IN THE INDUSTRIAL COURT OF MALAYSIA

CASE NO.: 15/4-369/25

BETWEEN

HAIRIZAL BIN HOSMAN

AND

ENCORP MUST SDN BHD

AWARD NO.: 1816 OF 2026

Before	:	Y.A. TUAN ANDERSEN ONG WAI LEONG - CHAIRMAN
Venue	:	Industrial Court of Malaysia at Kuala Lumpur
Date of Reference	:	03.02.2025.
Date(s) of Mention	:	26.03.2025, 29.05.2025, 01.07.2025, 15.05.2026
Date(s) of Hearing	:	11.03.2026
Written Submission (Claimant)	:	22.06.2026, 13.07.2026
Written Submission (Company)	:	26.06.2026, 14.07.2026
Representation	:	Encik Abd Muis Bin Abd Majid & Puan Mastura Binti Mustafa, both of Messrs. Nazri Aziz Masura Mak & Tan, Counsels for the Claimant.

Mr. Edward Andrew Saw Keat Leong &
Ms Kee Shu Min of
Messrs. AmerBon,
Counsels for the Company.

A. REFERENCE :

[1] This is a reference from the Director General for Industrial Relations to the Industrial Court of Malaysia under *section 20(3) of the Industrial Relations Act 1967* as amended by the *Industrial Relations (Amendment) Act 2020 (A 1615) ("the IRA 1967")*, in respect of the dismissal of Hairizal Bin Hosman ("the Claimant") by his employer, Encorp Must Sdn. Bhd. ("the Company") on **15.11.2024.**

B. THE PROCEEDINGS

[2] The Claimant was dismissed by the Company on the ground of alleged misconduct involving dereliction of duty and/or breach of fiduciary duties. The Company commenced the case by calling its sole witness to give evidence in support of the Company's case against the Claimant as follows:

(a) Arman Idzmy Bin Omar ("COW1"), who was the Assistant General Manager of Risk, Governance and Integrity of Encorp Berhad, the Company's holding company.

[3] Upon the conclusion of the Company's case, the Claimant commenced his case against the Company. The Claimant did not call any other witnesses to give evidence at the trial. Only the Claimant gave evidence at the trial in support of his case against the Company.

[4] The following cause papers and documents have been filed and/or marked as evidence before the Court and were referred to during the proceedings:

(a) The Claimant's Statement of Case dated 23.04.2025 ("the Statement of Case");

(b) The Company's Statement in Reply dated 10.06.2025 ("the Statement in Reply");

(c) The Claimant's Rejoinder dated 24.06.2025 ("the Rejoinder");

(d) The Company's Bundle of Documents ("COB1");

(e) The Company's Supplementary Bundle of Documents ("COB2");

(f) The Claimant's Bundle of Documents ("CLB1");

(g) The Company's Witness Statement of Arman Idzmy Bin Omar ("COWS1"); and

(h) The Claimant (Hairizal Bin Hosman)'s Witness Statement ("CLWS1").

C. THE SALIENT FACTS

[5] The Company is a Malaysian company primarily engaged in investment holding and property project management. It is a wholly owned subsidiary of Encorp Berhad, a publicly listed investment holding company with interests in property development, construction and facility management.

[6] Pursuant to an Offer of Appointment dated 30.09.2021, the Claimant was offered employment as Head of Marketing, Sales & Leasing on a Fixed Term Contract basis for a duration of two (2) years, i.e. from 02.03.2022 to 01.03.2024.

[7] By a letter dated 21.02.2024, the Claimant was offered employment for the same position on a Fixed Term Contract basis for a further duration of one (1) year i.e. from 02.03.2024 to 01.03.2025 ("the 2nd Fixed Term Contract").

[8] Although the Claimant was offered the position of Head of Marketing, Sales & Leasing under his Offer of Appointment, it is not disputed that he was, at all material times, the Company's Assistant General Manager, serving in that capacity under a Fixed Term Contract.

