



MahWengKwai & Associates

ADVOCATES AND SOLICITORS



Speaker
CAROLYN NG
Associate



Speaker
**ELISSANUR
SURAYA**
Associate



Moderator
JASON LIM
Associate

Thu 18 Dec 2025
3:00pm (GMT +8)

mwka.com/talks

MWKA ONLINE TALKS

Resignations Under Pressure: Avoiding Forced Resignation and Constructive Dismissal Claims



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Trusted by small medium enterprises (SMEs),
family businesses and individuals since 1985.

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About Us

- Welcome to MahWengKwai & Associates!
- Trusted by small medium enterprises (SMEs), family businesses and individuals.
- Established in 1985 by Dato' Mah Weng Kwai, now a consultant with the firm.
- Medium-sized law firm with 33 lawyers and 30 staff.

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Our Services



Corporate



Dispute
Resolution



Employment



Individuals &
Families

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Our Services

- Full-service law firm with 4 Departments:
 - Corporate
 - Dispute Resolution
 - Employment
 - Individuals & Families

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Our Practice Groups



Our Practice Groups

- 5 Practice Groups:
 - ASEAN-China Desk
 - Construction
 - Foreign Direct Investment
 - Real Estate
 - Sports & Esports

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MWKA Online Talks

- To share knowledge, raise awareness, encourage networking
- For clients, potential clients, in-house counsel
- Recent MWKA Online Talk:
 - 10.12.2025: Shareholder Disputes in Family-Owned Companies



Carolyn Ng

Associate

- ❖ Associate in our Dispute Resolution Department
- ❖ Bachelor of Laws with First Class Honours from the University of the West of England, Bristol
- ❖ Admitted to the High Court of Malaya in March 2022
- ❖ Areas of general litigation, intellectual property, employment disputes and strata management

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Elissanur Suraya

Associate

- ❖ Associate in our Dispute Resolution Department
- ❖ Bachelor of Laws (Hons), National University of Malaysia
- ❖ Admitted to the High Court of Malaya in 2024
- ❖ Areas of practice includes medical law, personal injury cases, employment law, etc

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Ask Questions on Slido



Or visit <https://www.sli.do>
and enter #76494

Please scan this QR Code to access Q&A and polling platform for this talk.

Post the questions that you would like to ask.

Upvote/Like the questions you like.

Most liked / popular questions will be discussed and answered by the speaker(s) during the Q&A session.

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Talk Points

- Indirect Dismissals in Malaysia
- Forced Resignation vs Constructive Dismissal
- Case Studies on Constructive Dismissal and Forced Resignation
- Best Practices for Employers and Employees

Indirect Dismissals in Malaysia

What is Unfair Dismissal?

- Termination has been carried out “without just cause and excuse”
- Section 20 of the Industrial Relations act 1967:
 - “Where a workman, irrespective of whether he is a member of a trade union of workmen or otherwise, **considers that he has been dismissed without just cause or excuse by his employer**, he may make representations in writing to the Director General to be reinstated in his former employment; the representations may be filed at the office of the Director General nearest to the place of employment from which the workman was dismissed.”

“Without just cause and excuse”

- *Goon Kwee Phoy v J & P Coats (M) Bhd* [1981] 2 MLJ 129 (Federal Court):
 - “If the employer chooses to give a reason for the action taken by him, **the duty of the Industrial Court will be to enquire whether that excuse or reason has or has not been made out.** If it finds as a fact that it has not been proved, then the inevitable conclusion must be that the termination or dismissal was without just cause or excuse.”

“Without just cause and excuse”

- *Lye Sook Fun v AmBank (M) Sdn Bhd & Anor* [2023] MLJU
 - “[50] ... The right to terminate is conditional upon unsatisfactory service or work performance. The employer must reasonably be satisfied as to unsuitability of permanent employment and cannot terminate the probationer arbitrarily or capriciously. The termination must be bona fide. **The function of the Industrial Court, is after all, to determine whether the termination is with or without just cause and excuse.** The instances given of termination without just cause and excuse are where the termination was a colourable exercise of the power to terminate or due to discrimination or unfair labour practice.”

