

Case Summary 01/2021

A summary of the Federal Court's decision in *Tindak Murni Sdn Bhd v Juang Setia Sdn Bhd* [Federal Court Civil Application No. 03-2-11/2018 (B)]

A judgment in default (“JID”) cannot be sustained when the Plaintiff who obtained the JID is bound by a valid arbitration agreement/ clause and the Defendant has raised disputes to be ventilated via arbitration

BACKGROUND FACTS

Tindak Murni Sdn Bhd (the Defendant/Appellant) [“TM”] and Juang Setia Sdn Bhd (the Plaintiff/Respondent) [“JS”] entered into a Building Construction Contract. TM was the employer while JS was the contractor.

The Building Construction Contract contained an arbitration clause (Clause 34). A dispute subsequently arose over sums which JS alleged were unpaid to it by TM.

JS issued a ‘notice of determination’, giving TM seven days to remedy the breach of the Building Construction Contract. TM did not respond and as a result, JS issued a notice of termination.

JS then filed a civil suit in the Shah Alam High Court to recover monies due and owing to it. TM failed to enter its appearance within 14 days of service of the Writ of Summons and Statement of Claim. JS went on to obtain a Judgment in Default (“JID”) against TM.

TM filed an application to set aside the JID on the basis that it had a valid dispute against JS’ claims and that an arbitration clause existed.



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HIGH COURT'S DECISION

The Registrar of the High Court allowed TM's application to set aside the JID on the basis that there was a defence on the merits in that there were disputes and/or triable issues justifying the matter being heard on its merits.

JS then appealed to the Judge in Chambers. The latter dismissed JS' appeal against the setting aside of the JID. The High Court judge found that there was a defence on the merits¹ and that there was a valid arbitration clause which the parties had agreed to be bound to.²

¹ *Juang Setia Sdn Bhd v Tindak Murni Sdn Bhd* [2018] MLJU 229, at paragraph 12

² *Juang Setia Sdn Bhd v Tindak Murni Sdn Bhd* [2018] MLJU 229, at paragraph 23

COURT OF APPEAL'S DECISION

The Court of Appeal allowed JS' appeal on the grounds that there were no defence on the merits.

Since the words in Clause 30.3(i) of the Building Construction Contract are "perfectly clear and free from ambiguity", the Court of Appeal held that TM must pay the JS the sums without any deduction or set-off or counterclaim or based on an allegation of defective works.³

The Court of Appeal then ordered the original JID entered against TM to be restored.⁴

³ *Juang Setia Sdn Bhd v Tindak Murni Sdn Bhd* [2018] MLJU 975, at paragraph 52

⁴ *Juang Setia Sdn Bhd v Tindak Murni Sdn Bhd* [2018] MLJU 975, at paragraph 56



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FEDERAL COURT'S DECISION

The Federal Court held that the Court of Appeal had erred⁵ as *inter alia* the latter had:

- a. simply determined JS' appeal relating to the setting aside of the JID in vacuo, disregarding the fact that there was a second appeal related to a stay pending arbitration; and
- b. failed to consider or give effect to the relevant provisions of the Arbitration Act in failing to consider Clause 34 and to give effect to the relevant provisions and purpose of the Arbitration Act 2005.

The JID could not be sustained when JS who obtained the JID is bound by a valid arbitration agreement/clause and TM had raised disputes to be ventilated via arbitration.⁶

The Federal Court thus reversed the Court of Appeal's decision and reinstated the order of the High Court.

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⁵ *Tindak Murni Sdn Bhd v Juang Setia Sdn Bhd and another appeal* [2020] MLJU 232, at paragraph 72

⁶ *Tindak Murni Sdn Bhd v Juang Setia Sdn Bhd and another appeal* [2020] MLJU 232, at paragraph 75