

ARBITRATION

Construction Law - Dispute on non-payment - Dispute arising prior to Construction Industry Payment and Adjudication (CIPA) Act 2012 coming into force - Application of CIPA Act – Whether retrospective

UDA Holdings Bhd v. Bisraya Construction Sdn Bhd & Anor and Another Case

[2015] 5 CLJ 527, High Court

Facts This matter involved two disputes. The first was non-payment of claims between UDA Holdings Bhd (“UDA”) and an unincorporated consortium (“the Consortium”). An adjudication proceeding was initiated against UDA under Section 9 of the Construction Industry Payment and Adjudication Act 2012 (“CIPA Act”) by the Consortium and an adjudicator was appointed by the Kuala Lumpur Regional Centre for Arbitration (“KLRC”). UDA challenged the validity of such adjudication and objected on the grounds that the CIPA Act was not in force when the claims arose. The second dispute was between Capitol Avenue Development Sdn Bhd (“Capitol”) and Bauer (Malaysia) Sdn Bhd (“Bauer”) where an adjudicator was appointed for the adjudication proceeding initiated by Bauer against Capitol. Capitol objected on the basis that the appointed adjudicator had no jurisdiction, as the concerned issues arose before the CIPA Act came into force. Both disputes were heard together as similar issues of law involved.

Issue The main issue before the High Court was whether the CIPA Act applied to payment disputes and their underlying contracts which arose before the Act came into force on 15 April 2014.

Held In dismissing the matter, the High Court held that the CIPA Act is applicable retrospectively to written construction contracts which are executed wholly or partly within the territory of Malaysia, regardless of when they were entered into. However, the Act is not applicable to the proceedings relating to payment dispute under a construction contract which commenced before 15 April 2014.