

5. THE REASONS WHY YOU ARE NOT PAID

CONTACT US

1. THE DEBTOR IS DISHONEST AND DECEITFUL

Past performance is the best predictor of future performance. Carry out background checks. Ask that the contract include;

- progress payments at certain stages
- the right to stop work if not paid
- the right to provide certification after payment

If this is not agreed to, **lights should flash and bells should ring.** Why are these conditions objected to?

2. THEY CANNOT PAY – THEY WOULD IF THEY COULD – most debtors do not dispute a valid debt

TRUE STORY: A builder owed a subbie \$20,000. He would not return the subbies calls. Doug's client was adamant **all he wanted to do was sue the builder.** Doug tracked the builder down. He was avoiding the subbie because he was embarrassed. He could not pay due to cash flow problems. He would pay in a couple of months when a project came to completion. The builder agreed to sign a **Deed of Acknowledgement of Debt with a payment plan.** Three months later the debt was paid in full plus interest.

3. THE CREDITOR DOES NOT DESERVE TO BE PAID – do what you promised to do

TRUE STORY: A builder had not responded to letter of demand. He had every reason not to pay. The wrong size cable had been used. The builder had tried to contact the electrician. Calls had not been returned. The demand arrived. Anger. Upset. No way was the builder going to pay. A good relationship had gone bad. One phone call and all this was discovered. All could have been prevented if the electrician had returned calls. He was more than willing to pay once the work was rectified.

Get advice you can act on with confidence. Call Doug Skelton.

P: (07) 3217 4811

F: (07) 3217 4822

M: 0419 686 823

E: doug.skelton@skeltonlaw.com.au

www.skeltonlaw.com.au

46 Young Street
Annerley Qld 4103

**FREE 20 MINUTE
CONSULTATION**

FOR IMMEDIATE ASSISTANCE RING NOW.

Free initial advice on your building concern is just a phone call away.

WE MAKE IT HAPPEN

Practical solutions for the WORKING MAN



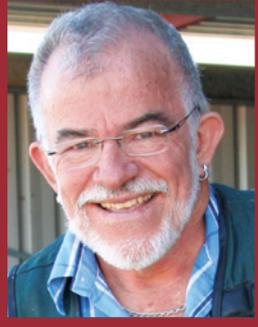
**DANGER
GETTING
PAID
ENOUGH?**

**5 WAYS TO MAKE
SURE YOU ARE!**

**Skelton
Law**

Lesson: Until the creditor has kept his promise the debtor does not have to keep his.





1. PUT IT IN WRITING

Legal fact: The law states that ALL building contracts must be in writing.

3 ESSENTIAL ELEMENTS OF ALL CONTRACTS:

1. **Properly identify the contracting parties.** Who will give you instructions, authorise variations, approve extensions, accept claims and make payment
2. **Scope of works.** Define, specify and document what you are promising to do.
3. **Contract price.** How, when, where, why and what you are going to be paid.

2. KNOW YOUR CONTRACT

It is vital you **understand critical dates** and notice provisions to do with claims, extensions of time and liquidated damages. **Not to do so is at your peril.**

TRUE STORY: A subbie entered into a contract with liquidated damages of \$4,250 per week. There were notice provisions for extensions of time. Delays were caused by the owner, builder and other trades. The subbie did not comply with the notice provisions or insist on signed variations before doing extra work.

He wanted to claim \$220,000 for unapproved variations. Doug spoke to the builder who advised that if the subbie wanted to claim for variations the builder would claim liquidated damages.

Had he complied with notice provisions and had variations signed he would have been OK, but he didn't. Tragic result: insolvency; excluded individual and loss of licence.

Lesson: Comply with notice provisions and if variations are not signed do not do the work.

3. UNDERSTAND BCIPA – YOUR MOST POWERFUL WEAPON

Golden Rule: Make every claim a payment claim

- Deliver on or after “reference date”
- One claim per monthly billing cycle
- Identify relevant work or goods and services
- State amount being claimed – include GST
- State claim is payable
- State *“This Payment Claim is made under the Building and Construction Industry Payments Act 2004”*
- Serve within 12 months of last work
- Serve on the person/entity contractually liable to pay
- Obtain proof of service

If you are not paid, except for a valid reason detailed in a valid Payment Schedule – **the boot is on your foot.**

You can inform the debtor **you will:**

- If reason given for non-payment is invalid **seek adjudication** – the debtor pays for this
- If Payment Schedule is not received on time and/or claim not paid when due, **convert statutory debt** into an **enforceable judgement debt** – the debtor pays for this
- If Payment Schedule is not received on time and/or claim not paid, **suspend work** – this has dramatic effect
- **Notify the BSA** if judgement is obtained

STOPPING WORK – the effect is magical and always immediate – the most underrated way to get paid.

TRUE STORY: A contractor was owed \$195,000. The work was not complete and the owner needed the certification of the contractor. He gave proper notice (Doug drafted it for him) and stopped work before giving certification.

THE BOOT WAS ON HIS FOOT. He was paid the whole amount within days. **If Doug's client had not delivered a valid Payment Claim he would not have had the legal right to give notice and stop work.** He would have been required to complete the contract before payment.

4. NEGOTIATION BEFORE LITIGATION

The intervention of a third party who truly listens, understands and is genuinely seeking a resolution cannot be underestimated.

4 tips before rushing off to sue a debtor:

- **Discover the facts** – most disputes hinge on the facts
- **Speak to the debtor** – understand the debtor's position
- **Develop a respectful relationship** – when you listen to the debtor he will listen and understand your position
- **Negotiate a resolution** – when the above are done it is almost certain the matter will be resolved

TRUE STORY: A subbie contacted Doug. He was desperate. He was owed \$184,000. Promises had been made and not kept. Communications had broken down. The subbie needed a payment by 5pm on Friday to meet his commitments.

Doug discovered the facts. He spoke to the debtor to understand his position. They both developed a respectful relationship. He promised a \$100,000 cheque. Doug's client was frantic, he needed clear funds. More firm but respectful discussions. Funds were electronically transferred before 5pm and balance paid within 3 weeks.

Lesson: If the client had asserted his legal rights, either proceedings or adjudication, it is likely it would have been weeks, possibly months, before he was paid.

Best advice – if too busy – get advice