

Issues in Termination of Construction Contract: Based on Law Cases

Norhernani Md Nor¹, Mohd Saidin Misnan²

Faculty of Built Environment and Surveying, Universiti Teknologi Malaysia, 81310, Skudai, Johor, Malaysia.^{1,2}

DOI: <https://dx.doi.org/10.47772/IJRISS.2024.801051>

Received: 31 December 2023; Accepted: 04 January 2024; Published: 31 January 2024

ABSTRACT

Construction is among the most critical and flourishing business sectors in Malaysia's economy development. Construction sector in Malaysia has annually worth at average RM140billion to be implemented (Dato' Sri Fadillah, 2020). Despite acting as an important role in the economy sector, the construction industry is still facing challenges due to inefficiency and lack of understanding in contract administration between two parties, client and contractor. One of the common issues in the building industry which usually has significant repercussion for the project and the parties concerned is termination of contractor's employment by the client. Therefore, the objective of this research is to identify the disputes or issues arising from terminating contractor's employment. In order to achieve this objective, the research was conducted by analysing relevant court cases with content analysis method. From the analysis, it can be concluded that execution of termination shall strictly comply with the clauses as stated in conditions of the contract. It is important to handle the termination with a great caution and consideration as well as get professional advice from the experts. Failure to comply all the clauses stated in conditions of the contract may turn the termination to be considered as unlawful termination which is may release the contractor from the obligation to finish the works. This research is very important to enhance the knowledge and understanding regarding the execution of termination in construction contract. Furthermore, this research is very important and critical as a basic guideline for important role in construction industry contract especially in the context for consideration of terminating contractor's employment.

Keywords: Termination of Contractor, Unlawful Termination, Law Cases of Termination, Termination of Construction

INTRODUCTION

The majority of construction contracts proceed accordingly as per original contract, but suddenly a scenario comes to the ends when client or contractor or both parties disagree to proceed the contract. A large number of terminations of construction contract ending with a big amount of additional cost to the original project (Mohammad, 2012). Before cutting the ties, it is important for client to study the contract carefully and understand the implication of termination before made a decision to terminate the contract employment of contractors.

Termination determines a contract expiring or being brought to an early end. Termination of contract occurs when a valid and enforceable contract is brought to an end, it is either because it became difficult to execute due to unforeseeable circumstances at the time the contract was created, or because one or both parties took acts that made it impossible to perform. In Malaysia, termination of construction contracts is always a serious issue and reflects to the cost implications. According to Auditor General's Report 2012 has reported

that 160 projects with a contract value of RM3.137 billion were terminated by Government, between 2007 and 2012 (Intan Safina, 2015). Parties may choose to terminate contracts for a variety of reasons, but not all terminations of contracts will allow them to escape from the liabilities and there are obligations that are still exist between the duration of time contract come the end (Thuy-Ninh Dao, 2017).

Most of the construction contracts provides clause for termination of contractor. However, to execute the termination is not always straightforward and simple as anyone thought. Some cases, contractors disagreed with the termination made by the employer and challenge the termination by proceeding to the court. When a case is brought to court, the court will make a thorough assessment through the examination of the facts of the case and principles of law. According to previous law cases, some of termination cases ended up with invalid or unlawful termination due to the certain reason which involving legal issues or technical error.

ISSUES IN CONSTRUCTION CONTRACT TERMINATION

A contract is terminated when one of the parties to the contract decides to exercise the right to terminate the contract. The right arises under common law and under the express terms in standard form of the contract (Liew Sock Tin, 2019). A party seeking to terminate a contract should always be aware of the legal basis for doing so, as well as the practical and financial risks associated. The interests of the party electing to terminate the contract could be best served by allowing it to proceed, for example, if there is a continuing right to collect compensation under the contract's terms. The terminating party shall ensure that the termination is complies with all procedural requirements according to common law and provision in standard form of contract. The terminating party should also be aware and cautious of the hidden risk of a claim against them as unlawful termination. Figure 1 shows the terminating flowchart of contractor's employment.

