

DISPUTES IN DESIGN AND BUILD CONSTRUCTION CONTRACT

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ABSTRACT

Design and Build projects have become popular in Malaysia around the year 2000, particularly in the public sector. The basic concept of Design and Build require the project to be contracted to a single organisation that would be responsible for design, procurement, engineering and commissioning. In the traditional system, the designer is only responsible for exercising the average degree of skill or care of the design and does not typically guarantee a successful outcome for services. However, the standard of care for a contractor under Design and Build is different; contractor provides both implied and express warranties of a successful project as a result of their services. This is one of the reasons why employers choose the Design and Build as it does not just give benefits to the employer but clarifies the contractor's scope of its liability with the intention of reducing the amount of claims. However, this is not always achieved and disputes among the contractual parties still arise. This study is to identify the circumstances of disputes which will arise under Design and Build contract that relate to the contractor's liability of design. This study is based on literature review and analysis of law cases related to the issue. After analysing the cases, it can be concluded that the employer will need to prove that the works which have been done are not fit for intended purpose; or the defective work are caused by the contractor's defective design, materials, or workmanship; or the design was carried out negligently. Therefore, by conducting this study, the decision and judgment regarding to the issue of contractor's liability can be used as a guideline so that the dispute or problem under Design and Build projects will not happen in future.

ABSTRAK

Reka dan Bina telah menjadi popular di Malaysia sekitar tahun 2000, terutamanya dalam sektor awam. Konsep asas Reka dan Bina memerlukan kepada organisasi tunggal yang akan bertanggungjawab bagi reka, kejuruteraan, perolehan dan pelaksanaan. Dalam tradisional sistem, Pereka hanya bertanggungjawab untuk menjalankan kemahiran atau tanggungjawab rekabentuk pada tahap purata dan tidak menjamin perkhidmatannya berjaya. Walaubagaimanapun, taraf tanggungjawab untuk Kontraktor di bawah Reka dan Bina adalah berbeza; Kontraktor menyediakan kedua-dua jaminan tersirat dan nyata dan projek yang berjaya sebagai hasil daripada perkhidmatan mereka. Ini adalah salah satu sebab utama mengapa majikan memilih Reka dan Bina, ia bukan memberi manfaat kepada majikan, tetapi menjelaskan skop tanggungjawab Kontraktor dengan niat untuk mengurangkan kadar tuntutan. Walaubagaimanapun, ia tidak semestinya tercapai dan pertikaian di kalangan pihak berkontrak masih timbul. Oleh itu, kajian ini adalah untuk mengenal pasti keadaan pertikaian yang timbul di bawah kontrak Reka dan Bina yang berhubung dengan tanggungjawab kontraktor pada rekabentuk. Kajian ini berdasarkan dari kajian semula dan analisis kes undang-undang yang dipilih berkaitan dengan isu. Selepas menganalisa kes-kes, kesimpulan yang boleh dibuat ialah Majikan perlu untuk membuktikan bahawa kerja-kerja yang dilakukan tidak sesuai untuk tujuan yang dimaksudkan; atau kerja-kerja yang rosak adalah disebabkan oleh kerosakan pada rekabentuk, atau bahan-bahan atau mutu kerja kontraktor; atau rekabentuk dijalankan dengan cuai. Oleh itu, dengan menjalankan kajian ini, penghakiman yang dibuat oleh mahkamah pada isu-isu yang berkaitan dengan tanggungjawab Kontraktor boleh dibuat sebagai satu garis panduan supaya pertikaian atau masalah yang sama di bawah kontrak Reka dan Bina tidak akan berulang dalam projek pada masa depan.