

CONTRACTOR'S LIABILITIES TOWARDS EMPLOYER'S DEFECTIVE
BUILDING WORK CLAIMS DURING DEFECT LIABILITY PERIOD

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ABSTRACT

The contractor's liability towards the defects discovered during defect liability period is related to the issue of their rights and liability during that period. The issues included are the employer's obligation to notify the contractor of defects, the contractor's liability towards defective work caused by design defects, materials supplied by employer and whether the contractor's liability to warn the employer if any faulty design that they knew about. The objective of this research is to identify the defective building work claims made by the employer for the defective building works during defect liability period and the circumstances whether the contractor is liable to the claims. The findings of this study show that, during the defect liability period, the contractor is liable and has the duty and rights to return to the site to rectify the defects and the employer is under the obligation to notify the contractor of the defects discovered. The contractor is not liable for the defective work caused by the quality of materials provided by employer, supplier chosen by employer and designer's defective designs. But, it is the contractor's liability to warn the employer of the faulty designs. The contractor is in breach of contract when he fails to rectify the defect during the defect liability period, and is liable to pay damages to the employer. The damages under employer's defective work claims are cost of rectification, loss of amenity and consequential loss. The contractor is not liable for the full cost of rectification when the employer fails to give the notice of defects or refuses the contractor to rectify the defects. The contractor is liable to the damages for the loss of amenity when the work is not up to the satisfaction of the employer. The contractor is also liable to compensation for the consequential loss. The case analysis show that the employer can claims under the contract and common law. This study can use as a guidance for the employer and contractor on their legal rights and liability in respect to the defective works which appear during defect liability period.

ABSTRAK

Liabiliti kontraktor terhadap penampilan kecacatan dalam tempoh liabiliti kecacatan adalah berkaitan dengan masalah hak-hak dan kewajipan selama tempoh itu. Masalah tertakluk kewajipan majikan untuk memberitahu tentang penampilan kecacatan, samada kontraktor bertanggungjawab terhadap kecacatan kerja yang disebabkan oleh kecacatan rekabentuk, bahan-bahan pembinaan yang disediakan oleh majikan, dan samada kontraktor bertanggungjawab untuk memberi amaran kepada majikan jikalau mereka tahu tentang sebarang kecacatan rekabentuk. Tujuan kajian ini bertujuan untuk mengenal pasti tuntutan kecacatan yang dibuat oleh majikan untuk kerja-kerja cacat selama tempoh liabiliti kecacatan dan keadaan sama ada kontraktor nertanggungjawab kepada tuntutan itu. Keputusan kajian menunjukkan bahawa, selama tempoh liabiliti kecacatan, kontraktor bertanggungjawab dan mempunyai tugas dan hak-hak untuk kembali ke tapak pembinaan untuk memperbaiki sebarang kecacatan. Majikan adalah berkewajipan untuk memberitahu kontraktor tentang kecacatan yang ditemui. Kontraktor adalah tidak bertanggungjawab untuk kecacatan kerja yang disebabkan oleh qualitinya bahan-bahan yang dibekal atau pembekal yang dipilih oleh majikan, kecacatan rekabentuk daripada pereka bentuk. Namun, kontraktor berliabiliti untuk memberi amaran kepada majikan tentang kecacatan rekabentuk. Kontraktor yang melanggar kontrak dengan gagal untuk memperbaiki kerja-kerja cacat selama tempoh liabiliti kecacatan, dan bertanggungjawab untuk membayar ganti rugi kepada majikan. Tuntutan gantirugi adalah kos pembaikan, kehilangan kepuasan, dan kerugian atas sebab. Kontraktor adalah tidak bertanggungjawab kepada pembayaran penuh kos pembaikan jika majikan gagal untuk memberi notis kocacatan atau tidak memberi peluang untuk kontraktor membaiki kecacatan. Kontraktor adalah bertanggungjawab terhadap gantirugi atas kehilangan kepuasan jika kerja tidak menemui tahap kepuasan majikan. Kontraktor juga bertanggungjawab untuk pampasan kepada kerugian atas sebab. Analisis kes-kes menunjukkan bahawa majikan boleh menuntut di bawah kontrak dan "common law". Kajian ini boleh digunakan sebagai rujukan kepada majikan dan contractor untuk memahami hak-hak dan kewajipan berkaitan kecacatan kerja yang menampil sepanjang tempoh liabiliti kecacatan.