[9] On 08.08.2024, the Malaysian Anti-Corruption Commission ("MACC") conducted a raid at the Company's premises. Following the raid, the Claimant

was called to the MACC headquarters for questioning and to assist in its investigation.

[10] By a letter dated 13.08.2024, the Company informed the Claimant that he was suspended from his duties with effect from 12.08.2024 until such time as the suspension was lifted by the Company's Board of Directors, due to the pending investigation by the MACC.

[11] By a letter dated 16.08.2024, the Company requested the Claimant to attend an interview and provide an explanation concerning his arrest and detention by the MACC.

[12] In his reply dated 20.08.2024, the Claimant declined the Company's request on the ground that he had been advised by his solicitor that the questions posed by the MACC and his responses thereto were private and confidential in view of the ongoing investigation by the MACC.

[13] Subsequently, by a letter dated 06.09.2024, the Claimant tendered his resignation by giving three (3) months' notice, with his last day of employment being 05.12.2024.

[14] However, by a letter dated 08.09.2024, the Company informed the Claimant that it rejected his resignation. In the same letter, which also served as a Show Cause Letter, the Company required the Claimant to provide a written explanation within seven (7) days in respect of the following allegations:

(a) That you, as of 30 June 2024 and as the officer in charge of marketing, sales and leasing of Encorp Bhd (at the material time), had failed and/or refused and/or neglected to ensure that all tenants at Encorp Strand Mall and Warna Avenue had executed and valid tenancy agreements with Encorp Strand Mall Sdn Bhd as the landlord. Your failure and/or refusal and/or neglect thereof has breached the fiduciary duty, trust and confidence reposed in you ("Allegation 1");

(b) That you, as of 30 June 2024 and as the officer in charge of marketing, sales and leasing of Encorp Berhad (at the material time), had failed and/or refused and/or neglected to take necessary and appropriate action (including to report and advise the same) against tenants of Encorp Strand Mall and Warna Avenue to effectively recover the total outstanding rent amounting to RM2,522,037.00 as of 30 June 2024. Your failure and/or refusal and/or neglect thereof has compromised the interests and rights of Must Ehsan Development Sdn Bhd and Encorp Strand Mall Sdn Bhd ("Allegation 2");

(c) That you, as of 30 June 2024 and as the officer in charge of marketing, sales and leasing of Encorp Bhd, had failed and/or refused and/or neglected to properly and faithfully discharge your duties to act in, and protect, the best interest of Must Ehsan Development Sdn Bhd and Encorp Strand Mall Sdn Bhd as not all tenants have executed valid tenancy agreements and there is a total outstanding rent of

RM2,522,037.00 as of 30 June 2024. Your failure and/or refusal and/or neglect thereof has breached the fiduciary duty, trust and confidence reposed in you ("Allegation 3").

[15] In his reply dated 13.09.2024, the Claimant maintained that his resignation was valid and in accordance with the *Employment Act 1955* and the terms and conditions of his employment as stipulated in the Offer of Appointment dated 21.02.2024.

[16] As regards the allegations in the Show Cause Letter, the Claimant explained that he was unable to provide a written explanation as he had been instructed by the MACC officer not to disclose any information or statements furnished to the MACC in the course of its investigation.

[17] By a letter dated 20.09.2024, the Company reiterated its rejection of the Claimant's resignation. The Company also rejected the Claimant's explanation for his failure to respond to the allegations, maintaining that there was no legal provision or restriction preventing him from doing so. Nevertheless, the Company granted the Claimant a further seven (7) days to provide his written explanation.

[18] In his subsequent reply dated 27.09.2024, the Claimant reiterated his position that his resignation was valid under the *Employment Act 1955* and in accordance with the terms of his employment. He further maintained that he

was prohibited from disclosing any information or statements furnished to the MACC in connection with its investigation.

[19] Thereafter, by a letter dated 09.10.2024, the Company informed the Claimant that, in the absence of his explanation to the allegations in the Show Cause Letter, it was left to consider the appropriate action to be taken against him without the benefit of his response.

