

THE IRRELEVANCY OF CLAIM FOR SET-OFF IN THE EXISTENCE OF
PROVISIONS IN STANDARD FORMS OF CONTRACT


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"I declare that this project is the result of my own research excepts as cited in the references. The report has not been accepted for any degree and is not currently submitted in candidature of any other degree".

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DEDICATION

To my dearest Mother and Father...

Shuhaini bt Othman & Mohd Nazam b Awang...

Thanks for your love, patience and encouragement...

To my fiancee...

Nurul Fazween Najwa bt Muhamad...

Thank you for your help and strong support...

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ABSTRACT

In the construction contract, the issue of payment has become a major concern to the contracting parties. The contractor is liable under the contract to execute the works according to the requirements in the contract while the employer is obliged under the contract to pay to the contractor the amount as certified by the certifier such as architect or superintending officer. When the amount of payment had been certified, that amount will be due and payable to the contractor. However, when the employer had failed to pay that amount to the contractor, the contractor can bring an action to the court and claiming the employer to pay the amount which has become due and payable to him. In defence, the employer may make a counterclaim by seeking a set-off in order to reduce the amount which is claimed by the contractor. Generally, the employer has a right to make set-off in respect of breach of the contract by the contractor. The standard forms of contract normally provide a right to make deduction or set-off to the employer. However, the standard forms of contract also provide the limitations in exercising the right of set-off. In the event that the employer's claim for set-off is not relevant to the express provision in the standard forms of contract, the court may refuse to award the right of set-off to the employer. As such, this study is aimed to identify the grounds on why the claim made for set-off become irrelevant in the existence of express provisions in the standard forms of contract. This study is held based on case analysis. From the study, it is found that that the claim made for set-off becomes irrelevant in the existence of the express provisions in the contract because the particular wording in the contract or the true meaning of the contract did not provide the right of set-off as contended by the party in its claim.

ABSTRAK

Dalam kontrak pembinaan, isu pembayaran telah menjadi satu kebimbangan utama kepada pihak-pihak yang berkontrak. Pihak kontraktor bertanggungjawab di bawah kontrak untuk melaksanakan kerja-kerja mengikut syarat-syarat di dalam kontrak manakala pihak majikan pula dipertanggungjawabkan untuk membuat pembayaran kepada pihak kontraktor mengikut jumlah yang telah disahkan oleh pengesah seperti arkitek atau pegawai penguasa. Apabila jumlah bayaran telah disahkan, jumlah tersebut akan menjadi suatu hutang yang perlu dibayar kepada pihak kontraktor. Namun begitu, sekiranya pihak majikan gagal untuk menjelaskan bayaran, pihak kontraktor boleh membawa perkara tersebut ke mahkamah bagi menuntut majikan supaya menjelaskan jumlah hutang tersebut. Pihak majikan boleh membuat suatu pembelaan melalui tuntutan balas iaitu dengan membuat penolakan bertujuan untuk mengurangkan jumlah bayaran yang perlu dibayar kepada pihak kontraktor. Pada kebiasaannya, pihak majikan berhak untuk membuat penolakan sekiranya hak tersebut telah diperuntukkan di dalam borang kontrak setara. Namun begitu, hak untuk membuat penolakan di bawah kontrak adalah terhad. Jika tuntutan yang dibuat oleh majikan adalah tidak relevan terhadap peruntukan di dalam kontrak, pihak mahkamah boleh menolak tuntutan tersebut. Maka, kajian ini bertujuan untuk mengenalpasti alasan-alasan berkenaan mengapa tuntutan untuk membuat penolakan menjadi tidak relevan dalam peruntukan sedia ada di dalam borang-borang kontrak setara. Kajian ini dibuat berdasarkan analisis kes. Daripada kajian ini, telah didapati bahawa tuntutan untuk membuat penolakan menjadi tidak relevan terhadap peruntukan nyata yang telah sedia ada di dalam borang kontrak setara adalah kerana kerana peruntukan di dalam kontrak tidak menyediakan hak-hak terhadap penolakan sebagaimana yang dituntut di dalam tuntutan.