“Without just cause and excuse”

- For the Industrial Court to decide if there is just cause and excuse.
- Examples of just cause and excuse:
 - Poor performance;
 - Misconduct;
 - Insubordination;
 - Sexual harassment;
 - Retrenchment.

Proportionality

- The Industrial Court will also look into the proportionality of the punishment.
- ***Norizan Bakar v Panzana Enterprise Sdn Bhd* [2013] 4 ILR 477**
 - **“The Industrial Court could substitute its own view, in place of the employer's view, as to what should be the appropriate penalty for an employee's misconduct.** The doctrine of proportionality of punishment was inbuilt into the Industrial Relations Act and the Industrial Court was duty bound to decide, using that doctrine, whether a proven misconduct constituted just cause or excuse for dismissal.”

Indirect Dismissal

- Dismissal that does not technically originate from the Company.
- Examples of indirect dismissal:
 - Constructive Dismissal;
 - Forced Resignation.

Burden of Proof

- ***Weltex Knitwear Industries Sdn Bd v Law Kar Toy & Anor [1998] 7 MLJ 359***
 - “Next is the burden of proof on the issue of forced resignation raised by the first respondent. The law is clear that if the fact of dismissal is not in dispute, the burden is on the company to satisfy the court that such dismissal was done with just cause or excuse. This is because, by the 1967 Act, all dismissal is prima facie done without just cause or excuse. Therefore, if an employer asserts otherwise, the burden is on him to discharge. **However, where the fact of dismissal is in dispute, it is for the workman to establish that he was dismissed by his employer [...]**”

Forced Resignation
vs
Constructive Dismissal

Constructive Dismissal



Constructive Dismissal is a situation which is said to occur when an employee leaves/walks out of their employment as a result of the employer's actions. The burden is on the employee to show this.

The alleged employer's actions are often one which would be considered to be **repudiatory** and when the employer fails to address their actions, the employee is left with no other choice but to walk out of their employment.

Elements in a Constructive Dismissal



Breach of contract

Sufficiently Important

Give Notice

Must leave

No Delay

Constructive Dismissal - Example of Breaches by Employer

- Example of the types of **breaches of a fundamental term** of the Contract of Employment:
 - Unilateral deduction of salary
 - Demotion
 - Non-payment of EPF and Salaries
 - Non-compliance of a fundamental term of the contract of employment
 - Transfer out of the company
 - Failure to provide a safe working environment

Constructive Dismissal - Example of Breaches by Employer

- Example of a **breach of an implied term**:
 - Unilateral change in contract of service which may include terms to humiliate the employee with the purpose of procuring his resignation
 - Failure to provide work is a breach which is fundamental as it is the obligation of an employer to give out instructions to their employee

Mutual Trust and Confidence

- Part of the implied terms between the employer and the employee
- Previously restricted to express breaches of the employment agreement
- Includes frustrating employees to the point that they choose to leave
 - has been described as “making a workman’s life so intolerable so as to force him to resign” -
***Stanley Ng Peng Hon v AAF Pte Ltd* [1979] 1 MLJ 57**

Constructive Dismissal - Example of Breaches by Employer

- **1)Malaysia Institute of Management (MIM) 2)Mim Education Sdn.Bhd(Joined As A Party By Order Of The Court Made On 17.10.2005) v Abdul Rahman Bin Wahidin [2006] ILJU 23:**
 - “In claiming constructive dismissal, Claimant also relied on the ground that he was **ridiculed, humiliated and belittled** by COW-1 and COW-2. According to the Claimant when he met COW-1 on 27.2.2002 after he had sent in his letter of 26.2.2002 (pages 18 and 19 of CLB), COW-1 **shouted at him and words like “bloody” and “pathetic” were used throughout the meeting.** COW-1 also hit the table a few times during the meeting and asked him why he became ungrateful. At another meeting on 18.3.2002, where two Executive Committee members were present, COW-1 again ridiculed and humiliated him and also called him “pathetic”.”

