

**DALAM TRIBUNAL TUNTUTAN PENGGUNA MALAYSIA
DI SIBU, SARAWAK**

TUNTUTAN NO. TTPM - Q- (P) - 12 - 2018

ANTARA

VINCENT NGUOI KING (PYM)

DAN

GREENPOWER ERA BHD. (PN)

KEPUTUSAN

Summary Of Facts

1. This is a design & build contract and based on specifications as mutually agreed by parties.
2. There are three (3) parts to the contract namely;
 - a. Cabinets for the living room
 - b. Cabinets for the wet kitchen
 - c. Cabinets for the dry kitchen
3. The total contract sum as shown in the invoice dated 11/12/2018 is RM 33,700.00, breakdown of which is as follows :
 - a. Living room cabinet – RM 6,800.00
 - b. Wet kitchen cabinet – RM 10,800.00
 - c. Dry kitchen cabinet – RM 16,625.00

Round up figure after less design costs of RM 300.00 is RM 33,700.00. Pihak Yang Menuntut (PYM) had paid 50% of the contract sum amounting to RM 16,850.00 leaving a balance of RM 16,850.00.

4. The Respondent had installed the living room cabinets. PYM was dissatisfied with the finished product viz;
 - a. Covering of the surface and the edges of the cabinets.
 - b. Product design was not what was previously agreed upon,
 - c. Respondent lacked cooperation in making good the defects, and
 - d. Respondent's poor servicePYM produced photos of the visible defects.

PYM's Claim

5. PYM on thus basic decided to cancel the remaining contract and that the Respondent shall no longer install the cabinets for the wet and dry kitchen.
6. PYM is claiming for the refund of the balance of the sum paid. Total sum paid is RM 16,850.00. After less the price for the living room cabinets (RM 6,800.00) the PYM's claim is for RM 10,500.00.

Respondent's Defence & Counter-Claim

7. In its Defence, Respondent avers that they have completed the contract save for installation of the wet and dry kitchen cabinets. Their attempt to inspect and remedy the alleged defects failed to meet schedule convenient to parties. Respondent counterclaim for balance of the contract of RM 16,850.00.

Provisions In Consumer Protection Act, 1999 (CPA)

8. Tribunal noted the relevant provisions in the CPA viz. Part V, V1, V11, V111 & IX.
9. PYM had decided to cancel the remaining contract. It is also not part of the PYM's claim for the Respondent to rectify the alleged defects.
10. Issue before the Tribunal in such a situation is whether the PYM is entitled to a refund of the amount paid less the price of the contract of the cabinets for the living room.
11. Tribunal will be guided by Section 64 of the CPA i.e. as to whether the Respondent can retain the whole sum or part of the amount paid after less the price of the living room cabinets.

12. Respondent's stance appears to be "He can refuse wet and dry kitchen cabinets. We will forfeit the amount paid. We will not attend to any defects as he had breached the contract"

Tribunal task is made more difficult as there is no evidence before the Tribunal of the actual costs for work done by the Respondent for the balance of the work.

13. In the circumstances, Tribunal will thus only order refund of part of the sum claimed. Tribunal is also of the view that the contract is divisible as there is a breakdown of the price of the works. Allow claim to the extent of RM 2,500.00.

14. The Respondent's in its 'Pernyataan Pembelaan dan Tuntutan Balas' states that "Kami telah mengupah peguam untuk membawa kes ini ke mahkamah dan menuntut pampasan dan keadilan".

15. In view of the above and as the cabinets for the wet and dry kitchen has not been installed Counter-claim is dismissed.

16. No Order as to costs.

t.t.

STANLEY EDDY
PRESIDEN
TRIBUNAL TUNTUTAN PENGGUNA MALAYSIA.

Tarikh : 23 Julai 2019