There are a few issues in construction contract termination as set out as per following items:

Failure to Issue Notice of Breach/Default

Generally, conditions of construction contract provide that before a notice of termination of employment of a contractor is issued, the employer must issue notice of default or notice of breach the contractor. This notice is very important which offers an opportunity to the contractor to rectify the breach. The client shall give written notice to the contractor specifying the default and requiring the contractor to remedy such default within reasonable period. If the contractor fails to rectify the breach, then the employer shall have the right to terminate the employment of the contractor. However, if the employer does not issue a notice of breach and proceed with only notice of termination, it may result to contractor to challenge that termination as unlawful termination in the court (Amran, 2017).

In the case of *DC Contractor Sdn Bhd v Universiti Pertahanan Nasional Malaysia [2014] MLJ 595*, the client issued two numbers of notices of termination. However, the client withdrew his first letter of termination and instructed plaintiff to resume his work. Then the contractor replied the letter and claimed an amount of another cost for overhead and loss of profit. The client was not agreeable to the contractor's term and subsequently issued the second letter of termination. The court held that in any event, the second termination is clearly void due to non-compliance with clause 51. Prior to the issuance of this letter of termination, no notice of breach of any of the matters listed in this second letter of termination was ever given. Furthermore, the claims made in this letter of termination are not stated in the Notice of Breach. It is the finding of the court that a fresh notice of breach (second notice of breach) should have been provided before the termination could be affected.

Insufficient Notice of Termination

When the employer decides to take action to terminate the employment of the contractor, he must issue a written notice explaining the reasons for the termination taken (Mohammad, 2019). The employer must clearly state the default action that has been done by the contractor that caused the employer to decide to take the termination action. If the employer only relies to the clause provided in the standard form of contract which allows the employer to terminate the employment of the contractor without explaining or specifically referring to the contractor's default action, then the contractor may claim that he does not know the real reason for his default of obligations. In addition, the contractor can also check whether the employer's allegations are true or appropriate action can be taken by the contractor.

Mode of Notice Delivery

According to Shanmugarajan (2018), mode of notice delivery is very vital for terminating of contractor's employment. Based on previous law cases, many termination cases were invalid due to the non-compliance of the mode of delivery used as stipulated in standard form of contract. There are a few methods on mode of delivery of the notices depending on what type of standard form used in the contract. The client shall strictly adhere to the mode of delivery as stated in standard form of contract.

Failure to comply the above requirement may result to contractor to challenge the termination due non-compliance of client to follow the procedure. This is difficult to client to defend and to prove himself to the judge that is not mandatory to client to comply the method of delivery as long as the contractor received the said notice. In other circumstance, contractor try to deny that they did not received the notice.

Reference can be made to the law case *Fajar Menyensing Sdn Bhd v Angsana Sdn Bhd [1998] 6 MLJ*. The plaintiff was the contractor and the defendant was the employer. The defendant's architect issued a written notice to plaintiff stated that plaintiff had failed to execute the works with regularly and diligently in and sent it to plaintiff by hand. Subsequently, defendant issued another written notice and requested plaintiff to carry out the work regularly and diligently. However, finally the defendant gave the notice of termination which was delivered by hand. The judge held that, according to contract, it clearly stated notice to be given to the contractor shall by registered post or recorded delivery. Therefore, the notice of termination delivered by hand to the contractor was adjudged invalid.

Time Duration Between Notice of Default and Notice of Termination

Refer to the PWD standard form of contract, if within fourteen (14) days contractor continues or fails to remedy the breach as specifying in notice of default, the client shall have the right to terminate the contract by issuing a written notice to the contractor. Notice of termination only can be issued after fourteen (14) days of issuance notice of default (Mohd Nazir, 2008) or otherwise it can be classified as pre-mature notice (Shanmugarajan, 2018). The contractor may challenge the termination as unlawful due to incompliance of time duration between these two notices.

