

# Non Payment ahead+

## Warning signs that you're not going to get paid

When I sit in front of my clients and ask them to tell me the story of their payment issue I often hear warning sign after warning sign that my client did not pick up on. They tell me about what the builder or project manager said or did which were clear signals that payment was going to be an issue. Yet they kept working, oblivious to the dispute that lay ahead.

If you can spot these signs early you can address non payment early. It is better to argue about \$20 000 than \$150 000.

I will outline the most common below.

### 1. Informalising the relationship

You and your client are not mates, friends, or relatives. You are in a business relationship. That means that your relationship is governed by the contract. Keep it that way. A key cause of disputes is where each party agrees to deviate from the contract in a series of informal works or undertakings. Then the client refuses to pay for those works, and then retreats back to the contract, and denies any additional agreements.

You all know what I am talking about.

You are entering into these informal agreements because you want to be a 'good bloke'. Forget it. The contract is the agreement. Any changes need to be run under that agreement.

You have a business relationship. It is 'fee for service'. Don't lose sight of that.

### 2. Dumping the paperwork

Often a contract will require certain notices and documents to be completed, sent, signed off etc at certain points. For example you may send your client an Extension of Time [EOT] request. Or you may quote a variation and submit it for sign off.

Now your client does not sign it or respond as the contract requires. Let' say you get a verbal approval, or your client refuses to sign or makes an excuse. Then you accept this and go ahead.

You have just left yourself wide open. Your client will deny approval for any of it. I often see contractors who follow the process as described in the contract, but their client doesn't. For example an EOT Notice may require a response in writing, but the client does not respond at all. (Clearly to avoid approving any EOT.)

Keep to the process. If the contract describes a process for each side to follow then hold your client to that process. Don't do anything unless your client does their part too. If a variation has to be signed off by the client then don't start

it until it is signed off. If an EOT Notice goes unresponded to, then insist that it is, and send written correspondence noting that your client has not responded.

These are all examples where your client does not want to create written evidence of their agreement to anything that might cost them money. Don't let that happen.

### 3. Gone bush

Suddenly you can't get your client on the phone. You know what I'm talking about. Messages unreturned. Faxes unanswered. They always appear to be in meetings. This is a strong sign of a payment problem. This usually happens in conjunction with other issues. For example you might be calling to follow up on your EOT notice or your variation quote, or when your promised payment will come in.

Don't accept this and keep working. A good strategy is to first send written notices to your client noting the number of calls and messages you have left and that they have not answered. Then, depending on what your contract says, you can simply not carry out the work in question. If you haven't gotten a response from your client then you can claim you have no direction either way and simply not do the work. This will almost always drag your client out of the shadows.

Above all you should be aware that the difficulty in contacting your client has nothing to do with all the 'meetings' he is in. It's likely to be connected to avoiding payment.

### 4. Meetings meetings meetings

Whenever you are being called in to meetings to 'sort out' things that are already clearly set out in the contract it's time to be worried. For example the contract might state that you are to be paid 30 days EOM. That date comes and goes without payment. You call your client to ask why you haven't been paid and they call you in to a meeting to 'sort it out'.

Sort out what? The contract states when claims are to be in, the contract states when they are to be paid. Simple. Yet you are being called into meetings to negotiate various terms and arrangements that are already agreed in the contract.

I had a client that spent months in these ridiculous meetings where all sorts of alternative payment arrangements were put to him. In short his client wanted to vary his contractual obligations relating to payment, while my client was expected to stick to the contract. In the end my client kept working and his client went into administration owing him \$70 000.00.

If you must attend these meetings make detailed notes and send your clients Minutes of that meeting. Also I would almost never agree to vary what was agreed in the contract. It's the thin edge of the wedge.

### 5. Ridiculous Payment Schedules

This is so common. You submit a claim for \$120 000.00 and you get a Schedule for \$42 000.00. Too many contractors accept this and continue working. After 4 months you have done \$500 000.00 and been paid \$135 000.00. This is crazy. I have looked at these Schedules and they are miles away from justifying such large shortfalls. Most of the time the

client will not argue with the work done but will create a whole series of set-offs claiming defective and incomplete work and damages.

You need to hit these hard straight away. Too many contractors try to 'have meetings' (see above) to reason with the client and get more money. Forget it. Your client has to justify every cent that they take off your table. If they can't, then take the matter to adjudication immediately.

This problem never improves next month. It only gets worse. When you client sees you are willing to work regardless of the low scheduled amounts, they will do it again next time (why wouldn't they?)

Hit this one hard straight away.

These five warning signs happen in combination or on their own. You need to see them for what they are: signs that you will not be paid. The key is to act quickly and address them head on. If the relationship breaks down then so be it. You need to protect your cashflow first. It is better to be in dispute over less money, than over 8 months worth of work. By then you will have no leverage in any dispute and will take anything to get out. Don't let that happen.