Must Leave in Response

- The Employee must leave or resign due to the breach. The Employee must set out the exact reasons for their resignation and the cause of the resignation.
- If the Employee cites other reasons in their resignation letter, this may weaken their claim for constructive dismissal.

Forced Resignation

Not voluntary

Compulsion to resign



Forced Resignation

“The precise formulation by the employer is immaterial whether it be by **invitation, request or dictation** so long as the substance of it is that the employer places his employee in a position which the employee really has no option but to tender his notice. In such a situation, the reality is... that the employee is dismissed”

The Law of Redundancy by Cyril Grumfield

Burden of Proof

- *Kuala Lumpur Glass Manufacturers Company Sdn Bhd v Lee Poh Kheng [1995] 2 ILR 917*
 - “It will be clear that the underlying basis of the doctrine of "forced resignation" is the existence of facts showing that an employee was **put under compulsion to resign and that if he declined to do so, the employer would proceed to dismiss him in any event. There might be disclosed in the evidence elements of persuasion**, for example that it would be better for the plaintiff to resign with a record unblemished by a dismissal or even the provision of a favourable, or at least, a neutral letter of reference to prospective employers.

Forced Resignation - Standard

- A suggestion to resign is not the same as forced resignation
- If it can be shown that the employee had the chance to take independent advice before offering his own resignation, this would not be considered to be forced resignation

Forced Resignation - Considerations

- Contents of the resignation letter; and
- Causation → necessity to find that the “resignation” was a direct threat

Case Studies on Constructive Dismissal and Forced Resignation

Constructive Dismissal

Dissatisfaction with a superior

Proportionality in punishing
employee misconduct

Voluntary resignation

Breach of Fundamental Term



Constructive Dismissal

Mariana Binti Ramli v Pum Global Resources Sdn. Bhd. - Case No. 4/4-2149/21 (Award No. 191/2025)

- **Facts:**

- Claimant employed as HR Executive since Jan 2015.
- Conflict arose after new HR Manager was appointed in June 2020 - Complaints were raised to the Group Managing Director
- In Sept 2020, the GMD assigned the Claimant to the Human Resources Department of Tamu Hotel & Suites under a Cross Exposure Exercise (CEE).
- Claimant viewed this as a transfer breaching her contract and resigned on 23.9.2020, alleging constructive dismissal.
- Company argued CEE was temporary, with no change to salary, job scope, or reporting line.

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Cont.

- **Issues:**

- Was the Claimant constructively dismissed?
- Did the CEE amount to a fundamental breach of contract?
- Was she entitled to reinstatement or compensation?

- **Decision:**

- Claim dismissed – no constructive dismissal.
- Court found resignation was voluntary, mainly due to unwillingness to work under her superior.
- CEE was a temporary reassignment, not a transfer, and did not alter contractual terms.

Constructive Dismissal

Adnan Bin Osup vs Empire Manufacturing Sdn. Bhd. - Case No. 7/4-2222/21 (Award No. 1935/2024)

- **Facts:**

- Claimant employed as Supervisor from 9.3.2020.
- Issued show cause letter on 12.8.2020 with 4 sexual harassment charges against the Claimant.
- Domestic Inquiry (DI) found Claimant guilty of 1 charge.
- DI panel recommended 3 days' suspension.
- Company instead demoted Claimant, reduced salary (RM2,600 → RM2,300), and removed mobile allowance.
- Claimant resigned and alleged constructive dismissal.

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Cont.

- **Issues:**

- Was the Claimant constructively dismissed?
- Did the demotion and salary reduction breach a fundamental term of contract?

- **Decision:**

- No constructive dismissal.
- Punishment was proportionate to the seriousness of misconduct.
- Employer is bound by DI findings, but not by its recommended punishment.
- Management retains discretion to impose appropriate disciplinary action.