Signatory of Notice

All notices to the contractor and especially for notice of default and termination notice must be signed by an authorized officer as stated in the contract document (Mohd Nazir, 2008). Failure to comply the above requirement may cause the termination to be categorized as an unlawful termination.

METHOD AND DATA ANALYSIS

This paper applied qualitative analysis in collecting, processing and analyzing the data collected. Content analysis is preferred to satisfy these purposes. Content analysis is a research method for assessing the

existence of a document. By using the words Termination of Construction Contract, 851 law cases resulted in the list of search from the Lexis Malaysia Database. From the first reading and screening, 6 law cases were selected to be analyzed further as in summary in Table 1:

Table 1- Issues in Termination

No.	Case Law	Issues in Termination
1	DC Contractor Sdn Bhd v Universiti Pertahanan Nasional Malaysia [2014] MLJU 595	<p>Notice of Breach:</p> <p>Second of termination letter issued without fresh notice of breach</p> <p>Summary of analysis:</p> <p>i. The defendant as the client of the project terminated the contract with the contractor with the ground that the contractor had breach the contract by abandoning the works, fails to proceed regularly and diligently as well as fails to comply with S.O instructions.</p> <p>ii. Then client issued the notice of breach followed with notice of termination. Due to the first termination is void because of non-compliance with the ministry’s guidelines, the client retracted the letter of termination and instruct the contractor to resume his work at site. Then the contractor claims for cost of overhead and loss of profit from the client. The client disagreed with the term and issued the second letter of termination without issuance of the notice of breach. In other words, the client relying on the first notice of breach.</p> <p>iii. The judge stated that:</p> <p>a. The defendant argues that the Guidance has no legal force or effect. The defendant may have opted to disregard the noncompliance because the termination letter had already been sent.</p> <p>b. The second letter of termination is void because of non-compliance of termination clause in the condition of contract. In other words, the client must notify the default in writing and require the contractor to fix the default within a reasonable time, as specified in the contract clause.</p> <p>c. No notice of breach issued for the second termination. The events of default by contractor for the second termination are not to be found anywhere.</p> <p>d. The Court finds that a new notice of breach should have been given, particularly when the Defendant is relying on different grounds, as is the case here.</p> <p>e. As a result, the second letter of termination is null and void for the reasons stated above.</p>
2	Nirwana Constructin Sdn Bhd v Pengarah Jabatan Kerja Raya Negeri Sembilan Darul Khusus & Anor [2008] 4 MLJ 157	<p>Notice of Termination:</p> <p>Non-compliance with the requirement of clause 51 in that the notice did not contain the precise ground of termination</p> <p>Summary of analysis:</p>

		<p>1. This is a case where the client terminated the contract after accepted the contractor’s repudiation. The contractor was appointed by client for completion of school. But the contractor failed to complete the project even though he was granted several extensions of time by the client. The client issued a notice of intention to terminate the contract and followed with notice of termination. Despite numerous notices, the client decided to allow the contractor to complete the school construction.</p> <p>2. The construction of school was duly completed and officially handed over to Ministry of Education which accepted it. However, the client wrote to the contractor to terminate the contact by referring or relying to the earlier notice of termination and alleging that the latter did not completed the works under contract which the turfing not complied with the specification. The contractor disagreed and refused to accept that termination.</p> <p>3. In the view of judge, it is not open to the client to depend on earlier notice of termination. If the client alleges that the contractor violated the contract fundamentally, the client has two mutually exclusive options with the contractor. He could recognize the contractors’ repudiation and conclude the contract as at an end. Or he could waive the repudiation and treat it as subsisting.</p> <p>4. Referring Contract Act 1950 section 40: when a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety the promise may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.</p> <p>5. The Court of Appeal held that notice of termination not complied with the requirement of clause 51 of the contract. The notice of termination did not contain a valid reason for termination which it is not precise ground of termination.</p>
3	<p>Hartajaya-Benteng Timur-Amr Jeli JV Sdn Bhd v Kerajaan Malaysia and another appeal [2018] MLJU 331</p>	<p>Notice of Breach:</p> <p>This termination is unlawful anyway as no Notice of Intention to Terminate/Breach and no reason were given for termination.</p> <p>Summary of analysis:</p> <p>i. In this case, there are 2 suits heard together. The client awarded contractor for the project to construct a new road and upgrading an existing road in Negeri Sembilan. There were 3 extensions of time (EOT) granted by the client. However, the 4th EOT was not granted. During the construction, this project was saddled with problem of land acquisition.</p> <p>There was a substantial delay in giving full possession of the entire Project Site by the client and the contractor had a further issue faced in that he was unable to transport the soil due to mainline not being cleared and the client’s contractor’s inability to remove existing utility.</p>

