

MALAYSIA
IN THE TRIBUNAL FOR CONSUMER CLAIMS
KOTA KINABALU
CLAIM NO: TTPM-SAB-(P)-74-2018

BETWEEN

YEE CHOI HA ATHENA

... PIHAK YANG MENUNTUT

AND

ENE ELECTRICAL AIRCON SERVICES

... PENENTANG

GROUND OF DECISION

PYM'S CLAIM

In early 2017, the PYM had appointed the Penentang to do the renovation works in her house in Lot 51, Taman Putra Pogun. The Penentang had provided the PYM with a hand written quotation with total sum of RM 115,050.00 which the PYM had subsequently agreed and confirmed the appointment of the Penentang to do the renovation works [Refer to the Quotation prepared by the Penentang].

The Penentang started the renovation works in February 2017 and completed the works on 4th July 2017. According to the PYM, after the completion of the renovation works, there were many defects in the works done as per the photos attached by the PYM [Refer to the photos P1-P23

by the PYM]. The PYM had subsequently appointed a Quantity Surveyor to conduct a valuation report on the house, and the total cost of repair is RM 53,275.00 [Refer to the valuation report done by the Quantity Surveyor]. The PYM also claimed that the Penentang did not do the piling works as orally agreed. The PYM now wants to claim for RM 25,000.00 from the Penentang.

THE PENENTANG'S DEFENCE

The Penentang's defence is that the renovation works had been completed on 04.07.2017, the PYM was satisfied with the works done at that material times and had paid the balance to the Penentang in December 2017. The Penentang claimed that if the PYM is not satisfied with the works done, she could have called the Penentang and asked him to repair the defects. The Penentang further claimed that since the PYM has been staying in the house for 1 year, it is therefore unreasonable for her to only claim against the Penentang now. The Penentang also claimed that he never agreed to do the piling works for the PYM.

EVIDENCE

The PYM called Mr. Chong Su Leong (PYM-W1), a certified Quantity Surveyor who went to the PYM's house to do an inspection and to prepare the report. Mr. Chong's evidence can be summarised as follows:-

- (1) After inspecting the PYM's house, PYM-W1 found the followings:-
 - (a) Piling works not done;
 - (b) Sloping floor tiles at extended kitchen;
 - (c) Rusty security grilles;
 - (d) Wrong positioning of air-conditioning blower;

- (e) Poor finish around edges of door frames;
 - (f) Cracked wall tiles at wet kitchen; and
 - (g) Cracks and rough surface in plastering and painting.
- (2) For the sloping floor tiles at extended kitchen. PYM-W1 testified that this could be caused by either tiling works not done properly or no piling works was done.
- (3) The defects and the rectification works need to be carried out can be seen from the Report of PYM-W1.

Out of the many defects found by PYM-W1, the Penentang only challenged the piling works and the costs of removing the air-conditioner.

For the piling works, the Penentang testified that he never agreed to do piling works for the PYM, therefore the quotation provided by him does not include piling works. Further, he also testified that the photo shown to the PYM in the Whatsapp message is not piling but only footing.

As for the cost of removal of air-conditioner, the Penentang challenged the cost of RM 1,000.00 and claimed that it is too expensive. PYM-W1 further testified that the cost of RM 1,000.00 includes the cost of taking down and re-installing the curtain.

FINDINGS

Section 53 of the Consumer Protection Act 1999 provides that:-

“Where services are supplied to a consumer, there shall be implied a guarantee that the services will be carried out with reasonable

care and skill and that any material supplied in connection with such services will be fit for the purpose for which it is supplied.”

When the Penentang agreed to supply services i.e. to carry out the renovation works for the PYM, there shall be implied a guarantee that the renovation works are to be carried out with reasonable care and skill.

After examining the documents, photos and testimonies of the parties, I find the followings:-

(1) The piling works

Looking from the quotation provided by the Penentang, the total sum of RM 115,050.00 does not include the piling works. Even though the PYM claimed that the Penentang had orally agreed to do the piling works and showed to me the Whatsapp messages, I believe that the PYM had misunderstood the meaning of piling and footing. The Penentang only agreed to do the footing but not piling. Refer to the photo as shown in the Whatsapp messages, the Penentang was indeed carrying out footing works but not piling works.

In the circumstances, I therefore agree with the Penentang that the renovation works carried by him did not include piling works.

(2) Other defects

As to the other defects, after examining the photos and report by PYM-W1, I am satisfied that the works carried out by the Penentang are of unsatisfactory quality. I agree with PYM-W1's Report that the defects and rectification works to be carried out as more reliable

being supported by the oral evidence of PYM-W1 whose evidence was not seriously challenged by the Penentang.

- (3) Despite having informed the Penentang of the defective works in the house, the Penentang has failed to rectify the defects.
- (4) As discussed above, the Penentang never agreed to do the piling works for the PYM, I will therefore not take into consideration the estimated cost of piling works of RM 30,900.00 provided by PYM-W1.
- (5) Taking into consideration the above factors, I find that the sum of RM 22,375.00 being over payment to the Penentang as reasonable and just. There is no reasonable and lawful excuse for the Penentang's unsatisfactory services done on the PYM's house.

I therefore make the following Award Borang 10:-

The Penentang hendaklah membayar balik RM 22,375.00 kepada Pihak Yang Menuntut dalam tempoh 14 hari dari tarikh Award diserahkan.

Dated this 22nd January 2019

T.T
YONG PEI YI
PRESIDEN TRIBUNAL TUNTUTAN
PENGGUNA MALAYSIA