the police were there in the background (T 50).

- 5.5.3 During the conversation, she first asked Mr Gass what's going on, saying we sent money but you are not responding to my husband's calls. She says they discussed the pool. Mr Gass asked for more money. He first asked for \$5000. She said that was too much and questioned what it was for. Ms Islam said she would not pay this and Mr Gass then brought the amount down to \$2000. Ms Islam again said no. She was happy to give \$500 or \$1000 to start the work (T 50).
- 5.5.4 Ms Islam did not realise until later that Mr Gass was after more money, over and above the contract. She later realised that it was more money.
- 5.5.5 Ms Islam's evidence was that Mr Gass said "Oh, Farhana, I've never deal with Asians" (T 51). He said the phrase a number of times. She felt he was trying to subdue her and utter words to get her to agree with him.
- 5.5.6 Ms Islam gave evidence that she thought the conversation ended with Mr Gass saying "Ok Farhana I will do the work. Like let me discuss it with my wife."
- 5.5.7 Ms Islam also gave evidence of a variation on the phrase "Never deal Asians" (T 51 paragraph 30) and that she felt inferior, that he was superior and felt under pressure. She put up with the behaviour to get him to start on the work but she felt dominated, threatened and weak.
- 5.5.8 Ms Islam's original complaint dated 26 July 2012 contains the words "At the meeting although he was in a smiling mood, the words he used was very aggressive, belittling, intimidating using the comment repeatedly "I will never deal with Asians" ".
- 5.5.9 Some aspects of Ms Islam's evidence are supported in the email she sent to Mr Gass on 7 May 2012, particularly the issue of money and that Mr Gass would let them know by Friday, but the email contains no reference to his comments about Asians.

- 5.5.10 Ms Islam in cross examination denies she was crying or cried during the meeting. Ms Islam agreed in cross-examination that Mr Gass was not loud and aggressive –“ ..however verbally with his tone he was dominating me”. He kept saying “I never deal with any Asians” and he gave me the impression he was very frustrated dealing with Asians (T 55).
- 5.5.11 Mrs Gass in questioning Mr Rahman and Ms Islam expressed her view that they were not Asian but in her view Indian (T 56). This position is also reflected in the material provided to the Commission by Mr Gass. It is linked to Mrs Gass’ submission at the close of Mr Gass’ case that Mr Gass would not have used racial comments referring to Asians because Mrs Gass did not view Mr Rahman or Mrs Islam as Asian.
- 5.5.12 Mr Gass did not give evidence on this issue and it is Mr Gass who allegedly used the words.
- 5.5.13 Mr Gass’ evidence is that Ms Islam bought coffee (T 67); they sat down and discussed the situation. He said he needed money to continue. She was asking why he would not finish the job as they had paid enough money. Mr Gass said in evidence his response was that they had not paid enough.
- 5.5.14 Mr Gass’ evidence is that Ms Islam said they had no money; they could not afford to pay. Mr Gass knew he was going no further, it was a very short meeting (T 67).
- 5.5.15 Mr Gass’ evidence was that he was not aggressive; he did not intimidate Ms Islam. Further, that at the meeting, they did not really come to a decision. The meeting lasted 15 to 20 minutes.
- 5.5.16 During his evidence when asked about comments regarding dealing with Asians he responded (T67):
- “MR GASS: I don’t remember saying any comments about what they’re accusing me of. I can’t recall that. That’s about it, you know.
- MS SIEVERS: So you don’t recall saying that you would never deal with Asians again?

MR GASS: No. I don't know why I would have said that. I don't."

