

GLOBAL CLAIMS FOR DAMAGES IN CONSTRUCTION CONTRACTS

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## ABSTRACT

Global claims are measures of damages or contractor's claims for additional costs caused by alleged breaches of contract by the employer where the alleged total costs of the contractor is compared with the contract value or price. In global claims, the claimant does not seek to attribute loss to specific breaches of contract, but rather alleges a composite loss as a result of all the alleged breaches. This method obscures the necessity of demonstrating the nexus between the individual breaches alleged to the consequences of the breach. Thus, one would have concluded that claims made under the method, but does not fully complied with the strict circumstances which allow a global claim to be put forward, would not have survived litigation. However, the current legal position of global claims seems to be at odd with this proposition. Therefore, this research is to determine whether the conventional approach and requirement of establishing the causal nexus link in a damages claim can be dispense with in cases where the claims are put forward in this form. Consequently, study is conducted to find out the approaches adopted by the courts to strike a balance between the need to prove causal nexus while preserving the claimant's right to sought remedy for the damages suffered. The research methodology undertaken in this study is analysis and review of case laws from United Kingdom and other Commonwealth countries. Further to the study conducted, conclusion can be made that the court will insist on the claimant to establish the causal nexus link between the breach of contract and the resulting financial consequences. However, this requirement is not enforced with utterly strict requirement for compliance which failure to establish the causal nexus link will resulted in the claim being struck out. It is undeniable that although global claims are discouraged, the right of a 'wronged' party to sought remedy for the damages suffered due to the breach is not extinguished merely due to the impossibility or impracticality to prove the causal link as can be deduced from the findings of the court in many case laws.

## ABSTRAK

Tuntutan global adalah remedi kerosakan atau tuntutan kontraktor bagi kos tambahan yang disebabkan oleh dakwaan pelanggaran kontrak oleh majikan di mana jumlah kos yang dibelanjakan oleh kontraktor dibandingkan dengan nilai harga kontrak. Dalam tuntutan global, pihak yang menuntut tidak bertujuan untuk mengaitkan kerosakan dengan pelanggaran kontrak yang tertentu, tetapi mendakwa kerugian komposit akibat semua pelanggaran yang dikatakan. Kaedah ini mengaburi keperluan menunjukkan pertalian antara pelanggaran tertentu dengan akibat pelanggaran tersebut. Oleh itu, seseorang akan membuat kesimpulan bahawa dakwaan yang dibuat di bawah kaedah ini, tetapi tidak mematuhi sepenuhnya kriteria yang ketat yang membenarkan tuntutan global dikemukakan, tidak akan dibenarkan di bawah undang-undang. Walau bagaimanapun, kedudukan semasa undang-undang tentang tuntutan global adalah tidak begitu terus terang. Oleh itu, kajian ini adalah untuk menentukan sama ada pendekatan konvensional dan keperluan untuk mewujudkan pautan pertalian sebab dan akibat dalam tuntutan ganti rugi boleh diketepikan dalam kes-kes di mana tuntutan tersebut dikemukakan dalam kaedah ini. Oleh itu, kajian ini dijalankan untuk mengetahui pendekatan yang diterima pakai oleh mahkamah untuk mengimbangi antara keperluan membuktikan pertalian sebab dan akibat di samping memelihara hak penuntut menuntut remedi untuk kerosakan yang dialami. Kaedah penyelidikan yang dijalankan dalam kajian ini adalah analisis kes-kes undang-undang dari United Kingdom dan Negara-negara Komanwel yang lain. Kesimpulan daripada kajian adalah mahkamah akan mendesak pihak yang menuntut untuk menubuhkan pertalian antara sebab pelanggaran kontrak dan akibat kewangan. Walau bagaimanapun, keperluan ini tidak dikuatkuasakan dengan ketat di mana kegagalan membuat demikian akan menyebabkan tuntutan dibatalkan. Tidak dapat dinafikan bahawa walaupun tuntutan global tidak digalakkan, hak parti 'dianiaya' untuk mendapatkan remedi kerosakan yang dialami disebabkan oleh pelanggaran tidak akan dipadamkan semata-mata kerana kemustahilan atau kegagalan untuk membuktikan pertalian sebab dan akibat yang boleh disimpulkan dari penemuan kes-kes mahkamah.