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EMPLOYMENT & INDUSTRIAL RELATIONS

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CONSTRUCTIVE DISMISSAL CLAIM IS NOT A “GET-OUT-OF-CONTRACT-FREE” CARD

by Shariffullah Majeed, Arissa Ahrom & Sarah Heyrissa

MAHAMOOD MUBARAK ALI v FGV HOLDINGS BERHAD
(Award No.: 838 of 2026)

Constructive dismissal is sometimes invoked by delinquent employees as a convenient means of avoiding their contractual obligations. This is not what the law of constructive dismissal was designed to achieve. Constructive dismissal exists to protect an employee whose employer has committed a fundamental breach of the employment contract. Through sufficiently serious conduct, an employee may have no reasonable alternative but leave the employer by resigning.

For example, in **VELAN @ RAKESHKUTTY VADIVAL v OMYA MALAYSIA SDN BHD [2023] 2 LNS 2239**, the employee alleged that he had been constructively dismissed after being placed on a performance improvement plan and facing a possible domestic inquiry for non-compliance. The Industrial Court found that the employee had negotiated a compensation package and voluntarily executed a Deed of Release & Settlement. The Industrial Court held that his constructive dismissal claim had been brought “***in bad faith and with an oblique***

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motive" and was "***a charade***" intended to facilitate a further claim against his employer. Also, in **NG CHENG WEI v SYNCHRO RKK SDN BHD [2023] 2 LNS 0577**, the Industrial Court found that the employee attended a meeting convened to resolve his grievances with the intention of secretly gathering evidence for future use. His conduct showed that he had ***"all along planned his move to claim constructive dismissal***" and "***building his case against the Company***".

An attempt of a similar nature arose in **MAHAMOOD MUBARAK ALI v FGV HOLDINGS BERHAD**, where the Claimant's education was sponsored by the Company in 2015 and under this arrangement, he was required to serve within the Company for 10 years upon completion of his studies. This scholarship bond reflected a straightforward bargain: the employer invested in the employee's education and development, while the employee agreed to serve the employer for a specified period so that the employer could benefit from the knowledge, skills and professional development gained through that investment.

In this case, the Claimant joined the Company in 2019 and progressed to the position of Senior Executive where he had 3 executives reporting to him. In 2022, the Company restructured the relevant department which resulted in both the Claimant and the 3 executives reporting to a new head. The Claimant contended that the restructuring was implemented without consulting him or obtaining his approval. He also complained that the programmes initiated by him had been cancelled, he had lost his supervisory authority and effectively been placed in "***cold storage***". On the surface, the claim was framed as one of victimisation, unilateral changes to the Claimant's responsibilities and a breakdown of trust and confidence.

Despite this, the Industrial Court found that the restructuring did not reduce the Claimant's grade, salary or contractual benefits. His contract did not guarantee that he would permanently lead a particular unit or retain a fixed number of subordinates, nor did it require the Company to obtain his consent before reorganising its operations. In fact, the restructuring was implemented in response to the Claimant's own complaints regarding his workload. The Claimant had expressed that he felt overwhelmed by the responsibility of supervising the 3 executives, which affected his ability to focus on his primary responsibilities. The Company's decision to revise the reporting structure was intended to alleviate his supervisory burden and enable him to better manage his responsibilities, rather than diminish his role or marginalise him.

Instead of an attempt to force the Claimant's resignation, the Company's actions demonstrated an effort to address the difficulties he had raised. The Industrial Court found that the restructuring was a *bona fide* exercise of managerial discretion and rejected the Claimant's attempt to rely on the said restructuring as evidence of constructive dismissal. The Company's conduct was also inconsistent with any intention to drive the Claimant out, as he was promoted shortly before the restructuring and the Company remained substantially invested in him through the scholarship arrangement and the approval of 13 months' unpaid leave for him to pursue a master's degree in London, subject to his return upon completion. The Company also took steps to promptly investigate and discuss the grievances he had raised. These actions showed that the Company genuinely intended for the employment relationship to continue.

The timing of the resignation was equally significant. Although the restructuring was announced in June 2022, the Claimant did not resign until April 2023. In the intervening period, he applied for postgraduate study, obtained extended unpaid leave, travelled to London and remained employed by the Company. The Industrial Court concluded that the resignation was not genuinely caused by the restructuring. Rather, the Claimant was seeking to avoid completing the remaining 6 years of his scholarship bond after the Company had financed his undergraduate education. Describing his conduct as "***seperti kacang lupakan kulit***", the Industrial Court found that there had been no fundamental breach by the Company and that the Claimant had voluntarily resigned.

Therefore, when faced with an unfounded constructive dismissal claim, employers must avoid being drawn into the employee's narrative. The key is to maintain evidential records which demonstrate that the employer had acted *bona fide* and that the resignation was not the result of any fundamental breach. This includes ensuring that managerial decisions, such as restructuring, changes in reporting lines or adjustments to responsibilities, are supported by legitimate business reasons and properly documented. A constructive dismissal claim often turns on whether the employer's conduct was a genuine exercise of managerial discretion or an attempt to force the employee's departure. Where an employee raises concerns, employers should address those concerns, investigate the issues raised and take reasonable steps to preserve the employment relationship. Ultimately, contemporaneous records of the employer's decisions, communications and actions will be critical in demonstrating the employer's true intention and rebutting allegations that the employee was deliberately pushed out.

The Company was represented in the Industrial Court by Partners, Shariffullah Majeed and Arissa Ahrom of Lee Hishammuddin Allen & Gledhill.

The Industrial Court Award may be found here.

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