THE PROFILE OF SUPPLEMENTARY AGREEMENT LAW CASES

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UNIVERSITI TEKNOLOGI MALAYSIA
THE PROFILE OF SUPPLEMENTARY AGREEMENT LAW CASES

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A thesis submitted in fulfillment of the
Requirement of the award of the degree of
Master of Science in Construction Contract Management.

Faculty of Built Environment
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June 2012
To My Beloved Husband, Ir. Zainidi Mat Yusoff, thanks for your love and the countless hours of joy that we’ve shared throughout the years, and to my family, thanks for the thought and for giving me such a good start.
ACKNOWLEDGEMENT

Syukur Alhamdulillah, as with the consent awarded, I am able to finish this master project within the given time in fulfillment for the award of the degree of Master of Science (Construction Contract Management).

This master project can be completed successfully due to the contribution of many people. First of all, I would like to express my highest gratitude to all the lecturers for the course of Master of Science (Construction Contract Management), especially to Assoc. Prof. Dr. Rosli Abdul Rashid, En. Norazam Othman, Assoc. Prof. Dr. Maizon Hashim, En. Jamaluddin Yaakob, and Dr. Nur Emma Mustapa for their patient, kind advice, encouragement and guidance throughout the research and subsequently completing the master project.

Besides that, I am deeply grateful to my family and my husband for their great consideration and encouragement while preparing this master project. My wish is they all share my happiness. Finally, I want to extend my grateful appreciation to all my friends and my lovely classmates who have helped me throughout the process of preparation and production of this master project. I will always remember and appreciate their help and may Allah S.W.T bless them.
ABSTRACT

A contract creates a legal obligation upon the contracting parties. Generally, when parties enter into a contract, they are not locked up into its terms forever. If certain requirements are not met, change of contract can become a source of contention particularly if the parties contest the sufficiency of the change and their respective rights and obligations under the contract. However, it becomes norm in Malaysia to have Supplementary Agreement (SA) after execution of main contract. This can be seen through Malayan Law Journal where more than 200 cases of SA appeared from the year of 1915 to 2012. For this study, the profile of SA case law is developed to determine the most common reasons for the use of SA and the legal issues arose that made the case been referred to the Court. The criteria of profiling are types of contract, types of Court, number of SA appeared, the parties involved, reason for SA and the issues arose. The cases are based on the Malaysian cases from the year of 1990 to 2011. From the analysis, the most reason for the use of SA is identified which is due to new issues that arise after the execution of main contracts, followed by the inadequacy of main contract and complexity of main contract. While for the legal issues, the issue arose are in terms the of validity of SA’s and implementation of SA. For the cases that has no issues or dispute regarding SA, the Court did not prompt any question of existence of SA and accept it as a legal document. Hopefully, by make this profiling, it will help people who are potentially involved in contract in future to prevent and minimize the dispute among parties.
ABSTRAK

# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>TITLE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DECLARATION</td>
<td>ii</td>
<td></td>
</tr>
<tr>
<td>DEDICATION</td>
<td>iii</td>
<td></td>
</tr>
<tr>
<td>ACKNOWLEDGEMENT</td>
<td>iv</td>
<td></td>
</tr>
<tr>
<td>ABSTRACT</td>
<td>v</td>
<td></td>
</tr>
<tr>
<td>ABSTRAK</td>
<td>vi</td>
<td></td>
</tr>
<tr>
<td>TABLE OF CONTENTS…</td>
<td>vii</td>
<td></td>
</tr>
<tr>
<td>LIST OF CASES……………………</td>
<td>xi</td>
<td></td>
</tr>
<tr>
<td>LIST OF TABLES……………………</td>
<td>xiv</td>
<td></td>
</tr>
<tr>
<td>LIST OF FIGURE……………………</td>
<td>xv</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>1.1 Background of Study</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>1.2 Problem Statement</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>1.3 Objective</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>1.4 Scope of Study</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>1.5 Significance of Study</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>1.6 Research Methodology</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>1.7.1 Stage 1: Identifying the Issue</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>1.7.2 Stage 2: Literature Review</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>1.7.3 Stage 3: Data Collection</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>1.7.4 Stage 4: Data Analysis</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>1.7.5 Stage 5: Conclusion and Recommendations</td>
<td>11</td>
<td></td>
</tr>
</tbody>
</table>
NATURE OF SUPPLEMENTARY AGREEMENT (SA)  

2.1 Introduction  

2.2 Definition of Supplementary Agreement (SA)  

2.3 Types of Supplementary Agreement (SA)  

2.4 Supplementary Agreement at a Common Law  
   2.4.1. Offer and Acceptance  
   2.4.2. Consideration  
   2.4.3. Mutual Assent  
   2.4.4. Consent  

