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

MOHAMAD SAFUAN BIN MOHD NAZAM

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Faculty of Built Environment
Universiti Teknologi Malaysia

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"I declare that this project is the result of my own research except 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".

Signature : 
Name : MOHAMAD SAFUAN BIN MOHD NAZAM
Date : 3rd SEPTEMBER 2012
DEDICATION

To my dearest Mother and Father...
Shuhaini bt Othman & Mohd Nazam b Awang...
Thanks for your love, patience and encouragement...

To my fiance...
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