- 5.5.17 Mr Gass also said he was not frustrated; he had been down this road before (T 68).
- 5.5.18 Mr Gass did not give evidence that Ms Islam started to cry during the meeting, when telling him they had run out of money. However it appears in the documentation that he has provided to the Commission. It is a matter Mrs Gass placed in her statutory declaration dated 20 August 2012 - "...Joe said Mrs Islam was crying when she told him they don't have enough money to cover additional costs".
- 5.5.19 Further as set out above in his evidence, Mr Gass did not recall making comments in regard to Asians whereas in written materials it says he did not at any time make racial comments using the word Asian; he explained this by saying the Complainants were Indians not Asian, a matter raised exclusively by Mrs Gass during the hearing.
- 5.5.20 Mr Gass in a response to the Commission dated 20 August 2012 denies Ms Islam appeared nervous, frightened or resistant towards him. He states he would never subject a woman to the type of behaviour described.
- 5.5.21 Police officer First Class Constable Abuss gave evidence during the hearing (T 17). He became involved when Mr Rahman attended at the Palmerston police station and informed him of a dispute with the person building his swimming pool. First Class Constable Abuss's role was to maintain the peace. He attended the Palmerston Shopping Centre with a colleague. First Class Constable Abuss observed a meeting of 15 to 20 minutes between Ms Islam and Mr Gass, outside Gloria Jean's.
- 5.5.22 First Class Constable Abuss gave evidence that there was nothing of concern in the meeting. Ms Islam at first appeared nervous putting her case, trying to convince Mr Gass. He further said she was

nervous and then a little upset; like a person who got a bit frustrated and at the same time a bit nervous. However he was not close enough to observe crying, if it did occur (T 18).

5.5.23 First Class Constable Abuss was told after the meeting that the words “It does teach me or it taught me not to do business with Asian” and the lady said “This is also teaching me not to do business with Greeks”. In regard to the latter comment this was clarified in cross-examination that this might have been what she should or could have said (T 21).

5.5.24 Mr Rahman had told him that his wife was upset; however he could not see that from the distance she was from him.

5.5.25 The police officer also conveyed information he had been told by Mr Rahman about the meeting after it had taken place including the builder asking for extra money than that agreed in the contract. Also making the comment “Not how do business in Australia” and “Taught me not to do business with Asians” (T17 &18).

5.5.26 Mr Rahman gave evidence that he went to the police after work on 4 May 2012 at 4pm. He sought police involvement as on Mr Gass’ previous behaviour he thought he might be threatening or bullying toward his wife (T 29.) He asked the police to stand by.

5.5.27 Mr Rahman then attended at the shopping centre to make sure his wife was ok. He did not observe the meeting he just took glances. He was not close enough to hear what went on and he kept out of sight. His evidence adds little to the evidence of what was said or people’s demeanour during the meeting.

5.5.28 After the meeting Mr Rahman rang his wife, and they met at the exit of the shopping centre leading to where the Friday night markets are held (T 30). She told him the meeting went well except for a comment, something like, “I will never deal with Asians” - or words to that effect.

5.5.29 Mr Rahman opened the case saying the words used were (T 8) “I will never deal with Asians” and “I will never deal with any Asians”. This

was not how he framed it in the original material to the Commission. He referred to racial comments – Asians and other irrelevant comments.

5.5.30 Mr Rahman's evidence in regard to what occurred in this conversation also varies from the material in his email to Ms Ghule (dated 24 July 2012, section 77 report at folio 2 – exhibit 2). In the third paragraph of this email he stated "I had enough, I will never deal with any Asians" and trying to undermine "ASIANS" by his facial expression and comment".

5.5.31 Mr Rahman was aware from the conversation with his wife, that Mr Gass would give them his decision as to whether he would start the job or not by Friday.

5.5.32 Mr Rahman (T31) went to the police station to thank them for their help and conveyed second hand the conversation from his wife to the police officer. It is important to note here that the police being told by Mr Rahman what he says his wife told him about her conversation with Mr Gass, does not mean that the police are witnesses to the comments or conversation between Mr Gass and Ms Islam. They were not present for the conversation and can only relay a third hand account with all the inherent problems mentioned earlier in the decision.

5.5.33 Mrs Gass also gave evidence of what she was told by Mr Gass after the meeting (this evidence has all the same problems, of being a second hand version of a conversation as the evidence of Mr Rahman set out above). Mrs Gass' evidence was that Ms Islam was upset, literally crying (T 76). It was clarified in cross-examination to mean tears in eyes, upset that things had gone this way. Mrs Gass' evidence was that Ms Islam begged Mr Gass to finish the job and for them to pay when it was finished.

5.5.34 Mr Gass' evidence was that she said to him "...you didn't say you would finish the job, not work for free". She thinks he said no and said he would get back to them Friday with what the plan was.