[20] Subsequently, by a letter dated 15.11.2024, the Company dismissed the Claimant from his employment with immediate effect ("the Dismissal Letter"). Relevant excerpts of the Dismissal Letter are reproduced herein below as follows:

> *"Dear Encik Hairizal,*
>
> ***DISMISSAL***
>
> ---
>
> *We refer to the Show Cause Letter dated 8 September 2024 which was issued to you. Reference is also made to your letter dated 13 September 2024, our response thereto dated 20 September 2024 and your subsequent letter dated 27 September 2024.*
>
> *We note that you have been given ample opportunity to furnish your response and explanation to the allegations that have been set out in the Show Cause Letter but you have failed and/or refused to do so. As such, we deem that you have no reasonable explanation to offer against the allegations that have been made against you.*
>
> *The Board of Directors find that the allegations, particulars of which are as set*

out in the Show Cause Letter, are unrebutted.

Premised on the above, the Company is unable to repose any further trust and confidence in you to carry on as the Assistant General Manager of the Company. Consequently, the Management has decided to dismiss you with immediate effect.

You are to also return all property belonging to the Company including all documents and passwords and any other property assigned to you in your capacity as the Assistant General Manager by the end of business on 20 November 2024.

In the meantime, all of the Company's rights are still reserved against you in respect for any loss and/or damage – financial or otherwise – attributed to or caused by you. The Company is also at liberty to commence legal proceedings for the refund or recovery of any monies due and owing to it.

Thank you."

[21] The Claimant was unhappy with the termination of his employment and made a representation to the Director General for Industrial Relations for reinstatement. The matter was accordingly referred to the Industrial Court for adjudication.

D. EVALUATION AND FINDINGS OF THE COURT

[22] The facts surrounding the Claimant's dismissal are straightforward. What makes this case peculiar, however, is that the Company instituted disciplinary proceedings against the Claimant and dismissed him after he had tendered his resignation, but while he was still serving his notice period.

[23] He was dismissed for alleged misconduct comprising dereliction of duties and/or breach of his fiduciary duties to the Company. The Company's pleaded case may be summarised as follows:

(a) That following the arrest and investigation of the Claimant by the MACC, the Company had attempted to seek clarifications from the Claimant on the matter. However the Claimant had refused to cooperate by contending that he was prohibited from sharing and/or disclosing any information or statement shared with the MACC during the course of its investigations;

(b) That the Company had conducted its internal investigation and discovered the Claimant, in his position as Head of Marketing, Sales & Leasing had been derelict in and/or had breached his fiduciary duties as enumerated in the Show Cause Letter;

(c) That the Claimant had been given ample opportunities to answer or reply to the allegations in Show Cause and the Claimant had refused to do so on the pretext he was advised by his letter not to disclose any information shared with the MACC during the investigation;

(d) That the Company had rejected the Claimant's resignation which was to avoid disciplinary action against him by the Company;

(e) That the Claimant had failed to rebut the allegations levelled against him in the Show Cause letter; and

(f) That the Company can no longer repose the necessary trust and confidence in the Claimant.

[24] It is not disputed that at all material time the Claimant did not answer and/or reply to the allegations levelled against him in the Show Cause. The Claimant maintained that he did not answer the allegations because he was advised by his lawyers that information shared with the MACC could not be disclosed to the Company due the ongoing investigation by the MACC.

[25] The Claimant in his Statement of Case and Rejoinder also pleaded *inter alia* as follows:

(a) That the Company has taken unreasonable and unconscionable decision when it failed to consider the Claimant's circumstances under which he was required to function at the material time;

(b) That the Company in terminating his employment, acted arbitrarily and its decision was erroneous when it disregarded the rules of natural justice because he was never been charged in any court of law for the matter related to MACC investigation and he was never found guilty of the same;

(c) That the Company's decision to dismiss him was motivated by mala fides, act of victimization and discrimination as the management had a hidden agenda and it was effected with the ulterior motive of getting rid of the Claimant; and

(d) That the decision of the Company in terminating the Claimant was capricious, arbitrary and in violation of fair labour practice and arrived at without just cause or excuse.

