

CHAPTER

4

SUBCONTRACTING PITFALLS: LESSONS IN CLARITY, CONTRACTUAL INSIGHTS, AND LEGAL PREPAREDNESS

Nor Sham Safiee, Muzani Mustapa, Norhazren Izatie Mohd, and Fuziah Ismail

4.1 PROLOGUE

Nazim Ali, an executive project manager at Megah Holding, just put down his phone and had a conversation with his boss, Datuk Mustafa Kamal. He was offered the lead position for a new project that the company secured from Usaha Jaya Sdn. Bhd. The project is about the development of Limuni Tower at Kuantan, Pahang. He was honoured by the offer as it would tremendously help his career. However, he has some reservations about continuing his employment in the company because of the company's practices. Once he left the office, he drove to gather this thought and kept replaying the incident with the Rebung Tower project.

A few years back, Nazim, who had just joined the company as a junior project manager, was entrusted to lead the Rebung Tower project. However, due to his lack of experience and project administration exposure, he was unaware of the lack of important clauses in the letter

of award. This led to an unfinished and defective project. Besides that, Teguh Bina sued the company, and the court granted its claim.

That experience had taken a toll on his confidence. He is afraid that he is going to repeat the same mistake. He also noticed that the company has some internal issues. He is thinking about the offer and perhaps how to avoid the same mistake. Datuk Mustafa expects his answer by tomorrow morning.

4.2 MULTILAYER SUB-CONTRACTING CONCEPT

Nazim Ali was ecstatic to start his new job as a junior project manager at a prestigious construction company. His first project, the Rebung Tower, was a massive commercial building that would put his skills to the test and make a name for himself in the industry. Little did he know that this project would become a nightmare, putting his career, and reputation on the line.

As the project progressed, Nazim discovered that the company sublet large portions of the work to specialist contractors, a common practice in the construction industry. This arrangement seemed attractive to the company because it reduced its technical and financial risks and guaranteed a profit. However, Nazim soon realised that the multilayer subcontracting system was fraught with problems he never anticipated.

“There are so many subcontractors involved in this project. How can we ensure that their work meets our quality standards?”, Nazim asked the senior project manager. “We have a strict vetting process to ensure that we choose reputable subcontractors with good track records,” the senior project manager replied. “We also ensure that all work is done per the project specifications and timelines.”

There were defects in the work that needed to be addressed. Nazim struggled to convince the subcontractors to correct them despite his best efforts. He was always under pressure to complete the project on time, but the subcontractors were causing delays, putting him in a tight spot. “You need to push the subcontractors to fix these issues as soon as

possible,” the senior project manager advised. “We cannot afford any further delays in this project.”

The situation worsened when the client, Teguh Bina, discovered the defects and sued the company. The court ruled in favour of Teguh Bina, and the company was sued for the damages. “This is a disaster,” Nazim said, feeling the weight of the situation on his shoulders. “What can we do to make things right?”. “We need to review the contract and see if we missed any clauses,” the senior project manager replied. “We also need to make sure that we choose subcontractors carefully and include important clauses in the contract to mitigate any risks associated with subletting work to specialist contractors.”

4.2.1 Subletting Practice in the Construction Industry

In the Malaysian construction industry, subcontracting work to specialists is common. This is because it allows contractors to reduce their technical and financial risk and ensure a profit, provided the work goes according to plan (Lesny, 2024). However, subcontracting can also cause problems such as payment issues and delays, which can negatively affect the quality of the construction work.

In Malaysia, contracts usually require the main contractor to obtain written permission before subletting any work. There are two ways to obtain this permission: either the contract administrator approves the subcontractor chosen by the contractor, or the contractor selects a subcontractor from a list of preapproved subcontractors provided in the contract documents (Curtin, 2010).

Multilayer subcontracting, which involves hiring several layers of subcontractors, has been identified as a potential cause of poor construction quality (Seloga Jaya Sdn. Bhd. v. UEM Genisys Sdn. Bhd., 2010, 5 CLJ). Although efficient at managing labour needs, it can lead to payment problems and delays, which can negatively affect the quality of the construction work (Yoke-Lian et al., 2012). While there is little research on this topic, specifically in Malaysia, payment problems are common in the industry. As such, strategies are needed to reduce