5.5.35 Mrs Gass also sets out in her statutory declaration signed 20 August 2012 that Ms Islam was crying when she told her husband that they don't have enough money to cover additional costs.

5.5.36 The findings I make are that there is clear evidence Ms Islam was not sent to the meeting by her husband but that she took the initiative to call and arrange the meeting to try and resolve the matter.

5.5.37 Further I find that the conversation which occurred between Ms Islam and Mr Gass was not loud and not overtly aggressive. Further I find that whilst Ms Islam was upset during the conversation she did not cry. I find the conversation revolved around what money needed to be paid for the work to continue, the Complainants being financially stretched and not willing to pay the amounts being suggested by Mr Gass.

5.5.38 I find there was some reference during the conversation to dealing with Asians. I am unable to find precisely what was said. I don't accept the version put forward it appears primarily by Mrs Gass that this was not how she viewed Mr Rahman and Ms Islam and so the word Asians would not have been used.

5.5.39 Whilst it is not clear precisely what was said I find it was a general comment about dealing with Asians. Significantly I do not find that Mr Gass said, and there is no suggestion that he said, he would not deal with Mr Rahman and Ms Islam again because they were Asian. The evidence is clear that Ms Islam was distressed by the words used.

5.6 Email exchange and contract termination on 9 May 2012

5.6.1 Ms Islam (T 52) sent an email on 7 May 2012 reminding Mr Gass that he had said he would let her know by Friday (Email at Folio 1 of the section 77 report - exhibit 2) attached at Attachment B.

5.6.2 The email also stated "You agreed either you will start your incomplete work by this Friday or if you don't want to continue the contract you will let me know within the same timeframe".

- 5.6.3 Ms Islam received back an email dated 8 May 2012, clarifying that the payments that Mr Gass had requested at the 4 May 2012 meeting, were for extras added to the contract. The extras totalled \$7,040, and an invoice was attached.
- 5.6.4 The request for over \$7000 was a shock to both Mr Rahman and Ms Islam (T 31).
- 5.6.5 Mr Rahman sent an email back dated 8 May 2012 setting out his version of events (T 32); the email is at (Folio 1 Section 77 report, exhibit 2) and Attachment B. In summary it sets out Mr Rahman's understanding of the contract, and asserts that he did not agree to work that was being done being charged as extra to the agreed contract price. It discusses his understanding of the arrangement re the pool fence, pool tiles, labor, etc.
- 5.6.6 It is common between all parties that \$2000 was outstanding of the original contract price, which was the amount to be paid on the completion of the pool.
- 5.6.7 The email from Mr Rahman dated 8 May 2012 concluded as follows "Finally, we have the understanding that you are not going to finish the job as per contract unless and until we pay you the unauthorized demand (Extra). Now we have to choose different option to get the unfinished job done."
- 5.6.8 It is in response to this email that an email was forwarded under Mr Gass' name dated 9 May 2012 terminating the contract. It stated:
- "Hi Rahman
- Sorry Rahman, but that's not the way we do things in Australia.
- Your contract is terminated.
- Joe"
- 5.6.9 Mrs Gass in her evidence and in her statutory declaration set out the circumstances of sending this email.
- 5.6.10 In her statutory declaration (Folio 8 Section 77 report – exhibit 2)

“I admit to typing the response to email...- Joe gave me instructions to cancel their contract due to non-payment of additional works. Other comments made in this email were my own opinions...”.

5.6.11 In the statutory declaration there is an attempt to justify the comment but also an acknowledgement that

“I understand now how the email may have been perceived as offensive but was never intended to be racially discriminatory”.

5.6.12 In the document and during the progression of the complaint Mrs Gass apologised for the offence caused by the email.

5.6.13 Mrs Gass gave general evidence that she supports her husband in his business, doing books and administration (T 71). Mrs Gass in her evidence was clear she wrote the contract (T 72).

5.6.14 Mrs Gass gave evidence that she wrote the email dated 9 May 2012 that terminated the contract and included the comment “That’s not how we do things in Australia” (T 72).

5.6.15 Mrs Gass’ evidence (T 73) was that she wrote all the emails from her husband in this matter, they were all from directions given by her husband, except for that comment; unlike the other part to terminate the contract, it was not done under her husbands’ instruction, and was the only exception. She says she has been saying this throughout their dealings with the complaint.