The Claimant's Intended Resignation

[26] Before examining the allegations of misconduct against the Claimant, the Court considers it necessary to address the issue of his resignation from the Company.

[27] It is not disputed that the Claimant had tendered his resignation by giving notice to the Company and that he was subsequently dismissed before the expiry of his notice period.

[28] *Section 12(1) of the Employment Act 1955 (""EA 1955")* provides that either party to a contract of service may, at any time, give notice to the other party of his intention to terminate the contract of service.

[29] *Section 12(2) of the EA 1955* further provides that the length of such notice shall be determined by the terms of the contract of service or, in the absence of any written provision, by the notice periods prescribed under the Act.

[30] Clause 15 of the Claimant's 2nd Fixed Term Contract is consistent with *section 12 of the EA 1955*, which provides for the right of an employee to terminate his contract of employment by giving notice. Clause 15 provides, *inter alia*, as follows:

> ***"15 Termination***
>
> *Three (3) months' notice of intention to terminate employment shall be given in writing by either the Company or you. The employee does not have the discretion to serve a termination notice longer than the amount prescribed above.*
>
> *A shorter notice of termination may be negotiated by payment of salary in lieu of notice of Three (3) months' salary by either party.*
>
> *The period of notice SHALL NOT include outstanding annual leave (which can only be taken after the required period of notice), unless the Company agree to approve the employee's leave application in writing.*
>
> *Further, your contract may be terminated by the Company without notice or payment in lieu of notice for the following reasons:*
>
> - *Misconduct;*
> - *Negligence;*
> - *Absence from work for any period of time without prior approval unless the employee shall be able to produce a medical certificate of a doctor to the effect that the employee is by reason of health unable to attend to duties;*
> - *Breach of instruction or regulations; and*
> - *Breach of any of the provisions hereof.*
>
> *In such event, the Company shall be under no obligation to pay you the salary or any part thereof arising after the expiry of the termination notice."*

[31] In view of the provisions of *section 12 of the EA 1955* and Clause 15 of the Claimant's 2nd Fixed Term Contract, the Claimant was entitled to terminate his employment by giving the requisite three (3) months' notice.

[32] In this regard, it is a settled principle of employment law that resignation is a unilateral act by an employee and does not ordinarily require the acceptance or approval of the employer to be valid.

[33] Nevertheless, the employer is entitled to insist that the employee serves the requisite notice period in accordance with the terms of the contract of employment.

[34] Be that as it may, the tendering of a resignation by giving notice does not, in itself, bring the employment relationship to an immediate end. The contract of employment and the reciprocal rights and obligations of the parties continue to subsist until the expiry of the notice period.

[35] During this period, the employee remains subject to the employer's lawful disciplinary authority. In this respect, *section 14(1) of the EA 1955* empowers an employer, on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of service, to dismiss an employee without notice after due inquiry.

[36] In *Standard Bank of South Africa Ltd v Chiloane (2021) 42 ILJ 863 (LAC)*, the South African Labour Appeal Court recognised that an employer remains

entitled to proceed with disciplinary proceedings against an employee during the subsistence of the contractual notice period, notwithstanding the employee's resignation. The Court held that the contract of employment and the reciprocal obligations arising therefrom continue until the expiry of the notice period.

[37] In the present case, although the Claimant's resignation did not require the Company's acceptance to be valid, the Claimant was still serving his notice period when the Company proceeded with disciplinary proceedings against him, which ultimately resulted in his dismissal before the expiry of the notice period.

[38] At the material time, the contractual relationship of employer and employee between the parties was still subsisting. The Company was therefore entitled to institute or continue disciplinary proceedings against the Claimant in respect of the alleged misconduct, notwithstanding that he had tendered his resignation.

[39] Accordingly, the Court finds that the Claimant's resignation did not deprive the Company of its disciplinary authority or preclude it from dismissing him before the expiry of his notice period.