	<p>ii. Client issued Notice of Intention to Terminate on ground failure of contractor to proceed regularly and diligently with the works 32.10/5 behind the schedule. The client gave the contractor 14 days to carry out the works with greater diligence. Then the client issued a Termination Letter to terminate the Plaintiff in accordance with Clause 54.3 of the Original Contract.</p>
	<p>iii. However, in the meeting with the contractor, the client allowed the contractor to continue work at the site. The client sent a letter to related ministry on what was happening at site. The ministry replied and asked the client to stop contractor from work. As instructed, the client wrote the letter to stop work and leave the site immediately. This letter also stated that the contractor entitled for payment for execution of works.</p>
	<p>iv. The Ministry could be disappointed that such a contract may be extended after it has expired. However, to the contractor, they behave as one and so this action instructing the contractor to stop work immediately can only imply and be interpreted as the client terminating the Original Contract that had been extended upon its revival.</p>
	<p>v. It is apparent that the delay was not caused by the Contractor's sluggish work progress of works but the delay was contributed by the client due to client's late of giving a full possession of the entire Project Site. In the circumstances, the client's failure to respond after 6 months from the date of the 4th EOT submission is unfair, and the time for completion will be extended if the application for extension of time is not processed. Termination of the initial contract was unlawful since the deadline for completion had become large.</p>
	<p>vi. Court made a reference to the following passages as a learned counsel to the client:</p>
	<p>a. Hudson's Building and Engineering Contracts, 12th Ed: "As a result, the client and any Certifier who is allowed by the termination provision to determine if any contractor is performing work consistently and faithfully will have to consider whether the completion date should be extended and will have to measure progress towards that extended date whether they believe an extension is warranted".</p>
	<p>b. Sindall Ltd v Solland and Others [2001] 80 ConLR 152: "Even if the contractor has not provided written notice of the factors, a contract administrator should always consider whether there were any factors known to him that could warrant an extension of time. This is particularly important if it is necessary to assess if the contractor is proceeding regularly and diligently"</p>

		<p>c. Engineering and Construction Contract Management, Ir Harbans Singh KS:“ Contrary to common opinion and the numerous contractual clauses contained in most contract conditions, the contract administrator has a positive obligation to recognize the Contractor’s right to an extension of time upon the occurrence of a delaying case, whether or not the latter has made an application in consequence thereof.</p>
		<p>In summary, the following are the implications of the employer’s failure to give the contractor successful site possession by the deadline: Such a default will be deemed a breach of contract, and the contractor will be entitled to damages for any losses incurred as a result of the breach; and the contractor will be entitled to damages for any losses incurred as a result of the breach; and unless the contract includes an express term permitting the client to enable a commensurate extension of time to contract in reimbursement for the delay caused by the client’s breach, the effect will be that the date of completion will be ‘at large’ and the client will lose his ability to claim liquidated and ascertained damages (LAD) under the contract.</p>
		<p>vii. In this case, this termination is unlawful since no Notice of Intention to Terminate was provided and no reason for termination was given. In the circumstances of the case, the initial termination of the Original Contract was held to be unlawful, and this subsequent termination after the Original Contract had been restored and permitted to proceed, without Notice and without any reason or justification given, is therefore unlawful. Notice of termination shall be in detailed and clearly explaining the reasons for the termination action taken. The client shall clearly state the act of default of obligations/breaches that has been committed by the contractor that caused the client to decide to take such terminating action.</p>
<p>4</p>	<p>Perbadanan Menteri Besar Kelantan v Syarikat Perusahaan Majubina Sdn Bhd [2016] MLJU 268</p>	<p>Notice of Termination:</p> <p>The termination of contract was invalid principally because the notice of termination issued under clause 51 failed to state the reasons or basis for the termination. No default was specified in the notice.</p> <p>Signatory of Notice:</p> <p>Warning letter could not be relied due to it was signed by Project Management Consultancy (PMC) and not by the Superintending Officer (SO).</p> <p>Summary of analysis:</p>