5.6.16 She admitted in evidence that the phrase would be offensive to people not born in Australia (T 77). She also at the end of her evidence indicated that she had from the outset of the complaint apologised for her comment.

5.6.17 Mr Gass (T 69) gave evidence that he did not write or come up with the wording in this email. He said in his evidence “It did not come from me”. His wife does book work and accounts. He tells her what needs to be done. Mr Gass’ evidence is that he does not do any of the administration (T 69).

- 5.6.18 Mr Rahman (T 32) found this email discriminatory and was shocked. He discussed it with work colleagues who shared his view that it was offensive and told him that he should not tolerate it.
- 5.6.19 He and Ms Islam gave evidence that it had a big effect mentally and did affect them intensely.
- 5.6.20 Mr and Mrs Gass both gave evidence and mentioned in all of the material provided to the Commission why they terminated the contract. It was due to the non-payment of additional works.
- 5.6.21 Mrs Gass in her statutory declaration dated 20 August 2012 stated “Joe gave me instructions to cancel their contract due to non-payment of additional works”.
- 5.6.22 Mr Gass in material dated 20 August 2012 titled Response to Rahman Mohibur letter to ADC (folio 8 section 77 report – exhibit 2) stated “I terminated the contract. Although the previous email by Rahman suggest that he finished with my services – prompted me to terminate the contract”.
- 5.6.23 It is very clear in material tendered by Mr Gass and in his evidence and submissions that his view and case is that the contract was terminated due to non-payment for the extra work completed at Mr Rahman’s request (Invoice dated 8 May 2012). This was however only first documented in the invoice dated 8 May 2012.
- 5.6.24 The evidence of Mr Gass and Mr Ovenden is that all these agreements were done orally, not by writing down quotes and agreeing a price etc.
- 5.6.25 Mr Gass, in material attached to statutory declaration dated 2 September 2013 stated “However, due to non-payment of the additional works I did not return to Rahman’s job because he had failed to conform to his agreement”. Also “Therefore, I had terminated the contract due to non-payment of additional works.”

5.6.26 Mr Gass was explicit in his evidence and submissions that it had nothing to do with Mr Rahman and Ms Islam's race; the contract was terminated because of the non-payment for the additional work.

5.6.27 It is clear from the evidence, both oral and in email from Mr Rahman and Ms Islam, that they contemplated that the contract would not continue, both from Ms Islam's email dated 7 May 2012, (Attachment B) and Mr Rahman's email dated 8 May 2012 (Attachment B).

5.6.28 There is direct evidence from Mr and Mrs Gass that the contract was terminated due to ongoing non-payment for work additional to that in the contract.

5.7 **General behaviour**

5.7.1 Mr Rahman and Ms Islam in closing their case and Mr Rahman in his evidence gave more general evidence of Mr Rahman's view that they were treated differently in the negotiation of the contract and also the day to day work under the contract and in its termination.

5.7.2 At the end of his evidence (T 35) he said

"MR RAHMAN: That's all about racial thing, that he try to put more pressure on me so that I agree with him whatever he says. Actually, I felt, like, victimised or something like that, and in my position what I believe, if in my place there is a real born and brought up Australian was there in my place, Mr Gass wouldn't be –wouldn't be treat him like what he treated me. He wouldn't be treat him at the same way that he treated me as an Asian or Asian people. That's it's like feels, like I belief, that's such that I went that far otherwise we shouldn't have go through all this process and procedure and we shouldn't have been waiting for a year with this pain and this belief. That's all about, dear Commissioner".

5.7.3 However apart from the three incidents set out above there were no specific examples given in the evidence of Mr Rahman and Ms Islam.

