

Ref.

DRAFT

NSC19
NSC
(U) 10

7th August 2000

UDL Kenworth Engineering Ltd.
Unit 01, 7/F
Westley Square
48 Hoi Yuen Road
Kwun Tong
Kowloon

HA's agreement for direct
payment to NSC due
to NSC's (Hing Lee) Liquidation

Attn: Mr. M.S. Chan, Jango

Dear Sirs

Redevelopment of Un Chau Street Estate – Phase 1

Sub-Contract to Contract No. 107 of 1995

Electrical Installation

Direct Payment for Retention and Material On Site

We refer to your letter ref. EG660/C3/150/CM/00 dated 1st August 2000 regarding the captioned and would draw your attention to the following:-

1. There is no privity of contract between Housing Authority and Kenworth and there exists no warranty or collateral contract between Housing Authority and Kenworth as alleged by you (proviso in clause 5(2) of Sub-contract Conditions refers).

2. GCC clause 69(3) of the Main Contract confers a discretionary power on the Employer to make any direct payment to Nominated Sub-contractors if the Contractor fails to satisfy the Surveyor that he has reasonable cause for withholding or refusing to make any certified payments to any of the Nominated Sub-contractors. Please note that clause 69(3) is not obligatory on the part of the Employer, and neither the existence nor the exercise of any such power by the Employer or the Surveyor shall render the Employer liable to pay any Nominated Sub-contractors directly in accordance with GCC clause 69(3)(d).

3. Your statement accusing the Housing Authority of wrongful selection/appointment of the Main Contractor is entirely unfounded, and the Housing Authority shall not be liable under the Contract for any loss, expenses, damages, etc. suffered by any parties not privy to the Contract arising from the lawful determination of Hing Lee's employment under the Contract due to his liquidation. The Housing Authority in this case is also one of the unsecured creditors in the liquidation of Hing Lee in the same situation as your office.

② c.l. 29.8
clause 27.6
empower E
to direct
payment
but it's
not an
obligation

③
E not liable
for NSC's
HLE →
No privity of
Contract.

privity

no
obligation
under
contract

your attention is drawn to GCC clause 81(4) of the Main Contract that the Housing Authority shall not be liable to pay to Hing Lee any money on account until the expiry of the Maintenance Period or the last of such Periods and thereafter until the cost of completion and maintenance, damages for delay in completion, if any, and all other expenses incurred by the Housing Authority have been ascertained and the amount thereof certified by the Surveyor. As and when the retentions being withheld in favour of any of the Nominated Sub-contractors fall to be released, it shall be effected under the operation of GCC Clause ~~62~~ of the Main Contract, i.e. paid to the Contractor, in this case, the Contractor's liquidator for the benefit of the Nominated Sub-contractors.

release retention through M.C.

30 and 27(a) (vii)

paid to MC, MC's liability

5. We note that your claimed amount of unpaid materials on site at \$1,179,704.50 is without any build up or substantiation. Please note that the valuation for the value of works carried out and fixed materials on site vis-à-vis your interim payment application No. 17 dated 10/2/1998 submitted by Hing Lee in his payment application has been included in Surveyor's Certificate No. 24 wherein a sum of \$1,124,000.00 was certified as due from the Contractor to you. Thereafter and before the date of re-entry, Hing Lee has not submitted any of your interim payment application for consideration and certification by the Surveyor pursuant to clause 21 of the Sub-contract Conditions and GCC clause 79 of the Main Contract nor have you submitted any documentary proof that you are entitled to further payment for unfixed materials on site. Hence, it is Hing Lee, not the Housing Authority liable to any outstanding payment due to you and nothing aforesaid shall in any way prejudice your right against Hing Lee for the said payment or any further payment pursuant to clauses 22 and 28 of the Sub-contract Conditions.

hold by M.C.
M.C. liable to pay not H.A.

Yours faithfully,

c.c. Housing Department – Mr. W. P. Chan (BSE/C40)
Levett & Bailey – Mr. C. H. Chan / Mr. Andy Lee