

# CASE UPDATE 1/2026

**How a RM566K Construction Contract Turned into a RM940K Penalty:**

**Lessons from *MS Elevators v Fairview International School* [2025] CLJU 1820 (Court of Appeal)**

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**This recent Court of Appeal decision is a critical reminder for all contractors that "finishing the job" isn't just about getting a government certificate (in this case, the Department of Occupational Safety and Health's (JKKP) certificate). It's about meeting the specific terms of your contract.**

### **What Happened?**

A school hired a contractor to install three (3) lifts for a contract sum of RM566,000.00. The contractor obtained the required safety certificates from JKKP, i.e., 'Perakuan Mesin Angkat' (PMA) certificates, on 2 June 2015. However, the lifts remained plagued by safety issues, such as stalling and trapping users, and the contractor refused to hand over the lifts because it hadn't been fully paid. The school sued for delays and the cost of hiring a new company to fix the defects. The contractor counter-claimed for its unpaid fees.

### **Why Did the Contractor Lose?**

The Court of Appeal ruled in favour of the school, finding that:

**Safety is Paramount:** Obtaining a government safety certificate does not mean the work is "complete" if it is still unsafe or unfit for use.

**Strict Timelines:** The contractor was liable for RM940,000.00 in damages for a 94-day delay (RM10,000.00 per day) because it failed to meet the completion date in the contract.

**No Right to Stop Work:** The contractor was not allowed to suspend work or hold the equipment "hostage" just because it wasn't paid by the school, as the contract didn't specifically allow for it.

**Forfeiture of Payment:** As the contractor "abandoned" the site by refusing to fix defects without payment, it lost its right to claim the remaining contract balance.

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## **How Does This Impact You as a Contractor?**

Regardless of your industry, this case sets a high bar for how you manage your projects.

### **1. Beware of "Hostage" Tactics**

If you have a payment dispute, you cannot simply stop work or refuse to hand over the site unless your contract has a specific 'right to suspend' clause. Doing so is considered a 'repudiatory breach', which means you are the one breaking the law. You may lose your right to be paid for the work you've already done.

### **2. Paperwork Doesn't Equal Completion**

Don't assume that a third-party inspection or a government certificate stops the 'late penalty' (LAD) clock. If your work has functional defects that prevent the client from using it safely, the court may rule that you are still in "delay" and continue to charge you daily penalties.

### **3. Formal Notices are Non-Negotiable ("EOT Trap")**

In this case, the contractor raised several valid reasons for the delay that were actually the client's fault, including:

- The late handover of the lift shafts
- The lack of a hoisting hook and incorrect doorway heights
- Water ingress and insufficient electrical supply for testing

### **The Rejection:**

Despite these valid grounds, the Court rejected the contractor's attempt to avoid LAD. Why? Because the contractor failed to apply for a formal **Extension of Time (EOT)** as required under **Clause 23.0 of the PAM Contract 2006**.

## The Court ruled that:

- **Silence is Fatal:** You cannot simply "complain" about delays in meetings or emails; you must follow the strict notice procedures in the contract.
- **Condition Precedent:** Under the PAM Contract 2006, giving written notice within 28 days of the delay event is a "condition precedent". If you don't do it, you lose your legal right to claim the extra time.
- **Risks for Non-Compliance:** Because no EOT was granted, the original completion date remained legally binding, leaving the contractor exposed to the full **RM940,000.00** in damages.

### **4. Check Which Contract Document Takes Precedence**

Often, your "Standard Terms" (which might cap your liability at a certain percentage) will conflict with the Letter of Award (which might not have a cap). Most contracts have a 'Precedence' clause. In this case, the Letter of Award won, and the contractor was forced to pay penalties that were nearly double the total value of the original contract.

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