2.5 Effect of Supplementary Agreement  

2.6. Supplementary Agreement (SA) under Contracts Act 1950  

2.7 Conclusion  

PROFILING  

3.1 Introduction  

3.2 Definition of Profiling  

3.3. Elements of Profiling  
   3.3.1 Types of Contract  
       3.3.1.1 Joint Ventures Agreement  
       3.3.1.2 Construction Contract  
       3.3.1.3 Sale and Purchase Agreement  
       3.3.1.4 Facility Contract  
       3.3.1.5 Trust Contract  
   3.3.2 Types of Court  
       3.3.2.1. High Court
3.3.2.2. Court of Appeal 35
3.3.3  Parties Involved in SA 35
3.3.4  Reason for Implementing SA 40
3.3.5  Legal Issues 42
3.4  The Need for Profiling 44
3.5  Conclusion 44

4  THE PROFILE OF SUPPLEMENTARY AGREEMENT CASES LAW 45

4.1  Introduction 45
4.2  Case Studies 46
4.3  Analysis of Supplementary Agreement Case Laws 47
4.4.  Analysis on the Types of Contract, Types of Court and Number of SA. 47
4.5.  Analysis on the Parties Involved in SA. 52
4.6  Analysis on the Reason for Supplementary Agreement (SA) Occurred. 61
4.7  Analysis on the Legal Issues 64
4.8  Conclusion 68
5

CONCLUSION

5.1 Introduction 69
5.2 Research’s Findings 70
5.3 Research Constraints 71
5.4 Suggestions for Further Research 72
5.5 Conclusion 72

APPENDIX 73

REFERRENCE 106
LIST OF CASES

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MAJS Investment Inc. v Albany Bank & Trust & Co (1988)

Dryer v. National By-Products
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## LIST OF TABLES

<table>
<thead>
<tr>
<th>TABLE NO</th>
<th>TITLE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1</td>
<td>Analysis on the Types of Contract, Types of Court and Number of SA</td>
<td>48</td>
</tr>
<tr>
<td>4.2</td>
<td>Analysis on Number of SA Occurred.</td>
<td>52</td>
</tr>
<tr>
<td>4.3(a)</td>
<td>Analysis on the Parties Involved in SA Law Cases</td>
<td>53</td>
</tr>
<tr>
<td>4.3(b)</td>
<td>Data Analysis on the Parties Involved in SA Cases</td>
<td>57</td>
</tr>
<tr>
<td>4.3(c)</td>
<td>Data Analysis on the Parties Involved in SA Cases</td>
<td>59</td>
</tr>
<tr>
<td>4.4</td>
<td>Analysis on the Reason for Supplementary Agreement (SA) Formed.</td>
<td>62</td>
</tr>
<tr>
<td>4.5 (i)</td>
<td>Analysis on the Legal Issues</td>
<td>65</td>
</tr>
<tr>
<td>4.5 (ii)</td>
<td>Analysis on the Legal Issues</td>
<td>66</td>
</tr>
<tr>
<td>4.5 (iii)</td>
<td>Analysis on the Legal Issues</td>
<td>67</td>
</tr>
</tbody>
</table>
## LIST OF FIGURES

<table>
<thead>
<tr>
<th>FIGURES NO</th>
<th>TITLE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1</td>
<td>Types of Contract</td>
<td>50</td>
</tr>
<tr>
<td>4.2</td>
<td>Types of Court Involved.</td>
<td>51</td>
</tr>
<tr>
<td>4.3</td>
<td>Percentage of Parties Involved in SA Law Cases</td>
<td>58</td>
</tr>
<tr>
<td>4.4</td>
<td>Percentage of Parties Involved in SA Law Cases</td>
<td>60</td>
</tr>
</tbody>
</table>
CHAPTER 1

INTRODUCTION

1.1 Background of Study

A contract is an agreement entered voluntarily by two or more parties with the intention of creating a legal obligation. It is stated in the Contracts Act 1950, section 2(h), that a contract it is ‘an agreement enforceable by law’. One of the roles of contract is to bind the parties with the responsibilities, the performances that need to be done by parties and provide what is to happen if things go wrong\(^1\).

Generally, once a contract has been formed, it cannot be changed unless all parties to the contract agree upon it\textsuperscript{2}. If certain requirements are not met, parties will make a change of contract, but leaves the general purpose undisturbed\textsuperscript{3}. This is a contradiction with the law of contract.

The change or modification of a contract has been introduced in various terms such as addendum, alteration, amendment, additional agreement, supplementary agreement and so on. But this study focussed on the use of Supplementary Agreement (SA). This supplementary agreement (SA) will be added together with the original contract.