[40] As regards the Company's contention that the Claimant had tendered his resignation to avoid disciplinary action, the Court is of the view that the Claimant's motive for resigning is immaterial.

[41] What is material is that the employment relationship between the parties continued to subsist during the notice period, and the Company remained entitled to exercise its disciplinary authority against the Claimant, irrespective of his reason for resigning.

[42] Be that as it may, the question remains whether the Company had just cause or excuse to dismiss the Claimant. The Court shall therefore proceed to examine the allegations of misconduct against him to determine whether the Company has proved those allegations on a balance of probabilities and, if so, whether the misconduct established justified his dismissal.

Allegations of misconduct

[43] In essence, the allegations of misconduct against the Claimant concern his alleged failure to ensure that all tenants had executed valid tenancy agreements and to take the necessary and appropriate action to recover the outstanding rent, thereby failing to discharge his duties to protect the interests of the companies concerned and breaching the fiduciary duty, trust and confidence reposed in him.

[44] The Company issued the Claimant a Show Cause Letter setting out the allegations against him and calling upon him to provide an explanation. Despite being afforded two opportunities to respond, the Claimant failed or refused to do so.

[45] He sought to justify his refusal on the ground that his lawyer and/or the MACC officer had advised him against disclosing matters relating to the ongoing MACC investigation.

[46] Although the MACC investigation concerned the subject matter of the allegations and had been widely reported in news portals, the Company was entitled to call upon the Claimant to explain the alleged failures in the discharge of his duties.

[47] The pendency of that investigation did not, in itself, relieve him of his obligation to respond to allegations directly concerning his work and responsibilities to the Company. There was no evidence of any order or direction from the MACC prohibiting him from providing such an explanation.

[48] The Claimant's reliance on his lawyer's advice, without identifying how responding to the allegations would contravene any restriction imposed by the MACC, did not adequately justify his refusal to reply.

[49] In the circumstances, the Court finds that his refusal to respond, despite having been afforded two opportunities to do so, was unjustified and could even amount to insubordination.

[50] In *Lim Chee Meng v Northport (Malaysia) Berhad (2026) IRLU 2007*, the learned Industrial Court Chairman, Yang Arif Tuan Augustine Anthony held as follows:

"The Claimant's conduct in refusing to respond to the show cause letters and refusal to attend the domestic inquiry were clearly acts of insubordination particularly the act of insubordination of refusal to obey the lawful instruction of the Company as stated in Charge No:3."

[51] Be that as it may, insubordination was not a ground relied upon by the Company for the Claimant's dismissal in the present case. The Court therefore sees no need to delve further into whether his refusal to respond amounted to insubordination.

[52] Neither does that refusal, by itself, establish the allegations against him. The Court must independently assess the evidence to determine whether the Company has proved the alleged misconduct on a balance of probabilities and, if so, whether it constituted just cause or excuse for his dismissal.

[53] The role of the Industrial Court in deciding cases referred under *section 20(1) of the IRA 1967* was succinctly explained in the case of *Milan Auto Sdn. Bhd. v Wong She Yen (1995) 4 CLJ 449, where the learned judge, Mohd Azmi bin Kamaruddin, FCJ*, in making reference to *Wong Yuen Hock v Syarikat Hong Leong Assurance Sdn. Bhd. & Anor (1995) 3 CLJ 344*, held that the function of the Industrial Court in dismissal cases on a reference under s.20 is two-fold. Firstly, to determine whether the misconduct complained of by the employer

has been established, and secondly whether the proven misconduct constitutes just cause or excuse for the dismissal.

[54] The burden of proof is on the employer to prove that the employee has committed the act of misconduct alleged by the employer and that he was dismissed for just cause or excuse. The standard of proof required is the civil standard of proof on the balance of probabilities *[See: Telekom Malaysia Kawasan Utara v Krishnan a/l Kutty Sanguni Nair & Anor (2003) CLJ 314].*

[55] COW1 testified during the trial that the Claimant's duties and responsibilities as the Company's Assistant General Manager and Head of Marketing, Sales & Leasing were set out in his Offer Letters and Job Description, and were further governed by Encorp Bhd's Leasing Management Policy and Credit Control Policy.

