



A summary of the Federal Court’s decision in *Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd* [Federal Court Civil Appeal No. 02(f)-11-02/2019(W)]

A contract of employment which is renewed successively without application by the employee and without any intermittent breaks in between is in reality a permanent employment

The purpose of the “essential unity group enterprise” or “common employer” doctrine is to permit the corporate veil to be pierced in order to establish or identify the true labour relationship between parties in terms of the existing labour relation realities

BACKGROUND FACTS

Ahmad Zahri bin Mirza Abdul Hamid (the Appellant) [“Ahmad Zahri”] was employed by AIMS Data Centre 2 Sdn Bhd [“ADC”] on a fixed term contract from 1.10.2009 to 30.9.2010.¹

The fixed term contract was successively renewed from 1.10.2010 to 30.9.2011, 1.10.2011 to 30.9.2012.²

Ahmad Zahri’s fixed term contract was subsequently renewed from 1.10.2012 to 30.9.2013 but with AIMS Cyberjaya Sdn Bhd (the Respondent) [“AIMS

¹ *Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd* [Federal Court Civil Appeal No. 02(f)-11-02/2019(W)], at paragraph 3

² *Ibid.*



Cyberjaya”] instead of ADC as ADC was being phased out.³

Ahmad Zahri was then offered further employment from 1.10.2013 until 30.9.2014 under revised terms, which he rejected.⁴

AIMS Cyberjaya then renewed Ahmad Zahri’s fixed term contract for 3 months, namely from 1.10.2013 to 31.12.2013.⁵

Later, AIMS Cyberjaya gave Ahmad Zahri 2 months’ notice of the expiry of his contract and granted him an early release from his employment with effect from 19.10.2013.⁶

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

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Ahmad Zahri lodged a representation with the Industrial Relations Department, pursuant to Section 20 of the Industrial Relations Act 1967, and the matter was referred to the Industrial Court for its determination.⁷

INDUSTRIAL COURT’S DECISION

The Industrial Court found that Ahmad Zahri was a permanent employee of AIMS Cyberjaya and the purported “fixed term contracts” were not genuine fixed term contracts⁸ as:-

- i. all contracts of employment of Ahmad Zahri were automatically

⁷ Ibid.

⁸ *Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd* [Federal Court Civil Appeal No. 02(f)-11-02/2019(W)], at paragraph 5



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renewed upon the initiative of ADC and/or AIMS Cyberjaya and not based on any application by Ahmad Zahri;

- ii. Ahmad Zahri was not a Consultant but an employee of AIMS Cyberjaya;
- iii. Ahmad Zahri’s function and position were not for a fixed duration but had an indefinite amount of time as was within the reasonable contemplation of parties; and
- iv. There was no break in Ahmad Zahri’s employment with ADC and/or AIMS Cyberjaya as confirmed by AIMS Cyberjaya’s own witness.

The Industrial Court lifted/pierced the corporate veil of AIMS Cyberjaya and held that Ahmad Zahri was in fact a permanent employee and there was continuity of employment from ADC.⁹

The Industrial Court was also of the view that Ahmad Zahri was dismissed without just cause or excuse.¹⁰

Ahmad Zahri was awarded back wages of twenty-four (24) months and compensation of one and a half (1½) month salary for each year of his service in lieu of reinstatement.¹¹

⁹ *Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd* [Federal Court Civil Appeal No. 02(f)-11-02/2019(W)], at paragraph 7

¹⁰ *Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd* [Federal Court Civil Appeal No. 02(f)-11-02/2019(W)], at paragraph 1

¹¹ *Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd* [Federal Court



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HIGH COURT’S DECISION

AIMS Cyberjaya then challenged the Industrial Court’s award via judicial review.

The High Court agreed with the Industrial Court and dismissed AIMS Cyberjaya’s application for judicial review.¹²

COURT OF APPEAL’S DECISION

On appeal, the Court of Appeal allowed AIMS Cyberjaya’s appeal and set aside

the High Court’s decision and the Industrial Court’s award.¹³

The Court of Appeal opined that the corporate veil should only be lifted in special circumstances.¹⁴

On the facts of Ahmad Zahri’s case, there were no grounds for the Industrial Court or the High Court to lift the corporate veils of ADC and AIMS Cyberjaya to treat the two separate entities as one i.e. the AIMS Cyberjaya.¹⁵

Civil Appeal No. 02(f)-11-02/2019(W)], at paragraph 3

¹² *Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd* [Federal Court Civil Appeal No. 02(f)-11-02/2019(W)], at paragraph 1

¹³ *Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd* [Federal Court Civil Appeal No. 02(f)-11-02/2019(W)], at paragraph 3

¹⁴ *Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd* [Federal Court Civil Appeal No. 02(f)-11-02/2019(W)], at paragraph 9

¹⁵ *Ibid.*



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The Court of Appeal also held that an expatriate who requires a work permit to work in Malaysia can never be a permanent employee in Malaysia.¹⁶

FEDERAL COURT'S DECISION

Ahmad Zahri obtained leave to appeal to the Federal Court on *inter alia* the following questions of law:¹⁷

(i) Whether a need for work permit is a material consideration in determining whether an

employment contract is a genuine fixed term contract; and

(ii) Does a contract of employment which is renewed successively without application by the employee and without any intermittent breaks in between, is in reality a permanent employment.

The Federal Court, after having examined relevant authorities, answered the first leave question in the negative and second leave question in the affirmative.¹⁸

¹⁶ *Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd* [Federal Court Civil Appeal No. 02(f)-11-02/2019(W)], at paragraph 68

¹⁷ *Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd* [Federal Court Civil Appeal No. 02(f)-11-02/2019(W)], at paragraph 2

¹⁸ *Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd* [Federal Court Civil Appeal No. 02(f)-11-02/2019(W)], at paragraph 88



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With regard to the first leave question, the Federal Court held that Ahmad Zahri’s citizenship has no bearing in deciding whether he was in permanent employment or in employment under a fixed term contract.¹⁹

The Federal Court also noted that the Industrial Relations Act 1967 does not make any distinction between the citizens of Malaysia and non-citizens.²⁰

As for the second leave question, in applying the principles enunciated in *Han Chiang High School/Penang Han Chiang Associated Chinese School Association v National Union of*

Teachers in Independent Schools, West Malaysia & Industrial Court of Malaysia (1990) 1 ILR 473, the Federal Court found that Ahmad Zahri’s contract of employment was a permanent contract and not a fixed term contract.²¹

On the issue of piercing the corporate veil, the Federal Court considered its past decision in *Hotel Jaya Puri Bhd v National Union of Hotel Bar and Restaurant Workers* [1980] 1 MLJ 109 and held that, “lifting/piercing the corporate veil may still be accepted in the realm of industrial relations as the correct approach to reveal who is the employer in the given case in order to

¹⁹ *Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd* [Federal Court Civil Appeal No. 02(f)-11-02/2019(W)], at paragraph 72

²⁰ *Ibid.*

²¹ *Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd* [Federal Court Civil Appeal No. 02(f)-11-02/2019(W)], at paragraph 85



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achieve social justice so that the workmen are not adversely affected.”²²

The Federal Court affirmed the decision in *Hotel Jaya Puri* and held that the purpose of the “essential unity group enterprise” or “common employer” doctrine is to permit the corporate veil to be pierced in order to establish or identify the true labour relationship between parties in terms of the existing labour relation realities.²³

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²² *Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd* [Federal Court Civil Appeal No. 02(f)-11-02/2019(W)], at paragraph 24

²³ *Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd* [Federal Court Civil Appeal No. 02(f)-11-02/2019(W)], at paragraph 45