	<p>1. The client appointed the contractor to carry out earth works and site preparation in relation to a housing project. Initially, the contract was for a sum of RM398,822.00 but increase to RM1,169,530.23 and works which stretched over almost five years with four extensions of times [EOT] were issued. The 2nd AI issued on 15.3.2010 did not carry a corresponding EOT. The contractor claimed that it needed this EOT in order to renew its insurance coverage. Instead of issuing the EOT Certificate, the SO unilaterally and without any reasonable ground, terminated the contract through a letter dated 9.6.2010. The contractor also argued that that this termination was not made in good faith as it was done to relieve the client of obligation to pay for idling time. It said that as a result, it had to deal with suffering and losses.</p> <p>2. The contractor claim was disputed. According to the client, the respondent had failed to complete the project despite the time extensions. The contractor allegedly delayed the project in order to obtain variance orders, which would result in a higher contract sum. The client clarified that the final EOT, which was demanded after the 2nd AI on 15.3.2010, could only be released after the other consultants had provided their input.</p> <p>3. On the demand for idling time, the claim was disputed on the basis of non-compliance with the contractual requirements, lack of supporting documentation and the project consultants' and client's inability to validate the claim. These charges were often not reimbursable since they were incurred by the client. The client also alleged that the claim was filed prematurely since the respondent should have referred the matter to arbitration before filing the current claim.</p> <p>4. The court found that that clause 54 did not apply as the parties, especially the appellant, had already taken "fresh steps" in the suit. These steps indicated that the appellant was agreeable to litigating instead of arbitrating the dispute.</p> <p>5. The court also found that the termination of contract was invalid principally because the notice of termination issued under clause 51 failed to state the reasons or basis for the termination. It was the view of the court that this failure amounted to a breach as clause 51 required the defaults to be identified. The court further found that the termination was invalid because the SO had failed to notify the respondent of its defaults. The right to terminate arises only where there is failure to rectify after such notification is given. Since the contractor was not given this opportunity, the court agreed with that the termination was thereby, invalid. Bearing in mind that the intent of the notification is to bring the specific default to the contractor's attention so that it can be resolved or remedied, or prevented in the future, it's unlikely for this to happen if the default isn't identified in the first place. It is not for the client to claim that just because the contractor is aware of a given default does not mean it is excluded from spelling it out in the notice.</p>
--	--

