

CIPAA 2012 : Early Court Intervention and Definition of “Occupation” under Section 3

LIEW PIANG VOON v WLT PROJECT MANAGEMENT SDN BHD
[2020] 1 LNS 1105

ISSUES

Section 3 of the Construction Industry Payment and Adjudication Act 2012 (“**CIPAA 2012**”) provides that CIPAA 2012 does not apply to:-

*“... a construction contract entered into by a **natural person** for any construction work in respect of any building which is **less than four storeys high** and which is **wholly intended** for his occupation.”*

[Emphasis added]

Does occupation in section 3 means that the building must be intended for the person’s residence? If it is for other purposes, can it still constitute occupation?

What if a party applies to the High Court to restrain another party from initiating adjudication based on the ground that CIPAA does not apply to the dispute? Will the Court entertain such application and make early intervention to halt the adjudication?

These questions were answered in the recent Kuala Lumpur Construction High Court case of **Liew Piang Voon v WLT Project Management Sdn Bhd [2020] 1 LNS 1105**.

BRIEF FACTS

The brief facts of the case, as reported, are as follows:-

- (a) By a Letter of Award dated 20.06.2019 (“**Contract**”), the Plaintiff appointed the Defendant to carry out renovation works (“**Works**”) at “a double storey house located at No. 2, Jalan Desa 8/4, Bandar Country Homes, 48000 Rawang, Selangor” (“**Premises**”).

- (b) The Plaintiff is an individual and co-registered proprietor of the Premises, with both of his sons. On the other hand, the Defendant is a private limited company carrying out construction renovation business.
- (c) The Premises are to *“be converted to a kindergarten for use by the Plaintiff’s daughter. The kindergarten is named TADIKA BESTARI”*.
- (d) Dispute arose on the Defendant’s progress and quality of the Works. The Works were allegedly *“fraught with defects”*.
- (e) Arising thereof, the Plaintiff refused to pay the Defendant for work done and the Defendant suspended from carrying out further works. Attempts to amicably resolve the disputes and differences did not succeed.
- (f) The Defendant through its solicitors, issued a letter of demand dated 22.05.2020, demanding for the sum of RM52,856.83 for payment of work done under the Contract.
- (g) The Plaintiff responded through his solicitors’ letter dated 28.05.2020, denying the claim and intimated that *“the disputes and differences should be referred to arbitration as provided in the Contract”*.
- (h) In response, the Defendant’s solicitors stated that the Defendant intends to *“refer the disputes and differences”* to statutory adjudication pursuant to CIPAA 2012.
- (i) The Plaintiff took objection and contended that CIPAA 2012 does not apply to the dispute at hand due to the non-application provision in section 3 of CIPAA 2012.

APPLICATION BEFORE THE HIGH COURT

Following the above, the Plaintiff applied to the High Court for the following reliefs:-

- (1) A declaration that any disputes arising between the Defendant and Plaintiff arising from the Contract/Works does not fall within the *“ambit and jurisdiction”* of CIPAA 2012; and
- (2) An injunction to restrain the Defendant from initiating adjudication proceedings against the Plaintiff in relation to any disputes arising from the Contract/Works.

2 principal issues arose from this application, i.e.:-

- (i) The extent of early Court intervention to halt or terminate adjudication proceedings before an adjudication decision is made; and
- (ii) Interpretation of the word “*occupation*” under section 3 of CIPAA 2012.

(I) EARLY COURT INTERVENTION

The Learned Judge reiterated that the extent of court intervention in CIPAA 2012 is limited, where the permissible challenges on jurisdiction has been prescribed in the statute, available only after the adjudication decision is made.

*“[20] I have in Multazam Development Sdn Bhd v. Felda Global Ventures Plantations (M) Sdn Bhd [2020] 6 AMR 258 stated that **the extent of court intervention in statutory adjudication under the CIPAA is limited.** The permissible court interventions including challenges on jurisdiction have been **expressly prescribed in the statute and these challenges are only available after the adjudication decision has been made.**”*

[Emphasis added]

However, the Learned Judge also recognised that in certain instances the Court has entertained challenges on jurisdiction where declarations and injunctions are sought to halt or terminate the adjudication proceedings.

“[21] That notwithstanding, the Court has in certain cases involving jurisdiction of the adjudicator entertained the parties who have sought declarations and injunctions to halt and terminate the adjudication proceedings; see Mega Sasa Sdn Bhd v. Kinta Bakti Sdn Bhd & Ors [2019] 1 LNS 1366 and [2020] 4 CLJ 201. The attractiveness of early court intervention is to avoid abortive costs incurable if the adjudication is eventually found to be a nullity for want of jurisdiction...”

The Learned Judge hastened to add that such intervention must only be entertained sparingly and suggested for such intervention to be limited to clear-cut cases where there is an absence of core jurisdiction, as defined in the case of Terminal Perintis Sdn Bhd v Tan Ngee Hong Construction Sdn Bhd and another case [2017] 1 LNS 177.

