

CIPAA 2012 : Section 30 Direct Payment – Timing of Notice and “Money Due or Payable”

TRI PACIFIC ENGINEERING SDN BHD v KL Eco CITY SDN BHD [W-02-(C)(A)-1102-07/2024]

29th April 2026

ISSUES

The key requirement under Section 30 of the Construction Industry Payment and Adjudication Act 2012 (“CIPAA 2012”) is that there must be “*money due or payable*” by the principal to the contractor at the time the notice of direct payment is received. This raises important questions as to the timing of such notice, and whether subsequent contractual arrangements, such as final certificates or settlement agreements, affect the question of whether there is any “*money due or payable*”.

What happens if the notice for direct payment is issued before the time for payment under the adjudication decision has expired? Further, how should the Court determine whether there is “*money due or payable*” at the material time, particularly where sums are subject to retention, set-off, or deductions under a settlement agreement?

These questions were answered in the recent Court of Appeal case of **Tri Pacific Engineering Sdn Bhd v KL Eco City Sdn Bhd [W-02-(C)(A)-1102-07/2024]**.

BRIEF FACTS

The brief facts of the case are as follows:-

- (a) The Plaintiff (i.e. the Appellant before the Court of Appeal, Tri Pacific Engineering Sdn Bhd) was appointed by the Main Contractor, one Ireka Engineering & Construction Sdn Bhd (“Ireka”) as a subcontractor for the supply delivery, installation curtain walling, aluminium and glazing works for a project known as Parcel C, Office Tower 2, Lot 5, 16, 29, 30, 42 & 215 on Government Land on Lot 3345, 39, 237, 160 & 238 and Government Land on Lot 95A and 98 Kampung Haji Abdullah Hukum, Jalan Bangsar, Wilayah Persekutuan, which is also known as the OT2 Project (“**Project**”).
- (b) The Plaintiff claimed to have completed the works due under the subcontract but was not paid by Ireka on the payment due.



- (c) The Plaintiff initiated Adjudication Proceedings under CIPAA 2012 against Ireka but before the conclusion of the same, Ireka paid the sum of RM532,940.70 to the Plaintiff.
- (d) On 08.05.2023, the Adjudicator delivered the Adjudication Decision wherein Ireka was ordered to pay the Plaintiff the Adjudicated Sum consisting of the following:-
 - (i) The adjudication amount of RM1,531,594.35 (Principal Sum);
 - (ii) Interest at the rate of 6.4% per annum calculated from 22.05.2023 until the Principal Sum was settled;
 - (iii) Adjudication proceedings costs of RM32,681.04; and
 - (iv) Claim preparation and incidental charges costs of RM30,000.00.
- (e) Subsequently, the Plaintiff instructed its claims consultant ("**Plaintiff's Claims Consultant**") to issue two notices dated 09.05.2023 ("**First Notice**") and 23.05.2023 ("**Second Notice**"), seeking direct payment of the Adjudicated Sum from the Defendant (i.e. the Respondent before the Court of Appeal, KL Eco City Sdn Bhd) pursuant to Section 30 of CIPAA 2012 ("**Direct Payment Demand**").
- (f) On 25.05.2023, the Defendant issued a letter requesting Ireka to show proof of payment to the Plaintiff within 10 working days.
- (g) The Final Certificate was issued by the Project Architect to the Defendant on 10.06.2023.
- (h) The Defendant then requested 14 days to respond to the demand for direct payment, via its letter dated 30.06.2023. The Plaintiff agreed on the same day, while reserving its right to object to any deduction from the direct payment.
- (i) The Defendant then sought a final extension until 31.07.2023 to review the Plaintiff's claim, and expressly stated that the direct payment should exclude interest and adjudication costs. The Plaintiff agreed only to the extension, and not to the other terms.
- (j) By a letter dated 31.07.2023 addressed to the Plaintiff's Claims Consultant, enclosing a cheque dated 25.07.2023, the Defendant made direct payment of RM998,653.66 to the Plaintiff. The Defendant stated, among others, that the payment under Section 30 of CIPAA 2012 excluded late payment interest and adjudication costs, and that the Plaintiff would have no further claim upon accepting the cheque.