		<p>6. In as much as the notice is a pre-requisite to the right to determine the contract, so are the contents of that notice. The court disagreed with the client’s appellant’s assertion that the notice requirements are merely advisory, particularly after considering the purpose and circumstances in which such a notice may be issued.</p> <p>7. According to the condition of contract there are two important elements before the client can terminate the employment of the contractor. The written notice issue by the client should specifying the default that committed by the contractor and the client should give time to contractor for them to remedy such default and if they fail or continue such default, then the client can terminate the contract.</p> <p>8. None of the memos and letters issued by PMC drew the attention of the respondent to clause 51. Certainly, there was no indication of any intention to determine under clause 51 anywhere in these documents. Failure both material and serious, and quite outside the scope of clause 51. The court also concluded that the client cannot rely on the earlier letter sent by the PMC. The PMC is not the SO. Therefore, the letter sent by the PMC is not a notice within the meaning of clause 51 that the client appellant may rely on to cite a continuous or a repeated breach.</p>
5	<p>Metro Luxury Sdn Bhd v PKNS Engineering & Construction Bhd [2018] MLJU 367</p>	<p>Notice of Termination: The termination was invalids and it was plainly erroneous due to date of termination.</p> <p>Summary of analysis:</p> <p>i. The respondent appointed by Perbadanan Kemajuan Negeri Selangor (‘PKNS’) to be the main contractor of a housing project. The respondent, in turn, appointed the appellant as the subcontractor to design, build and complete the project (‘the works’). The scope of the works later amended and varied. Instead of building 1,160 units of flat houses, the subcontractor was required to build 1,560 units. In 2001, the respondent issued a certificate of non-completion and informed the appellant that the original and amended contracts were terminated. The contract was terminated with a ground of failure to proceed with the works regularly and diligently</p> <p>ii. However, the subcontractor challenged the termination as wrongful due to the certain reasons including that the termination against the term of original contract and the amended contract</p> <p>iii. The main contractor disagreed and alleged that the termination is valid due to the subcontractor had failed to extend the performance bond despite the respondent’s request conveyed in letter dated 8 June 2001 and the works was in delay.</p> <p>iv. The main contractor also claimed that it was mistakenly written as 10 January 2001 when it should read 30 October 2001.</p> <p>v. The court concluded that:</p>

		<p>a. The claim on the performance bond or the BG was valid on the basis that it was on demand bond independent of the underlying contract where the court will not inquire into any breach of that underlying contract and rejected the subcontractor’s contention that the BG could not be extended because there was no official EOT as this was not explained to the respondent. Besides there being no document from the bank that it required a letter to confirm EOT, this issue was also not pleaded.</p> <p>b. The learned judge also rejected the sub-contractor’s claim that it could complete the balance 2.2% of the works as there were about 40 days from the call on 21 September 2001-31 October 2001, the expected date of the completion of the works. The learned judge examined the evidence and found that the progress reports for 1 June 2011-15 June 2011 showed progress to be of 96.33% and delay to be 3.76% and for the period 1 September 2001- 20 September 2001 to be 97.71% and 2.05% respectively. According to the learned judge this ‘effectively meant that over a period of four months the work progress was less than 1.4%’ and that overall, ‘this meant work had not been completed despite the EOT given’.</p> <p>c. The subcontractor’s case is that the termination with effect from 10 January 2001 is unlawful as at that date, the date for completion had already been extended to 31 October 2001. The respondent’s response was that the date of 10 January 2001 was in error; the correct date being 31 October 2001. The main contractor claimed it was typographical which it was mistake and the date of termination was intended to be 30 October 2001. However, the judge found that the date of termination is still invalid. This is because EOT5 was in place with the date for completion fixed on 31 October 2001. The main contractor was not entitled to terminate until the completion date had lapsed. It only lapsed on 31 October 2001. Consequently, the termination on 30 October 2001 is invalid.</p>
6	<p>Matang Selatan Engineering Sdn Bhd v Kerajaan Negeri Melaka [2017] MLJU 60</p>	<p>Notice of Termination:</p> <p>The termination is unlawful and not compliance to the Clause 51 PWD Contract Form.</p> <p>Summary of analysis:</p>

