

NORACON SDN BHD

... Plaintiff

AND

R. P SDN BHD

...

Defendant

**(Intermediate Court of Brunei Darussalam)
(Civil Suit/COM No. 109 of 2017)**

Muhammed Faisal Bin PDJLD Kol(B) DSP Haji Kefli, J.C

Date of Ruling: 18th December, 2025.

Headnote: Civil Procedure – Application for leave to appeal to the court of appeal and extension of time to file appeal – factors to consider when allowing leave to appeal – in this case no prospect of success – application dismissed

Ms Dayang Nasreen Erzayanty Binti Awang Kamaruddin & Mr Mohd Noorsuhaimy Bin Kasmany of Messrs Fathan & Co for the Plaintiff.

Ms Nuratikah Binti Awang Haji Omar of Messrs Omar and Khan for the Defendant.

Case cited:

Pearson v Chen Chien Wen Edwin [1991] 3 MLJ 208 at pp 208

Statute:

Order 57 rule 4 of the Rules of the Supreme Court

**RULING ON NOTICE OF MOTION FOR
LEAVE TO APPEAL AND EXTENSION OF TIME**

Muhammed Faisal, J.C.:

I Introduction

1. Before this Court is the Defendant/Applicant's Notice of Motion dated 9 April 2025 seeking two forms of relief:
 - (a) leave to appeal to the Court of Appeal against the judgment of Pengiran Masni, ICJ, dated 8 February 2025; and
 - (b) an extension of time to file and serve the Notice of Appeal out of time.
2. The Plaintiff/Respondent opposes the application in its entirety.
3. This is my ruling on this matter.

II Background Facts

The Project and the Contractual Relationship

5. The Defendant, R.P. Sdn Bhd, was the main contractor appointed by the Government (JKR) to undertake the construction of the *Cadangan Bangunan Sekuriti Pelabuhan Muara*, a multi-level structure with a contract value of approximately B\$612,020.00.
6. The Defendant engaged the Plaintiff, Noracon Sdn Bhd, as subcontractor to carry out all structural works, namely sub-structure and superstructure works. An agreement dated 25 June 2013 recorded the parties' respective scopes and obligations.
7. The Plaintiff commenced works shortly thereafter and says it completed all works within its scope by November 2013, ahead of schedule. This was corroborated at trial by PW3 (QED Konsult), the Defendant's own appointed structural engineer and project coordinator.

Events Leading to Dispute

8. After completion of the structural works, the Plaintiff was also instructed—through PW3 on behalf of the Defendant—to perform additional works relating to soil backfilling, polyfilm to GF slab and soil treatment. These works were carried out and completed by February 2014.
9. Meanwhile, the project stalled as the Defendant was unable to finance and complete its remaining architectural and finishing works. A site meeting was convened on 9 February 2014, at which it was agreed:
 - that Iridium Sdn Bhd would take over the Defendant's remaining works;
 - that Duners Sdn Bhd would in turn perform architectural portions; and
 - that the Defendant would channel certified payments to Iridium, who would then distribute the sums payable to the Plaintiff and Duners.
10. The Plaintiff was never fully paid for the completed structural works and the additional works. The outstanding sum claimed was B\$153,910.35.

Trial and Judgment

11. After a full trial, including evidence from PW1, PW2, PW3, and the Defendant's Director, the learned Intermediate Court Judge made detailed findings, including that:
 - the Plaintiff did complete all contracted structural works ahead of schedule;
 - the additional works were instructed and completed;

- the Defendant’s assertions of abandonment or incomplete work were inconsistent and uncorroborated;
 - the Defendant’s delays were attributable to his own late structural drawings and financial difficulty; and
 - the Defendant’s counterclaims for LAD and labour costs were unproven.
12. Judgment was entered for the Plaintiff for B\$153,910.35, with interest and costs. The Defendant’s counterclaim was dismissed in full.

III The Present Application

13. The Defendant is now applying for leave to appeal out of time, having failed to file its Notice of Appeal within the period stipulated under *Order 57 rule 4 of the Rules of the Supreme Court*¹.
14. The delay is approximately one month. The Defendant explains the delay as arising from alleged financial difficulty and the need to prioritise an application for stay of execution.
15. The Plaintiff opposes, saying that:
- the delay was deliberate and unjustified;
 - no evidence of financial hardship has been provided;
 - the Defendant only filed the present application after the Plaintiff highlighted the non-compliance; and
 - more importantly, the intended appeal has no realistic prospect of success.

