

CONSTRUCTION LAW

Construction – Main contractor – Sub-contractor – Interim certificates – Re-measurement contract – Whether interim certificates considered final amount

Usima Sdn Bhd v Lee Hor Fong

[2017] MLJU 1306, Federal Court

Facts The appellant, Usima Sdn Bhd, was appointed as the main contractor by Jabatan Kerja Raya to construct a water tank and carry out pipe laying works (“the main contract”). The respondent, Lee Hor Fong, was the subcontractor appointed by the appellant to carry out the works. The Letter of Award states that the terms and conditions of the main contract will be deemed to form and be construed as part of the subcontract. Dispute arose between the parties which led the appellant to terminate the subcontract alleging that the respondent had breached the terms of the contract by abandoning the contract works. The respondent commenced an action against the appellant on the basis that the appellant refused to pay for work done as represented by several interim certificates. The High Court dismissed the respondent’s claim. Aggrieved, the respondent appealed to the Court of Appeal. The Court of Appeal allowed the respondent’s appeal and set aside the decision of the High Court. The appellant appealed to the Federal Court.

Issue The main issue was whether interim certificates issued to the appellant can be considered as the final amount of the value of the work done.

Held In dismissing the appeal, the Federal Court held that although the interim certificates are deemed as merely estimates and not final, however in this case, since the contract is subject to re-measurement and based on the finding that measurement had been done before the issuance of the interim certificates, it was decided that the interim certificates can be considered as the final amount and that it can be relied on as evidence of the value of the work carried out.