

CHAPTER

5

DELAY AND TERMINATION IN CONSTRUCTION CONTRACTS

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5.1 PROLOGUE

Johan, the Chief Executive Officer (CEO) of EXO Properties Sdn. Bhd. (EXO) was sipping his coffee and thinking about the recent conversation that he had about the current ongoing project with a representative from its subcontractor Star Building Sdn. Bhd. (SBSB). EXO was established in 2000 and was prominently known for developing housing and school projects in Johor Bahru. In early 2021, EXO was awarded with a RM40 million project to construct a private educational institution for Frangipani Education Foundation Sdn. Bhd. (the client) in Bandar Dato' Onn, Johor Bahru, Malaysia. The project was originally scheduled to be completed by the end of October 2021 however, it was extended by three Extension of Time (EOTs) for a total of ten months given by EXO to SBSB. The new date of completion will be by the end of August 2022.

Johan stared at the ceiling of his office and reminisced about what happened during the previous meeting. The due date is catching up as tomorrow will be the beginning of August 2022; however, Johan noticed that SBSB is persistently failing to perform regularly and

diligently in their subcontract work despite several warnings that were communicated. In fact, there were various scopes of works that have yet to be completed including roofing works, flooring works, wall painting works, and the installation of furniture for the project. Johan feels tight in his chest. Now SBSB had written to him requesting for an additional five months to complete the subcontract works by January 2023. He had analysed the reasons given by SBSB for the delays, which allegedly were caused by various factors, including inclement weather, insufficient labour, and an inadequate period of EOT previously given. However, Johan finds no proven justification.

Johan takes a deep breath as he is worried that if SBSB is given EOT No. 4, the project will only be completed by 2023 which will cause the client's wrath. At the same time, EXO had been pressured by the client to complete the project by August 2022 and any delay will lead EXO to be charged with liquidated ascertained damages (LAD). This means there shall be no more delay for SBSB to complete the building works for EXO to ensure timely handover to the client.

As the CEO of an established construction company, Johan must decide whether to terminate SBSB, the subcontractor or to allow SBSB to continue with the subcontract work. He kept staring blankly at the ceiling when suddenly a notification came in from his iPad.

5.2 THE CAUSES OF DELAY IN CONSTRUCTION INDUSTRY DUE TO COVID-19 PANDEMIC

Johan picked up his iPad and began scrolling through the news when he came across an article that caught his attention. The construction industry in Malaysia was projected to rebound strongly after being severely affected by the COVID-19 pandemic. The article stated that the industry was expected to grow steadily by 7.1% to reach RM181,599 million by 2022, and that the growth momentum was expected to continue over the next four quarters. (Bernama Thoughts, 2021; Businesswire, 2023).

Johan could not help but remember about the chaos that the COVID-19 pandemic had caused in the construction industry. The constant stream of movement control orders by the government to curb the pandemic had halted the industry, causing massive delays and disruptions to ongoing projects. Despite being one of the biggest players in the industry and a G7 company, EXO had struggled to keep up with the constantly changing regulations and safety protocols, but eventually they endured. Cash flow significantly impacts the successful completion of construction projects, making it a critical factor in the construction industry (Akinsiku et al., 2016). The current project involving the international school development gives light to his company's business after the pandemic, even though they struggled with the Movement Control Orders protocols.

As Johan continued reading, he noticed something that made his heart sink. The article mentioned that competency, commitment, and continuous involvement in project development were critical factors affecting project planning and completion. (K. Pinto et al., 1987; Kalogeraki et al., 2024). Johan knew that his company was falling short in these areas, and he could not afford to let that happen anymore. The current project was delayed in completion and Johan's subcontractor, SBSB, had recently come under fire for below average performance and may cause EXO's reputation in tatters. He cannot keep letting SBSB get away with shoddy work, missed deadlines and setbacks.

Johan leaned forward, his eyes blazing with intensity. He needs to make sure SBSB operates on schedule and is persistently diligent to complete the subcontract works in accordance with quality and safety standards.

5.3 EXO PROPERTIES SDN. BHD.

Johan stared out of the window and reminisced about how he had been fascinated with building things since he was a young boy and would spend hours building elaborate structures with his Lego sets. After completing his degree in construction management, Johan worked for