[56] These included facilitating the execution and filing of legal lease documents, preparing, executing and stamping tenancy agreements on behalf of the Company, and collecting rental payments.

[57] According to COW1, the matters underlying the allegations, namely the absence of validly executed tenancy agreements for all tenants at Encorp Strand Mall and Warna Avenue and the alleged failure to take appropriate action to recover outstanding rent totalling RM2,522,037.00 as at 30.06.2024, therefore fell within the Claimant's scope of responsibilities.

[58] The Company produced and tendered into Court the Claimant's Job Descriptions as Head of Marketing, Sales & Leasing, the Leasing Management Policy and the Credit Control Policy to establish the Claimant's duties and responsibilities.

[59] The Claimant admitted under cross-examination by learned Counsel for the Company, Mr. Edward Andrew Saw Keat Leong, that the aforesaid Job Descriptions set out his duties as the Company's Head of Marketing, Sales & Leasing.

[60] He further admitted that he was aware of the Leasing Management Policy and the Credit Control Policy, both of which were applicable to him and/or his department within the Company at the material time.

[61] The Job Description of the Claimant sets out the Claimant's job functions and key responsibilities *inter alia* as follows:

(a) Clause 2.0 - Managing leasing and marketing activities, business and financial; and

(b) Clause 3.0 - Work cooperatively with internal team to develop lease briefs for internal approval. Facilitate ownership execution and lease filing of all legal lease documents.

[62] The Company's Leasing Management Policy further sets out, *inter alia*, the scope of duties and responsibilities of the Claimant and/or the Leasing Department as follows:

(a) Clause 2.2 - Initiate discussion with potential tenants, negotiate the lease and finalize rental and other terms and conditions.

(b) Clause 5.1 - Leasing Manager shall ensure tenants to follow lease terms and follow through the terms and conditions to commence the business in Strand Mall.

[63] The workflow chart in the Leasing Management Policy also clearly showed that the Leasing Department, headed by the Claimant was responsible for ensuring that tenancy agreements were signed by the tenants.

[64] In this regard, the Claimant admitted during the trial that he was responsible for the marketing, sales and leasing of properties belonging to Encorp Berhad and/or the Company, and that his duties included ensuring that tenancy agreements were executed by the tenants of Encorp Strand Mall and Warna Avenue.

[65] COW1 who was also in charge of Encorp Berhad's internal audit function, testified that in April 2024, the Internal Audit Unit from the Risk, Governance

& Integrity conducted an internal control review of the tenancy agreements and trade receivables of Encorp Strand Mall and Warna Avenue.

[66] He stated that the internal control review revealed, among other findings, that as at 30.06.2024, not all tenants at Encorp Strand Mall and Warna Avenue had executed tenancy agreements or had valid tenancy agreements in place. The review also revealed outstanding rentals from tenants at both properties totalling RM2,522,037.00.

[67] Under cross-examination, the Claimant admitted that he knew some tenants were occupying the Company's properties namely at Encorp Strand Mall and Warna Avenue without tenancy agreements or valid tenancy agreements in place, as revealed by the Company's internal audit findings.

[68] He further admitted that he knew some tenants had not paid their rent, but maintained that he was unaware that the outstanding rentals totalled RM2,522,037.00 He sought to explain that debt collection fell outside his job scope and that his responsibility was limited to ensuring that tenants paid their rent.

[69] The Company's Credit Control Policy further provides *inter alia* the scope and responsibility of the Claimant and/or leasing department as follows:

(a) Clause 5.1 - Leasing Manager shall ensure tenants follow the lease terms and follow through the house rules.

(b) Clause 7.5 - Writ of Summons will be arranged by Legal Department upon Leasing Department & FD's instruction (if necessary). Any legal action with cost should obtain approval from the GCEO before proceed.

