

SUMMARY JUDGEMENT: TRIABLE ISSUES AS A DEFENCE.

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A master's project report submitted in partial fulfilment of the  
requirements for the award of the degree of  
Master of Science in Construction Contract Management.

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## DECLARATION

“I declare that this Master Research Project entitled “*Summary Judgment : Triable issue as a Defence*” is the result of my own research and that all sources are acknowledged in the references. The project report has not been accepted for any degree and is not concurrently submitted in the candidature of any other degree.”

Signature: .....

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.....

Date : SEPTEMBER 2012  
.....

"I hereby declare that I have read this project report and in my opinion this project report is sufficient in terms of scope and quality for the award of the degree of Master of Science in Construction Contract Management"

Signature : .....

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Date : SEPTEMBER 2012

*To my beloved Mama, Abah and my three little brothers  
for their endless love, care and support.....*

*To my best friends Akmaleena,  
thank you for always be my side*

*Thank you so much. I love you guys.*

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## ABSTRACT

Litigation under civil takes a long time to complete, there are many stages need to be started from pleading, pre-trial discovery, trial and judgment, appeal and enforcement. Normal average time taken is three years. The RHC contains a mechanism that can cut short the time and completion called Summary Judgment under Order 14 RHC. Summary Judgment can be used where the Defendant has no valid defence. However, the Defendant may prevent Summary Judgment by raising triable issue as defence. Triable issues are defences that rose by the defendant, as subject to a legal trial capable of being brought under judicial prosecution or determination. When triable issue successfully arises then Summary Judgment should not be granted, means Triable issue can be a defence against Summary Judgment. Therefore, this research has been conducted to determine triable issues in various contracts related to the construction industry. To achieve the objective of this research 18 cases were selected to be analyzed by using qualitative method analysis. From this case found that there are eight (8) points of issues that can be a triable issue as defence which are claimed for interest, contractual issue, certificate, final account, work done, set-off, obligation and liability and the last issues related to liquidated ascertain damages (LAD). Overall, triable issues can arise from any other issues but need to prove that there are disputed issues on the facts or on the law, as disclosed in the pleadings read together with the affidavit or affidavits.

## ABSTRAK

Litigasi di bawah undang-undang sivil mengambil masa yang lama untuk diputuskan, ini kerana terdapat banyak peringkat yang perlu diikuti bermula daripada peringkat rayuan, pra-perbincaraan, perbincaraan, penghakiman dan rayuan serta perlaksanaan. Secara puratanya peringkat ini mengambil masa selama 3 tahun untuk dilengkapkan. Namun begitu, di bawah Undang-undang Mahkamah Tinggi terdapat satu mekanisma yang dapat menjimatkan kos dan mengurangkan masa perbincaraan dikenali sebagai Penghakiman Terus di bawah Oder 14. Penghakiman Terus merupakan satu alternatif yang digunakan oleh pihak plaintif apabila pihak defendan tidak mempunyai pembelaan ke atas tuntutan yang telah dibuat. Walau bagaimanapun, Penghakiman Terus boleh disekat apabila pihak defendan berjaya menimbulkan isu yang perlu dibicarakan sebagai pembelaan. Apabila isu yang perlu dibicarakan berjaya ditimbulkan permohonan terhadap Penghakiman Terus akan ditolak oleh mahkamah. Ini menunjukkan isu yang perlu dibicarakan boleh dijadikan sebagai suatu pembelaan terhadap Penghakiman Terus. Oleh itu, kajian ini telah dijalankan untuk menentukan apakah isu-isu yang boleh dibicarakan di pelbagai kontrak yang berkaitan dalam industri pembinaan. Untuk mencapai objektif penyelidikan ini 18 kes telah dipilih dan dianalisis dengan menggunakan kaedah kualitatif. Hasil daripada analisis yang diperolehi mendapati bahawa terdapat lapan (8) isu-isu penting yang boleh dijadikan sebagai isu yang perlu dibicarakan sebagai pembelaan kepada penghakiman terus iaitu tuntutan ke atas kadar faedah, pembentukan kontrak, sijil perakuan, penyata akaun akhir, kerja-kerja yang dilakukan, *set-off*, obligasi dan ganti rugi kerosakkan (*LAD*). Secara keseluruhan, isu-isu yang boleh dibicarakan boleh timbul daripada mana-mana isu tetapi perlu dibuktikan bahawa terdapat unsur pertikaian ke atas fakta-fakta atau mengenai undang-undang, seperti yang dinyatakan dalam rayuan dan dibaca bersama dengan afidavit.