5.7.4 There was also general evidence from Mr and Mrs Gass that they do not treat anyone on the basis of race and denials of treating anyone,

particularly his customers in this way, Australian or non-Australian (statutory declaration Mr Gass dated 2 Sept 2013 – exhibit 5)

- 5.7.5 Mr Gass did not at the time or at the hearing believe there was any underlying issue; apart from that they did not want to pay/refused to pay.
- 5.7.6 Mr Gass, in presenting his case, provided statements and evidence from Mr Ovenden and Mr Tonson that he was a good bloke who employed and assists Indigenous people. All of this is very commendable but of limited assistance in resolving the matter before me.
- 5.7.7 The allegation in regard to being treated differently because of their race generally in the negotiation of and administration of the contract is too general and not supported by specific evidence to substantiate the onerous and very specific requirements to prove discrimination under the Act.
- 5.7.8 A further general comment on the evidence is that neither party complied with the requirements of the contract when the work to be completed varied from the original contract, i.e. there was no variation notice. The documentation was very poor and led to an increased risk of misunderstandings which has occurred here; one party believing that the work occurring was proceeding under a contract they signed and agreed to and the other proceeding on the basis that what was occurring was additional to the contract, and required extra work. There is no clear evidence of precisely what was agreed, all leading to suspicion and conflict and the allegation of treatment being on the basis of race rather than just very poor business practise.

6 APPLYING THE ACT TO THE FACTS THAT HAVE BEEN FOUND TO BE PROVEN

- 6.1 The relevant sections of the Act are extracted at Attachment A.
- 6.2 The outstanding question is whether the conduct that I have found occurred amounted to prohibited conduct under the Act.

- 6.3 The first area is the conversation on 1 May 2012 where I have found Mr Gass conducted himself in a manner that Mr Rahman and his family and friend interpreted as aggressive. This was in the context of requesting payment for work that Mr Gass believed he had done and payment was due. However what is missing is any link between this conduct and the race of Mr Rahman and Ms Islam. They believe Mr Gass would not have behaved this way if they were not from an overseas country. However apart from the allegation no evidence was called to support this. On the material led in the case it is not an inference I am able to draw.
- 6.4 Also missing in this allegation is evidence of the link between the manner in which Mr Gass conducted himself and the provision of goods and services, or in this case no provision of goods and services.
- 6.5 Mr Rahman and Ms Islam ask me to link Mr Gass' aggression to race and therefore that no further work on their pool occurred. However the alternative inference from the evidence called by Mr Gass, suggests they were not treated any differently because of race and that Mr Gass did not complete their pool because they did not pay for the work he had already done.
- 6.6 As the onus of proof rests with Mr Rahman and Ms Islam, I am not able to find that they have proven this aspect of their case on the balance of probabilities.
- 6.7 The second area to consider is the use of a phrase at Gloria Jean's café on 4 May 2012 around not dealing with Asians again. Mr Rahman and Ms Islam would allege that this indicates that it was due to their race that the work on their pool did not proceed at or around the time of this conversation, and that it is open to infer that because race was raised this is why the work did not continue.
- 6.8 Again whilst the phrase was used the link to the non-provision of services or less favourable treatment in the provision of goods and services has not been established. I am not able to accept the inference Mr Rahman and Ms Islam need to establish to prove this aspect of their complaint when the

alternative which is put by Mr Gass, as set out above, is that he did not do any further work due to non-payment for work already done.

- 6.9 The final area to consider raises very similar issues, however, also the additional issue of whether Mr Gass can be held responsible for the conduct of Mrs Gass in regard to the content of the email sent on 9 May 2012, specifically the comment “Sorry Rahman, but that’s not the way we do things in Australia”. I must firstly consider whether Mr Rahman and Ms Islam were treated differently because of their race. The inference is available from the comment in the email. The email contains a reference to race, other than being born in Australia, and also the email referred to and explicitly terminated the provision of services to Mr Rahman. So not only is race other than Australian an aspect of the email, it is linked to the termination of the provision of a service. Both aspects are required to establish prohibited conduct.
- 6.10 This finding requires a consideration of the law in regard to the application of s 105 – vicarious liability to this situation and if Mr Gass can be held responsible for the conduct of Mrs Gass in sending the email dated 9 May 2012.
- 6.11 The first question is could Mrs Gass be regarded as a worker in relation to what she did for Mr Gass under the definition of work in s 4 of the Act. There was no evidence apart from what she did e.g. administration and prepares his documents on instruction, in particular all the emails and computer generated correspondence. There was no other evidence of how she was paid, hours worked etc. to establish her as a worker under the Act.
- 6.12 The question then is could she be an agent for Mr Gass? The arrangement between Mr Gass and Mrs Gass in regard to her role in his business is more akin to a principal and agent. For commercial purposes an agent is a person who is authorised, either expressly or impliedly, by a principal to act for that principal so as to create or affect legal relations between the principal and third parties. The principal is bound by the acts of an agent as a result of the authority given to the agent. In cases of actual authority, the relationship between the principal and an agent is a consensual one. This

commercial relationship is altered by the provisions of the Act which sets out the terms under which an act of an agent binds the principal.