[70] To substantiate the allegations against the Claimant, the Company tendered in evidence a detailed breakdown of the outstanding rentals totalling RM2,522,037.00, together with particulars of the premises occupied by tenants without tenancy agreements or valid tenancy agreements.

[71] Despite admitting that these matters fell within his job scope and that he knew some tenants occupied the premises without tenancy agreements or valid tenancy agreements, while others had not paid their rent, the Claimant offered no explanation at the trial for his failure to address these matters.

[72] The Claimant's denial of knowledge that the outstanding rentals totalled RM2,522,037 does not detract from the Company's evidence of the arrears. In the case of *Linda Binti Othman v Pembangunan Tanah dan Perumahan Sendirian Berhad (2019) MLJU 1739* the High Court held that a witness's lack of knowledge would render him "unable to challenge or decide on the position of a matter. The relevant excerpts from the judgment are as follows:

"In our instant case, PW1 is the last keeper of these original documents which she received from her father Othman bin Ismail and she has kept them in the safe custody since then until production in court. She has never tempered or doctored or do anything with these documents.

None of this was challenged by the Defendant's counsel. I agree that failure to cross-examine (i.e. challenge) tantamount to acceptance of the evidence.

***No knowledge is not a challenge.** No knowledge is what DW1 said in court. Further there is nothing in the pleadings that says the documents are forgery or not authentic or not truthful.*

No knowledge is not a denial of the authenticity nor of the truth of the content. No knowledge is the lack of information that renders a party unable to challenge or decide on the position of a matter."

[Emphasis added]

[73] Similarly, in the present case, the Claimant's professed lack of knowledge of the total outstanding rentals does not, in itself, amount to a challenge to the truth of the Company's evidence.

general denial against his own admissions and the documentary evidence adduced by the Company, the Court finds that it does not answer the specific failures established against him.

[79] The Claimant neither explained how the circumstances at the material time justified the failures identified by the Company nor substantiated the alleged improper motives.

[80] His reliance on the fact that he had neither been charged nor found guilty in connection with the MACC investigation likewise fails to answer the allegations concerning the discharge of his employment duties.

[81] When weighed against his own admissions and the documentary evidence adduced by the Company, his assertions and general denial do not provide a sufficient basis to displace the Company's evidence or establish that his dismissal was actuated by bad faith.

[82] The Claimant's failure to discharge the duties entrusted to him, particularly in ensuring that tenants occupied the Company's premises under duly executed and valid tenancy agreements and paid their rent, constituted the misconduct alleged against him.

[83] The Claimant did not, at any material time, whether before or during the trial, provide any explanation to justify his failures or omissions in ensuring that tenants occupied the Company's premises under duly executed and valid

tenancy agreements and in taking steps to recover outstanding rentals, including instructing the Legal Department to commence legal proceedings against defaulting tenants as provided under the Credit Control Policy.

[84] Having considered the totality of the evidence and guided by equity, good conscience and the substantial merits of the case, the Court is satisfied that the Company has proved all three allegations of misconduct set out in the Show Cause letter against the Claimant, in the form of dereliction of duties and/or breach of his fiduciary duties to the Company, on a balance of probabilities.

[85] In *Pearce v Foster (1886) 17 QBD 536* at 542, Lopes LJ explained what constitutes misconduct justifying dismissal as follows:

> *If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service or the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also it he discovers it afterwards, in dismissing that servant.*

[86] In the present case, the Claimant's failures exposed the Company to contractual risks and significant financial loss, with outstanding rentals totalling RM2,522,037.00.

[87] In view of the nature, seriousness and consequences of those failures, the Court is satisfied that the misconduct established against him was sufficiently grave to warrant dismissal.

[88] Accordingly, the Court finds that the Claimant was dismissed for just cause or excuse. The Claimant's case against the Company is hereby dismissed.

HANDED DOWN AND DATED THIS 15TH DAY OF OCTOBER, 2026

(ANDERSEN ONG WAI LEONG)
CHAIRMAN
INDUSTRIAL COURT OF MALAYSIA
AT KUALA LUMPUR