CHAPTER 1

INTRODUCTION

1.1 Background of Study

The construction industry plays the important role and key sector in the development that contributes to Malaysia’s economy growth. The nation’s economic system has shown encouraging trends for the first quarter of 2014, where the Gross Domestic Product (GDP) recorded a growth of 6.2%, which is the highest increase since the fourth-quarter of 2012. It is because the construction industry remains robust and recorded double digit growth of 18.9% (Martin C., 2014). The success of economic development will further lead to an increase in incomes, generating demand for additional construction activities.

The industry also provides employment for many ranging from professional such as architects, engineers and surveyors to main contractors, subcontractors, suppliers and ultimately manual laborers who are hired by these contractors. The construction industry is an important cog in the wheel propelling the Malaysia economy (M. Fikri et al., 2012).

The Malaysia Construction Industry Master Plan (CIMP) (2005 – 2015) has a vision for the Malaysia Construction Industry to be WORLD CLASS by 2015. Outlined with the CIMP are the vision, mission, critical success factors, seven (7) strategic thrusts and twenty one (21) strategic recommendations that will guide the development of the Malaysian Construction Industry through the following decade.
Focusing on strategic thrust No.2, it is aimed to strengthen the construction industry image. It is recommended that an Act be enacted to address non-payment, late payment and other payment related issues in the construction industry (M. Fikri, et al., 2012). Therefore, Construction Industry Development Board (CIDB) Malaysia in collaboration with the construction industry has moved forward for the enactment of Construction Industry Payment and Adjudication Act to improve cash flow problem in the Malaysian construction industry.

1.2 Problem Statement

Payment has been said to be the life-blood of the construction industry. Yet there remains a continuing problem of delayed and non-payment in the Malaysian construction industry calling for the entire delivery chain (Noushad, 2005). It is generally accepted that the late or non-payment will cause severe cash flow problems especially to contractor (M. Fikri et al., 2012). However, the construction industry is always in dispute liable. It is therefore common for the claimant pursuing his claim for works and services rendered to meet with a cross claim instead for defective work, delayed completion etc. Thus payment is always postponed until the settlement of the conflict (Lim, 2005).

The usual mechanisms for dispute resolution in the Malaysian construction industry are presently by way of arbitration and litigation. These mechanisms have always involved the judicial system and a complex body of rules as to the process. It is no secret that these mechanisms of dispute resolution leave much to be trusted. Criticisms are frequently made as to its many inadequacies and shortfalls. Litigation is affordable but it takes too long. It may be heard after a long delay by a judge with little or no experience in the field of construction (Sundra, 2003). On the other hand, arbitrator is faster but it is expensive. In any case, both modes will still take a considerable length of time as the disputes will have to be determined and disposed in accordance with the law, which must amongst others require affording the disputant natural justice in the presentation of their respective case (Lim, 2002).
The situation is getting worse when there are only limited security of payment and remedies pending dispute resolution for the unpaid claimant in Malaysia. In Kah Seng Construction Sdn Bhd v Selsin Development Sdn Bhd (1997) 1 CLJ Supplemental 448, there is no general common law right of suspension of work for non-payment. The unpaid claimant is given with the option of getting on with the work concurrent suing for payment with interest or if the non-payment is thus severe to constitute a repudiator breach, and so there is the option terminating the contract.

There can be multitude of reasons for the dispute ranging from under capitalization of the respondent to in-competency of the claimant. Even though, standard forms such as PAM 1998 and CIDB 2000 contain express provisions for determination of employment. However as matter of practice, many unpaid claimants are reluctant to go on the route of determination of employment (Lim, 2005). These are the dilemmas of the unpaid contractor as its cost flow and profitability are often in put in failure.

1.3 Objectives of the Study

The objectives of this research are:

a. To determine the profiles of Malaysian court cases in relation to payment disputes in construction industry which are most likely brought to the court.

b. To investigate the problem, effects and legal issues disputed by contractors.

c. To provide remedies or solution of payment in construction industry.

1.4 Scope of the Study

The study involves the class A construction company. The study only covers during the construction phase and not in bidding and design phase.