*“...Nevertheless, **this sort of court intervention must be very sparingly entertained;** otherwise it will encourage the opening of floodgates to frustrate or defeat the utility of statutory adjudication as a swift interim remedy to ease the case flow of a deserving*

unpaid party to a construction dispute. In my view, the safeguard can be meaningfully achieved if the **permissible court intervention is perhaps limited to challenges on core jurisdiction** as defined in *Terminal Perintis Sdn Bhd v. Tan Ngee Hong Construction Sdn Bhd* and another case [2017] 1 LNS 177.

[22] Despite my initial reluctance to entertain the Plaintiff's application here, I am, after due consideration, satisfied that the problem in issue concerns core jurisdiction and has been brought by the Plaintiff early before statutory adjudication has been even instituted; see also *Euroland & Development Sdn Bhd v. Tack Yap Construction (M) Sdn Bhd* [2018] 1 LNS 896. Nonetheless, I hasten to add that **future applications of similar nature should only be entertained in clear-cut cases where core jurisdiction is absent.**"

[Emphasis added]

(II) SECTION 3 : OCCUPATION

The central question in this case is, whether CIPAA 2012 applies to disputes arising from the Premises/Works or is it excluded by virtue of section 3 of CIPAA 2012.

To this end, the Defendant submitted that, "*the Premises is not caught by s. 3 of the CIPAA because the Premises will not be occupied for residential but commercial purposes*". The Defendant relied, amongst other, on "Guide to CIPAA 2012 published by the Asian International Arbitration Centre [Part IV]":-

"CIPAA does not apply to an individual owner i.e. resident who erects a building not more than 4 storey high which is wholly intended for his own occupation."

On the other hand, the Plaintiff contended that, "*the word "occupation" in s. 3 of the CIPAA has to be broadly interpreted since there is no express limitation to residential occupation*". In support thereof, the Plaintiff referred to, amongst others, "Words, Phrases and Maxims Legally & Judicially Defined" on the word "occupation":-

*"Occupation means **actual holding**. It is **not necessary** that the person claiming to occupy should be **living on it or using it as a residence**. The owner **can occupy a place by making use of it in any manner.**"*

[Emphasis added]

Upon considering the parties' submissions and authorities, the Learned Judge held that the word "occupation" under section 3 should be literally interpreted based on its natural and ordinary meaning. Since there is no express restriction that it must be for residential purposes, the word "occupation" should be given its widest significance (for purposes of exclusion under

section 3).

*“[29] After careful reading and deliberation, I find and hold that the word “**occupation**” in s. 3 of the CIPAA **should be literally interpreted based on its natural and ordinary meaning**. There is **no express restrictive words that it must be for residential purposes only** unlike that in s. 106 of the English Housing Grants, Construction and Regeneration Act 1996 as applied the cases of *Edenbooth Ltd v. Cre8 Developments Ltd* (supra), *Shaw v. Massey Foundations & Pilings Ltd* (supra), *Howsons Ltd v. Redfearn and Another* (supra) and *Westfields Construction Ltd v. Lewis* (supra). **Thus the word “occupation” should be given its widest significance**. It is not the function of the Court to fill up the gap to limit it to residential occupation as so contended by the Defendant.”*

[Emphasis added]

Having found that the word “*occupation*” is not restricted to residential use, the Learned Judge held that section 3 of CIPAA 2012 will be attracted even if the premises is occupied for commercial purposes.

*“[30] Consequently, I further find and hold that **s. 3 of the CIPAA will be attracted even if the Premises is occupied for use as commercial purposes** such as running the Kindergarten.”*

[Emphasis added]

DECISION OF THE COURT

Notwithstanding the above, the Learned Judge found that the Kindergarten was not for the Plaintiff’s own use as it was managed by the Plaintiff’s daughter.

“[31] That notwithstanding, I find that s. 3 of the CIPAA also requires the Plaintiff to occupy the Premises for his own use based on its natural and ordinary meaning. In other words, s. 3 will be attracted if the Plaintiff himself manages the Kindergarten in the Premises. This is however not so because the Kindergarten is in fact managed by the Plaintiff’s daughter.

Resulting thereof, the Plaintiff did not fulfill section 3 in its entirety. As such, the disputes in this matter can be adjudicated upon and is not excluded by virtue of section 3 of CIPAA 2012.



MOVING FORWARD

Following the decision, it is important to note that:-

- (a) The extent of Court's intervention in statutory adjudication under CIPAA 2012 is limited.
- (b) However, the Courts may entertain application to halt or terminate adjudication proceedings in limited circumstances, i.e. in clear-cut cases where core jurisdiction is absent.
- (c) The word "*occupation*" under section 3 of CIPAA 2012 should be given its widest significance and is not limited to residential use only. In fact, occupation extends to commercial usage of the premises.


If you have any questions or comments on this article, please contact:-


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