Changes to existing contract will give an effect to the parties involved and the implementation of it. For example, the changes will be interpret as an including agreement to rescind the inconsistent term in the earlier contract and failure to comply with the terms will lead to a breach in contract\textsuperscript{4}. Later, when disputes arise between the parties upon the Supplementary Agreement (SA), then it will be brought to the Court.

The changes of contract will be represented as a SA and will be read in conjunction with the main contract⁵. There are many reasons of parties make changes. Those would include extending a contract, to change the duration of contract, to add additional items or to change the payment terms⁶.

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³ KK Land Sdn Bhd v Sabah Economic Development Corporation & Anor (2010) MLJU 1465
1.2 Problem Statements

It has been common scenario where SA appeared after the execution of main contract. For example, there is a SA in Public Work Department (PWD) formed after execution of main contract where the reason of SA is give extension of time regarding late payment by Employer. Apart from that, by searching the cases regarding the SA using Lexis-Nexis Malaysia, there are more than 200 cases appeared from the year of 1915 to 2012.

By doing profiling, we can look into details what are the common reasons of SA and the legal issues arose in SA law cases. Besides, when the SA law cases have been referred to the Court, this study can determine the most significant questions arose in solving disputes regarding SA law cases.

Based on Crowe & Sias (2006), generally the issues of SA that brought to the Court are regarding to its requirements such as offer, acceptance and consideration. But, this is just a general effect of the changes of contract into SA. It does not include the criteria of the project, parties involved, different company or firms, different size, part of country with different skills and capabilities and always subject to changing environment.
Thus, the study of SA law cases will be carried out to form the profile of SA law cases due to some criteria such as types of contract, types of Court, number SA occur, the parties involved in SA, reason for implementing of SA and lastly, the Court judgments. A ‘profile’ can be defined as a set of data often in graphic form portraying the significant features of something by test or rating\textsuperscript{8}. Since the disputes have been one of the major factors affecting cost and time of the completion and successful of the contract, it is necessary to determine the reasons of SA formed and the legal issues trough the SA law cases.

By having all the information and knowledge into profiling, it will definitely give a parties involved to the contract especially in the construction industry to anticipate the problems in early stage.

\textsuperscript{8}Merriam Webster (2012). http://www.merriam-webster.com/dictionary/profile
1.3 Objective of Study

The objective of this study is to develop the profile of SA law cases due to the criteria outlined below:

i. Types of Contract,
ii. Type of Court,
iii. Number of SA Occur
iv. The parties involved in the contract,
v. Reason for SA, and
vi. Court Judgments.

The profile would be used as a guideline to the parties to the contract especially in the construction industry before entering into contracts. This provision would be included in the terms and conditions of contract or as part of the conditions of acceptance.
1.4 Scope and Limitation of Study

This research will be limited to the followings:

i. Malaysian cases only.

ii. The cases that being reported with adequate information for the profiling criteria.

1.5 Significant of the Study

This research is very important as it can be a guideline for those who are involved in the construction industry mainly to the employer and contractor especially when there is a possibility that supplementary agreement will be formed later. This study may help the parties to the contract to know when the supplementary agreement can be used and what are the issues normally arise.
1.6 Research Methodology

This research will be based on the systematic process in order to achieve the objective of the study. It will have five stages of identified issues such as literature review, data collection, data analysis, conclusion and suggestion.
1.6.1 Stage 1: Literature Review

After the issues and the objectives have been defined, literature review related to the study field will be collected in order to give more understanding and the idea of how this objective will be achieved. All the data related will be collected from books, journals, previews research, reports and internet.

1.6.2 Stage 2: Identifying The Research Issue

The study issue arises from my working experience, intensive reading of books, journals and articles which can be attained from the UTM library, Building Construction Information Centre (BCIC) and Resource Centre of Alam Bina (RC). From study issue, the objective of the study has been identified.
1.6.3 Stage 3: Data Collection

In this stage, after identifying all the background and relevant issues through literature review, legal cases based on written opinions of courts which are related to the invitation to treats will be collected from different sources such as All England Law Reports, Malayan Law Journals, Singapore Law Report and etc. via UTM library electronic database, namely Lexis-Nexis Legal Database.

1.6.4 Stage 4: Research Analysis

The case study will be started by reviewing and clarifying all the facts of the selected cases.
1.6.5 Stage 5: Conclusion And Recommendation

After the discussions have been made from previous stages, I will make a conclusion from the analysis. After presenting the research findings, further study will be suggested. I will also review the whole process of the study to identify whether the objective of the study have been achieved.
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