- (k) The Plaintiff, via the Plaintiff's Claims Consultant's letter dated 01.08.2023, protested the above conditions and stated that the sum received would be treated as part payment of the Adjudicated Sum. The Plaintiff also demanded the balance of RM192,970.76 ("**Balance Adjudicated Sum**") and objected to the manner in which the Defendant's letter dated 31.07.2023 was issued.
- (l) As the Defendant did not accede to the demand to pay the Balance Adjudicated Sum, the Plaintiff instructed its solicitors ("**Plaintiff's solicitors**") to issue a further direct payment notice under Section 30 of CIPAA 2012 on 11.09.2023, demanding the Balance Adjudicated Sum.
- (m) On 21.09.2023, the Defendant issued a notice to Ireka to show proof of payment of the Balance Adjudicated Sum to the Plaintiff, failing which the Defendant would make direct payment of the sum of RM87,916.92 after the expiry of 10 working days.
- (n) The Plaintiff's solicitors issued a letter dated 22.09.2023, stating that as the Defendant had previously issued a notice under Section 30(2) CIPAA 2012 on 25.05.2023, and that there was no requirement under Section 30 CIPAA 2012 for the Defendant to issue a fresh notice. The Plaintiff also requested that the Defendant disclosed all payment records relating to Ireka with regard to the alleged payment of RM87,916.92.
- (o) By a letter dated 22.09.2023, the Defendant's solicitors responded that, at the time the Direct Payment Demand was made, only the retention sum of RM998,653.66 was due and payable to Ireka. They further stated that, in light of the Plaintiff's position in its letter dated 22.09.2023, no further sum was due or payable by the Defendant to Ireka pursuant to the Second Notice.

PROCEEDINGS BEFORE THE HIGH COURT

On 30.01.2024, the Plaintiff filed an Originating Summons in the High Court and claimed from the Defendant as the principal under Section 30 CIPAA 2012 for the following:-

- (i) Balance Adjudicated Sum of RM192,970.76; and
- (ii) An order that in the event any payment was made by the Defendant to Ireka after the Plaintiff's Direct Payment Demand, the Defendant should make the same payment again to the Plaintiff.

To this, the Defendant filed an Affidavit in Reply dated 01.03.2024 and referenced a Settlement Agreement between the Defendant and Ireka, which was duly stamped on 27.02.2023 ("**Settlement Agreement**").

Before the High Court, two issues were agreed to be determined, namely:-

- (i) Whether the sum due or payable to Ireka by the Defendant on the date of receipt of the Plaintiff's notice of demand made under Section 30 CIPAA 2012 is more than RM998,653.65;
- (ii) Whether the Defendant is liable under Section 30 CIPAA 2012 to pay the Balance Adjudicated Sum of RM192,970.76 to the Plaintiff.

The High Court found that the valid Notice of Request under Section 30 of CIPAA 2012 was the Second Notice dated 23.05.2024, as, at the time the First Notice was issued, the period for Ireka to pay the Adjudicated Sum under the Adjudication Decision had not expired.

In determining whether any sum was due or payable by the Defendant to Ireka at the time of receipt of the Second Notice, the High Court found that only the balance retention sum of RM998,653.66 was due. Accordingly, there were insufficient funds to satisfy the Plaintiff's claim under Section 30 of CIPAA 2012.

Dissatisfied with the High Court's decision, the Plaintiff appealed.

PROCEEDINGS BEFORE THE COURT OF APPEAL

The Court of Appeal considered the two issues before the High Court, together with a third ground of appeal namely, whether the Defendant can rely on the Settlement Agreement and whether the Defendant is allowed to enter into the same to extinguish the Plaintiff's right.

Before determining the issues, the Court of Appeal adopted and reiterated the position in *HSL Ground Engineering Sdn Bhd v Civil Tech Resources Sdn Bhd & Anor Case [2020] CLJU 526* that so long as there is an obligation or liability to pay upon it being properly claimed, the Defendant is obliged to make direct payment if there is money due or payable under Section 30(5) of CIPAA 2012.

MONEY DUE AND PAYABLE BY THE DEFENDANT TO IREKA

In relation to the Final Certificate issued by the Project Architect, the Court of Appeal held that only the balance retention sum of RM998,653.66 was due and payable by the Defendant to Ireka. Pursuant to the Final Certificate, the amount due to Ireka was RM87,916.92 after accounting for the set-off or deductions under the Settlement Agreement:-



“37. We consequently agree with the HCJ on her finding that only the balance retention sum of RM998,653.66 was due and payable by the Defendant to Ireka and that pursuant to the Final Certificate the amount due and payable by the Defendant to Ireka is RM87,916.92 after taking into account the set off or deductions made in accordance with the Settlement Agreement, of which we will deal with in detail later in our grounds.”