IV Case Law

16. In *Pearson v Chen Chien Wen Edwin*², states 4 factor to consider which guides the Court’s exercise of discretion in the extension of time:
- i. the length of the delay;
 - ii. the reasons for the delay;
 - iii. the chances of the appeal succeeding if time were extended; and
 - iv. the degree of prejudice to the other party.

¹ “4.(1) Subject to the provisions of this rule, every notice of appeal must be filed and served under rule 3(6) within one month —
 (a) in the case of an appeal from an order in Chambers, from the date when such order was pronounced or when the appellant first had notice thereof;
 (b) in the case of an appeal against the refusal of an application, from the date of such refusal;
 (c) in all other cases, from the date on which the judgment or order appealed against was pronounced.”

² *Pearson v Chen Chien Wen Edwin* [1991] 3 MLJ 208 at pp 208

17. These factors must be considered as a whole, but the most crucial factor is the prospects of success; an extension of time should not be granted where the proposed appeal is devoid of merit.

V Analysis

(1) Length of Delay

18. The delay of approximately one month is not trivial, but neither is it excessive. On its own, this factor does not bar relief. The more decisive consideration lies elsewhere.

(2) Reason for Delay

19. The Defendant asserts that financial difficulties prevented it from filing the Notice of Appeal in time. However:

- no documentary evidence is produced;
- the Defendant nonetheless managed to file and pursue a stay application during the same period; and
- unfiled copies of the Notice of Motion were only served after the Plaintiff raised the non-compliance.

20. The Defendant's explanation for the delay remains unsupported by evidence and is internally inconsistent, particularly when viewed against the fact that a stay of execution application was pursued promptly while no Notice of Appeal was filed within time. The asserted financial difficulty remains a bare assertion.

(3) Prospects of Success

21. This is the determinative issue.

22. The Defendant contends that the trial judge failed to consider Exhibit NSB-4 (the QED Konsult letter dated 19 December 2014) and did not give proper weight to the Defendant's evidence.

23. However, a fair reading of the judgment demonstrates that the learned Judge:

- expressly referred to the QED letter;
- accepted it after PW3 (the Defendant's own consultant) verified its authenticity;
- relied heavily on PW3's independent corroboration that the Plaintiff completed its scope of works; and
- explained in detail why the Defendant's evidence was inconsistent, unsupported, and contradicted by contemporaneous records.

24. The Judge's findings were heavily grounded in credibility, contemporaneous documents, and the evidence of an independent consultant appointed by the

Defendant. These are findings of primary fact to which an appellate court shows the highest degree of deference.

25. The proposed grounds of appeal do not reveal any arguable question of law, misdirection, or oversight of material evidence. They amount, in essence, to an invitation to retry factual disputes already fully ventilated at trial.

26. I therefore find that the proposed appeal has no realistic prospect of success.

(4) Prejudice

27. Prejudice to the Plaintiff is real and significant. The action commenced in 2017; judgment was delivered in early 2025. No payment has been made despite a demand dated 21 April 2025.

28. Allowing an appeal out of time would perpetuate an already protracted matter and further delay the Plaintiff's entitlement to the judgment sum.

29. On the other hand, the "*prejudice*" to the Defendant consists only in losing the opportunity to pursue an appeal which has no merit. This does not justify the granting of an extension.

V Conclusion

30. Having carefully considered all four Pearson factors, I find:

- the explanation for delay is weak and unsupported;
- the Plaintiff would suffer prejudice from further delay; and most importantly,
- the proposed appeal discloses no arguable issue and no realistic prospect of success.

31. In these circumstances, it would not be in the interests of justice to extend time or to grant leave to appeal.

VI Order

32. The Defendant's application for leave to appeal and for an extension of time is dismissed in its entirety.

33. Costs of this application are awarded to the Plaintiff, to be taxed if not agreed.

MUHAMMED FAISAL BIN PDJLD KOL(B) DSP HAJI KEFLI
Judicial Commissioner