- 6.13 In this case it is clear from the evidence of Mr and Mrs Gass that she usually acts as Mr Gass' agent, and does all the administration for the business, prepares all correspondence etc. The question is then whether in adding the comment "Sorry Rahman, but that's not the way we do things in Australia" to the termination email she acted as the Act requires "in connection with her duties as an agent".
- 6.14 On this occasion what she did was outside that arrangement she had with her husband to act as his agent. She had specific instructions consistent with Mr and Mrs Gass' evidence, to terminate the contract for non-payment of the additional work and the comment she made was one she included beyond those instructions. On the basis of this factual finding I cannot find that Mr Gass, who is the only Respondent, can be held responsible by the provisions of s 105 of the Act for the actions of Mrs Gass.
- 6.15 Mrs Gass did concede the comment would be offensive to someone not born in Australia.

7 CONCLUSION

- 7.1 The case as stated at the outset is primarily a dispute over the work involved in building a swimming pool. Both parties view the negotiations and what occurred from very different perspectives.
- 7.2 Ascertaining what occurred is not assisted by the fact that variations of what was contained in the contract and extra work to be performed were not placed in or confirmed in writing. It would appear that this is the way Mr Gass does business, exposing himself to potential allegations such as these and disputes over precisely what was agreed.
- 7.3 It is unfortunate that neither party used the procedure set out under the contract for the additional work or followed the dispute resolution procedures under the contract.
- 7.4 Mr Rahman and Ms Islam were distressed by their dealings with Mr Gass and believed there was a racial element to the way they were treated. Apart

from the last comment in the email dated 9 May 2012 I have not found this to be the case to the level required under the Act to substantiate discrimination. Mr Gass maintains that the race of the Complainants was the last thing he thought of.

8. DECISION

For the reasons set out above I find that the prohibited conduct alleged in the complaint is not substantiated and I dismiss the complaint.

A handwritten signature in black ink, appearing to read 'Sally Sievers', written in a cursive style.

Sally Sievers
Commissioner

18 December 2013

ATTACHMENT A

4 Interpretation

(1) In this Act

.....**race** includes:

- (a) the nationality, ethnic or national origin, colour, descent or ancestry of a person; and

services include:

.....

- (g) services of any profession, occupation, trade or business; ..

work includes work:

- (a) in a relationship of employment (including full-time, part-time, casual, permanent and temporary employment); and
- (b) under a contract for services; and
- (c) remunerated in whole or in part on a commission basis; and
- (d) under a statutory appointment; and
- (e) by a person with an impairment in a sheltered workshop; and
- (f) under a guidance program, vocational training program or other occupational training or retraining program.

19 Prohibition of discrimination

(1) Subject to subsection (2), a person shall not discriminate against another person on the ground of any of the following attributes:

- (a) race;

20 Discrimination

(1) For the purposes of this Act, discrimination includes:

- (a) any distinction, restriction, exclusion or preference made on the basis of an attribute that has the effect of nullifying or impairing equality of opportunity; and
- (b) harassment on the basis of an attribute, in an area of activity referred to in Part 4.

(2) Without limiting the generality of subsection (1), discrimination takes place if a person treats or proposes to treat another person who has or had, or is believed to have or had:

(a) an attribute; or

(b) a characteristic imputed to appertain to an attribute; or

(c) a characteristic imputed to appertain generally to persons with an attribute,

Less favourably than a person who has not, or is believed not to have, such an attribute.

(3) For discrimination to take place, it is not necessary that:

(a) the attribute is the sole or dominant ground for the less favourable treatment; or

(b) the person who discriminates regards the treatment as less favourable.

