

ADJUDICATION

THE DOCTRINES OF RES JUDICATA AND ISSUE ESTOPPEL APPLY TO STATUTORY ADJUDICATION UNDER THE CONSTRUCTION INDUSTRY PAYMENT AND ADJUDICATION

ACT 2012... In kicking off the new year, T. Kuhendran, Susan Tan Shu Shuen and Noor Sumaeya Sofea Shamsudin from our Construction Dispute Resolution practice group had on 8 January 2021, succeeded in resisting the Employer's ("Defendant") application to set aside and stay an adjudication decision granted in favour of the Main Contractor ("Plaintiff") in the sum of MYR3,642,356.58, and obtained an order to enforce the same.

This article discusses the facts, issues and judgment of the case.

INTRODUCTION The background of the case rests on the same set of facts found in [PJ *Midtown Development Sdn Bhd v Pembinaan Mitrajaya Sdn Bhd and another summons* \[2020\] MLJU 1432, High Court](#), which is the 1st Adjudication Decision granted in favour of the Plaintiff. The current dispute relates to the 2nd Adjudication Decision, which pertains to two different interim payment certificates from that of the subject matters in the proceedings of the 1st Adjudication.

It is worth noting that the fundamental nature and parameters of the disputes involved in the 1st and 2nd Adjudication proceedings are the same and/or substantially the same, and all issues raised in the 2nd Adjudication have already been ventilated adequately and determined in favour of the Plaintiff in the 1st Adjudication Decision. As such, the 2nd Adjudicator found that the doctrine of *res judicata* applies, and based its decision on the 1st Adjudication Decision.

Similar to the outcome of the 1st Adjudication, the Plaintiff obtained an Adjudication Decision in its favour wherein the Defendant is required to amongst others, pay the Plaintiff the Adjudicated sum of MYR3,642,356.58 ("Decision"). Dissatisfied with the Decision, the Defendant filed an application to set aside and stay the same, while the Plaintiff applied to enforce the Decision.

ISSUES The crux of the issue to be determined by the Court was whether the doctrine of *res judicata* applies to statutory adjudication under the Construction Industry Payment and Adjudication Act 2012 ("CIPAA 2012"). The contentions raised by the Plaintiff are amongst others, summarily as follows:

- a) It is clear from various Malaysian cases that the doctrine of *res judicata* applies to statutory adjudications as the public policy requires that a certain form of certainty be ensured under the adjudication regime. The application of the doctrine of *res judicata* in the context of adjudications will not bar the parties from revisiting the issues involved in full curial proceedings by way of arbitration or court litigation.
- b) Section 13 of CIPAA 2012 provides that an adjudication decision is provisionally binding unless the same is set aside under section 15 of CIPAA 2012, a settlement is reached between the parties, or the dispute is finally decided by arbitration or the Court. It is clear from this provision that the doctrine of *res judicata* applies to statutory adjudications.

CONCLUSION Upon considering the submissions advanced, the Court found that the doctrine of *res judicata* applies to statutory adjudications under CIPAA 2012. Consequently, the High Court allowed the Plaintiff's application to enforce the 2nd Adjudication Decision and dismissed the Defendant's applications to set aside and stay the same.

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