	<p>1. The appellant/contractor was appointed by respondent/client to execute works for the road construction at Malacca with contract amounting at RM12 million. There was a delay of handing of site by the client due to late in making payments of compensations to owner of the land. It took about four (4) months. The original contract was stated that the term of payment of this project is Interim Payment Certificates which contractor will be paid progressively according to work executed at the site. However, the client failed to make payments to the contractor for eleven (11) certificates with cumulative amount at RM 2.5 million. Instead of making a payment, the client change the mode payment from the interim payments to the deferred payment, which meant no payment would be made until the entire works had been completed.</p>
	<p>2. A year later, the client issued a warning letter due to delayed of works by the contractor. After seventeen (17) days, the client gave the notice of intention to terminate the contract. Despite of notice, the client continued certify further interim payments. Then, the client held the meeting (Mesyuarat Penyelarasan No.4) on 8 May 2008 to discussed issued regarding to the project finally agreed to the following matters:</p>
	<p>a. Payment to be paid as per original contract</p>
	<p>b. Allocated RM6 million for each year 2008 and 2009 for that project</p>
	<p>c. The project will be completed at end of December 2008 and client will pay RM6 million in 2008 and the balance of RM6 million after completion in 2009.</p>
	<p>1. However, the client breach of the agreement by giving the notice of intention to terminate and followed with notice of termination.</p>
	<p>2. The client carried out valuation of work done with the contractor and certified the work valued at RM2.7 million. The client issued Final Certificate of Termination Cost and claimed the sum of RM78k as being due and payable by the contractor. A year later, the client revised the certificate and claims RM 239,546.75 as loss/damages from the termination of the contract. The contractor has refused to pay.</p>
	<p>3. Issues raised in this case:</p>
	<p>a. The contractor failed to proceed the works as per schedule</p>
	<p>b. Non-payment for interim certificate No.1 to No.11</p>
	<p>c. Unlawful termination</p>
	<p>d. Breach of agreement as agreed in Mesyuarat Penyelarasan Projek No.4</p>
	<p>1. Conclusion:</p>
	<p>a. No proper and valid ground s for the client to lawfully terminate the contract</p>

		b. The client accepted the facts that the client contributed the delay due to non-payment which had cause cash flow issues to the contractor as Mesyuarat Penyelarasan Projek No.4. It is a principle of law that no one can in such case take advantage of a state of things which he himself produced.
		c. The client has agreed that the work will be completed in December 2008, but suddenly the client terminate the contract on 13 June 2006 before reach the agreed date.

CONCLUSION

Termination is a binary scenario in which one side is right and the other is wrong. Either a party has the right terminate or it does not. That is, if a party has the right to terminate, the termination is valid regardless of whether the terminating party has already breached the contract. If the terminating party does not have the right to terminate, the alleged termination is a repudiation in which the other party can rely, regardless of any violation by the other party on which the terminating party attempted to rely.

Construction contracts recognize an owner’s right to terminate a contract before reach the project completion date due to breach of contract by contractor or if the contractor lost his abilities to proceed the contract due to that he becomes bankrupt, insolvent and others (PWD Form 203/A Rev.1/2010). Not all of situations are sufficiently serious breaches of the contract to justify for termination; indeed, some of them do not constitute breaches at all. To minimize any future risk and arbitration/litigation proceedings, it is a good prudent practice to ensure that termination of employment provisions by the client are included in standard form contracts that expressly and accurately specify the contractual rights and responsibilities of the parties in the case of a contractual termination before the execution of the contract necessary for the parties. Any termination must be executed with considerable great caution and consideration. The terminating party must indicate that it has agreed to terminate the contract by communicating with the other party, usually in writing.

The notice of termination shall strictly comply with the clauses as stated in conditions of the contract. Nonetheless, any party contemplating termination, which is a serious action with far-reaching consequences, should do so only after careful consideration, professional advice sought and seeking legal advice, as such drastic action often leads to arbitration or litigation. Disputing parties should accept and strive to find win-win resolution first through mutual termination, if necessary. Another possible dispute resolution route is another method for settling a dispute rather than embark straight on to a long drawn and/or costly legal/arbitration proceedings to resolve their dispute.