7.4.1 (4) The motive of a person alleged to have discriminated against another person is, for the purposes of this Act, irrelevant.

41 Discrimination in goods, services and facilities area

(1) A person who supplies goods, services or facilities (whether or not for reward or profit) shall not discriminate against another person:

(a) by failing or refusing to supply the goods, services or facilities; or

(b) In the terms and conditions on which the goods, services or facilities are supplied; or

(c) in the way in which the goods, services or facilities are supplied; or

(d) by treating the other person less favourably in any way in connection with the supply of the goods, services or facilities.

105 Vicarious liability

(1) If:

(a) a worker of a person does an act in connection with his or her work that is unlawful under this Act; or

(b) an agent of a person does an act in connection with his or her duties as an agent that is unlawful under this Act,

this Act applies in relation to the person as if the person had also done the act.

- (2) Subsection (1) does not apply if the person shows that he or she took all reasonable steps to prevent the worker or agent from doing the act referred to in that subsection.
- (3) For the purposes of subsection (2) and without limiting the matters that may be taken into account in determining whether the person has taken all reasonable steps, the following matters are to be considered:
 - (a) the provision of anti-discrimination training by the person;
 - (b) the development and implementation of an equal employment opportunity management plan by the person;
 - (c) the publication of an anti-discrimination policy by the person;
 - (d) the financial circumstances of the person;
 - (e) the number of workers and agents of the person.
- (4) If, after the hearing of a complaint, the Commissioner finds that prohibited conduct alleged in the complaint is substantiated in respect of an act that a person is taken to have done under subsection (1), the Commissioner must, before making an order that an amount be paid to the complainant for loss or damage caused by the prohibited conduct:
 - (a) consider the extent of steps taken by the person to prevent the prohibited conduct; and
 - (b) take those steps into consideration in determining the proportion of the amount to be paid to the complainant by the person.

ATTACHMENT B

Mohibur Rahman

From: Joe Gass [jgdoverindustries7@gmail.com]
Sent: Wednesday, 9 May 2012 12:15 PM
To: Mohibur Rahman
Subject: Re: FW: Contract for the swimming pool, 3 Davis Court, Rosebery

Hi Rahman,

Sorry Rahman, but that's not the way we do things in Australia.

Your contract is terminated.

Joe.

On Tue, May 8, 2012 at 10:40 PM, Mohibur Rahman <Mohibur.Rahman@nt.gov.au> wrote:
Hi Joe,

Thanks for your e-mail and now at least I can understand that you were making plot to get some extra money out of the contract as I can see your attached funny invoice. I thought you were asking for contracted amount before finishing contracted job and that's why you were reluctant to finish the job. Now your motive is clear to me. Now let us face the FACTS.

Fact-1: We had a contract to build a solid concrete salt water swimming pool with the measurement of 7 meters X 2.6 meters X 1.8 meters depth (actual measurement is 6.85x2.40x1.6meters) and to make that happen, how much cement, steel, labour cost and concrete you need IS NOT MY CONCERN. I wanted my swimming pool done and you did not discuss with me any of the technical issues which may have effected our contractual amount. We agreed for \$17500 (\$10000 on agreement and \$7500 CASH) . Regarding the fence you insisted me to buy from Bunnings saying that they were cheap and you will install them without mentioning any labour cost. Otherwise I could have chosen different options; and I did not had to take hassles to run around and finally I had to give the job to Darwin Pool Fencing as you were not efficient enough to install glass pool fence and may be that was not area of your expertise. I DID NOT TELL YOU TO DO ANY EXTRA WORK FOR ME OUT OF CONTRACT. What you have done, you did it as per contract and according to your own interest.

Fact-2: Labour for glass pool fence: I must agree that you worked only 1 (one) day (29/03/2012) starting from 9:30 am to 1:30pm and the next day (30/03/2012) at about 10 am, my wife rang me stating that you rang her saying that one of the glass was exploded itself and you made arrangement to return back them with the help of Bunnings Transport.

Fact-3: Again you insisted me to put Pool Tiles instead of paving around the pool saying that it will look nice and straight which cost me additional \$ 1400 out of my pocket and also you agreed to put them on because in that case you wouldn't have to put the pebbles and make the paving which was part of our contract.