The Court of Appeal also found that the “*liability for payment*” of the sum in the Final Certificate would only accrues after the issuance of the Final Payment Certificate on 10.06.2023. Since the Plaintiff took the position that there was no fresh demand after the Second Notice, this amount would not be due or payable in May 2023 when the Second Notice was issued:-

“38. It is our judgment that the sum of RM97,916.92 would only become due when the Final Certificate was issued on 10.6.2023 i.e. the liability for payment only accrues after the issuance of the Final Payment Certificate, and since the Plaintiff took the position that there was no fresh demand under s. 30 CIPAA after the Second Notice, there was no amount due or payable by the Defendant to Ireka as at May 2023...”

41. For the sake of completeness, we thus state that we do not agree with the Plaintiff’s contention that the said Architects Final Certificate demonstrates that at the material time, there were finds due and payable to the Main Contractor.”

Following the above, the Court of Appeal held that there was no money due and payable by the Defendant to Ireka at the time of receipt of the Second Notice:-

“42. Following from all of the above, we hold that as the sum of RM998,653.66 had been paid by the Defendant to the Plaintiff by way of direct payment, there is therefore no money due and payable by the Defendant to Ireka sat the time of receipt of the Second Notice. This is also the finding of the HCJ in the Court below.”

SETTLEMENT AGREEMENT

Next, the Court of Appeal examined the Settlement Agreement dated 27.02.2023 executed between the Defendant and Ireka but declined to consider the issue as the same was abandoned at the High Court:-



- “47. *We do note that the subject of the Settlement Agreement which forms Ground 3 in the Appeal before us i.e. inter alia whether the Defendant can rely on the Settlement Agreement and whether the Defendant is allowed to enter into the same to extinguish the Plaintiff’s right, was not canvassed in the Court below as the Plaintiff/Appellant here had informed the Court that it would not pursue the said issue and this point was expressly noted by the HCJ in her written grounds and she had made no findings in respect of the same...*
49. *There has been no reason, what more exceptional circumstances, given to us in this appeal why this ground, after being abandoned at the High Court, should now be considered and heard by us. Accordingly, we reiterate that this third ground will not be considered by us.”*

INTEREST & COSTS UNDER THE ADJUDICATED AMOUNT

Finally, the Court of Appeal cited the case of *Pali PTP Sdn Bhd v Bond M&E Sdn Bhd and anor appeal [2023] 6 MLJ 176* (read our previous update [here](#)) where the Court of Appeal decided that the adjudicated amount under Section 30 CIPAA 2012 includes interest and costs awarded in the Adjudication Decision. Nevertheless, considering that the Court’s findings that Plaintiff is not entitled to the Balance Adjudicated Sum, the issue was held to be academic.

DECISION OF THE COURT OF APPEAL

Consequently, the Court of Appeal found no appealable errors in the High Court judgment and dismissed the appeal with costs of RM30,000.00.

KEY TAKEAWAY

Following the decision, the following points should be noted:-

- (a) **Timing is critical in invoking Section 30 CIPAA 2012.** A notice for direct payment should only be issued after the time for payment under the adjudication decision has expired. A notice issued earlier may be held to be premature and invalid.
- (b) **The existence of “money due or payable” is assessed at the time of receipt of the Section 30 notice.** If the “*liability for payment*” of a particular sum only accrues after the receipt of that notice, that sum would not be regarded as an amount due or payable for the purposes of section 30(5) of CIPAA 2012.



- (c) **A fresh Section 30 notice would be required in respect of any sum that becomes due or payable by the Principal after the original notice.** Sums falling due only after receipt of the Section 30 notice do not fall within that earlier Section 30 notice.

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

CONTACT



ANDREW HENG YENG HOE
Senior Partner

+6016 222 8412

andrew@zainmegatmurad.com



ATIQAH YASMIN SEDEK
Associate

+6012 732 7567

atiqahsedek@zainmegatmurad.com

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ZAIN MEGAT & MURAD

D2-5-1 to D2-5-3A, Block D
Solaris Dutamas No.1, Jalan Dutamas 1,
50480 Kuala Lumpur, Malaysia

+6 03 6207 9331

+6 03 6207 9332

zmm@zainmegatmurad.com