REFERENCES

1. Chong Oi Siang. Wrongful Termination of Contract In Construction Industry. Master. Thesis. Universiti Teknologi Malaysia; 2011. Majid, A. M. (2017). *Isu-isu Perundangan Berkaitan Kontrak Binaan*. Kuala Lumpur: Dewan Bahasa dan Pustaka.
2. Marican, P. (1994). Construction Contracts: Disputed Possession of Project Site. *Malayan LawJournal Articles*. 1994: 1-11.
3. Intan Safina Binti Sanusi. *Termination Procedures of Projects By the Public Works Department (PWD)*. Master. Thesis. Universiti Teknologi Malaysia; 2015. Ismail, M.N. (2008). *Pengenalan Kepada Pentadbiran Kontrak*. Selangor: Upena. 2008
4. Kementerian Kerja Raya. (2020, April 22). *Perintah Kawalan Pergerakan*.
5. Liew Sock Tin. Profiling of Construction Disputes in Private Projects. PHD. Thesis. Universiti Teknologi Malaysia; 2019.

6. P.W.D Form Contract 203. (Rev.1/2010). *Standard Form of Contract to be Used Where Drawing and Specifications Form Part of The Contract.*
7. P.W.D Form Contract 203A. (Rev.1/2010). *Standard Form of Contract to be Used Where Bills of Quantities Form Part of The Contract Form Part of The Contract.*
8. Terry, H. C. and Nigel, D. (2012). *Defining and describing what we do : doctrinal legal research.* Deakin Law Review.
9. The Entrusty Group. (2008). Determination of Employment and Termination of Contract the Same in Meaning and Implications? *Master Builder, 2nd Quarter. 96-100.*
10. The Entrusty Group. (2008). Is Late Payment a Ground for Determination or Termination? *Master Builder, 2nd Quarter. 96-100.*
11. Shanmugarajan Rengan. Termination of Construction Contract: Issues in Termination Notice. Master. Thesis. Universiti Teknologi Malaysia; 2018.

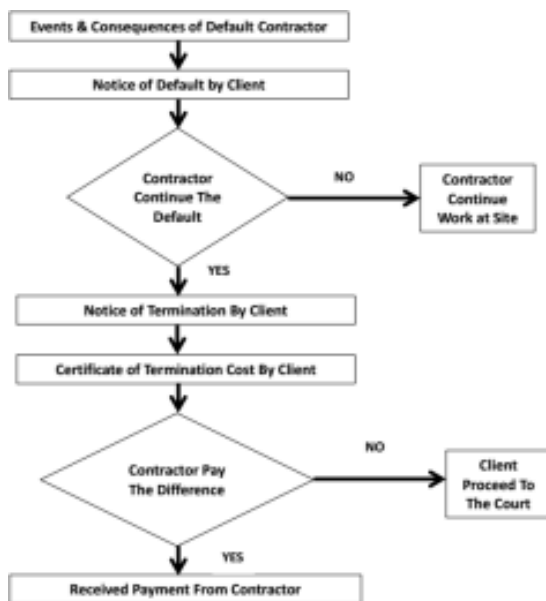


Figure 1. Terminating Flowchart of Contractor’s Employment

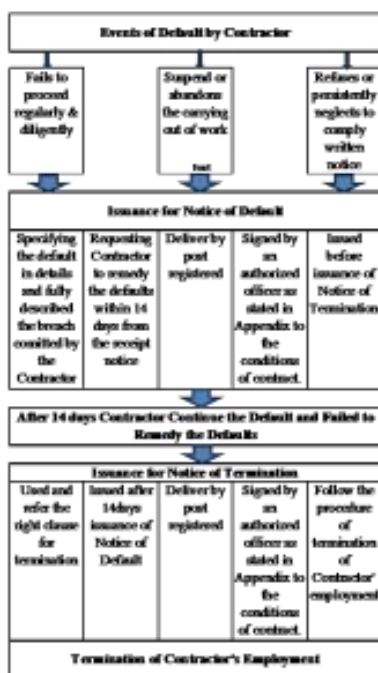


Figure 2. Termination Process Flowchart of Contractor’s Employment