Fact-4: I am sorry to say that you completely lying to my wife stating that you asked me for EXTRA in several times. But reality is that YOU DID NOT ASK ME FOR ANY EXTRA. We never ever had any discussion about any EXTRA. What I can see, you trying to take advantage since I was not present there (Palmerston Shopping Centre) at the discussion between you and my wife.

Fact-5: I definitely have the contracted amount ready for you which is only \$ 2000 and we made

9/05/2012

all the previous payment in time to you but surely we will never have money for any unauthorized demand.

Finally, we have the understanding that you are not going to finish the job as per contract unless and until we pay you the unauthorized demand (Extra). Now we have to choose different option to get the unfinished job done. Thank you very much for your work.

Cheers
Mohibur Rahman

NOTE: There are lot of damages caused by you we also need to take under consideration.

From: farah.7777@yahoo.com [farah.7777@yahoo.com]
Sent: Tuesday, 8 May 2012 5:41 PM
To: Mohibur Rahman
Subject: Fwd: Contract for the swimming pool, 3 Davis Court, Rosebery

Sent from my iPhone

Begin forwarded message:

From: Joe Gass <jgdroverindustries7@gmail.com<<mailto:jgdroverindustries7@gmail.com>>>
Date: 8 May 2012 1:49:57 PM ACST
To: Farhana Islam <farah.7777@yahoo.com<<mailto:farah.7777@yahoo.com>>>
Subject: Re: Contract for the swimming pool, 3 Davis Court, Rosebery

Hi Farhana,

I have no discrepancies about what's written on the contract, quite the contrary. May I be a little clearer, on Friday 4th May the amount of \$2,500 was not intended as additional money out of the contract. This was presented as a way out for you to be able to pay the amount outstanding for the Additional works or Extra's added to the contract.

Let me remind you, that the extra's added to the contract is totalling \$7,040 for extra concrete and labour and this needs to be paid in respect of the contract and by agreement. (please see invoice attached)

On numerous occasions, I have told Rahman that he needs to pay for the extra's, this is why your pool is not finished.

On Friday 4th May, you told me Farhana that you have no money left. So I proposed you pay an amount of \$2,500, so I can cover some costs for the extra's just so we can move on. However, a payment of \$2000 is still remaining as the balance of the contract price once the pool is complete.

I hope that you can finally understand what is required of you before we can move on to complete the pool.

Please call me asap to discuss this, hopefully we can find a solution.

Regards,

Joe.

DOC B



ABN: 99 707 594 551
Rosebery Palmerston NT 0832
M: 0487 653 561
E: jgdroverindustries7@gmail.com

08/05/2012

Rahman & Farhana Mohibur
3 Davis Crt
Rosebery NT 0832

INVOICE STATEMENT

EXTRA'S ON CONTRACT

Steel 7m x 2m = 14m ² @ 200mm x \$200 per metre.	\$2,800 Extra concrete
Lay concrete pavers @ \$80 per m ²	\$1,120 Labour
Lay Bullnose pavers 20 Lineal metres x \$56 per Lineal metres	\$1,120 Labour
Labour for glass panel pool fence @ 3 days labour	\$2,000 Labour
<u>Total balance owing</u>	<u>\$7,040</u>

Please pay the amount owing within 7 days

On Mon, May 7, 2012 at 10:14 PM, Farhana Islam

<<mailto:farah.7777@yahoo.com>farah.7777@yahoo.com<mailto:farah.7777@yahoo.com>>

wrote:

Hi Joe,

I am writing you to remind you about the deal we had this Friday on 04/05/12. On our discussion you have asked me for \$2500 additional money out of the contract which was unreasonable as well as unacceptable to claim and therefore I refused and you also have understood my opinions clearly . And then you have demanded all the rest of the contracted money which is only \$2000 before you commence the pending work. But my understanding is that you would be able to claim that money only when you start your incomplete work and come to a reasonable end. We had the final negotiation that you will let me know about your decision to carry over the contractual work by this Friday on 11/05/12. You agreed either you will start your incomplete work by this Friday or if you don't want to continue the contract you will let me know within the same timeframe. Waiting to hear from you.

With thanks,
Farhana