Constructive Dismissal

Yap Soo Lin v Tan Boon Ming Sdn Bhd - Case No. 5/4-1913/19 (Award No. 1752/2023)

- **Facts:**

- Claimant resigned with immediate effect, alleging assault by the Company's Director.
- She claimed the incident destroyed mutual trust and confidence and caused fear for her safety.
- Resignation was accepted by the Company.
- Claimant later alleged constructive dismissal.

Cont.

- **Issues:**
 - What constitutes constructive dismissal?
 - Can constructive dismissal be claimed after resignation is accepted?
- **Decision:**
 - Claim dismissed – resignation was voluntary.
 - Alleged assault not mentioned in resignation letter.
 - No complaint lodged with the Company prior to resignation.
 - Resignation with immediate effect, once accepted, negates a claim of dismissal.
 - Claimant failed to provide sufficient evidence; standard of proof for constructive dismissal is high.

Constructive Dismissal

Eric Koh Kim Lai v AirAsia Bhd - Case No. 7/4-468/23 (Award No. 1728/2024)

- Facts:

- Claimant employed as a Captain from July 2018.
- Company **unilaterally imposed unpaid leave** and **repeated salary reductions** from 2020–2022.
- Salary reduced progressively from RM13,000 to RM5,500, followed by multiple suspensions with little or no pay.
- On 8.4.2022, Claimant was informed of indefinite unpaid leave.
- Claimant resigned shortly after, citing loss of livelihood.

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Cont.

- **Issues:**
 - Was the Claimant constructively dismissed?
 - Did the Company breach a fundamental term of the employment contract?
- **Decision:**
 - Constructive dismissal proven.
 - **Unilateral unpaid leave and non-payment / substantial reduction of salary** amounted to a **fundamental breach of contract**.
 - Claimant resigned in response to the breach and within a reasonable time.
 - Court awarded RM268,620.00 as compensation in lieu of reinstatement.

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Forced Resignation

Voluntary resignation

Ultimatum, pressure or threat by the
Company



Forced Resignation

Ng Suh Horng v Country Garden Pacificview Sdn Bhd - Case No. 13(2)(12)/4-1307/19 (Award No. 137/2024)

- **Facts:**

- Claimant employed as a Quantity Surveyor on 16.7.2017.
- Her salary linked to sales performance; recorded zero sales from Feb–Dec 2018, resulting in salary deductions.
- Company issued **9 warning letters** and provided **10 training sessions**.
- Claimant requested transfer to another department but declined available roles.
- Claimant **agreed to resign** if no alternative position was offered and signed a resignation form on 11.12.2018.

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Cont.

- **Issues:**
 - Was the Claimant forced to resign, or did she resign voluntarily?
- **Decision:**
 - Claim dismissed – resignation was voluntary.
 - Claimant failed to prove coercion or that resignation was signed under protest.
 - No evidence raised challenging the salary policy or alleging coercion in pleadings.
 - Burden of proof remained on the Claimant and was not discharged.

Forced Resignation

Mohd Nasir bin Johari v MyBurgerLab Sdn. Bhd. - Case No. 20/4-562/23 (Award No. 488/2025)

- **Facts:**

- Claimant employed as Production Manager & CK Expansion Lead from Jan 2021.
- Sent two resignation emails on 15.2.2022 citing different reasons (better offer; company's financial issues).
- On 22.2.2022, attempted to retract resignation, alleging coercion.
- On the same day, sent another email confirming a mutual agreement to waive notice period instead.
- Subsequently filed a forced resignation claim.

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Cont.

- **Issues:**
 - Was the Claimant forced to resign from his employment?
- **Decision:**
 - Claim dismissed.
 - No evidence of ultimatum or threat by the Company.
 - Discussions prior to resignation related only to performance.
 - Post-resignation correspondence showed mutual agreement on resignation terms.
 - Court viewed the retraction as an afterthought to support a forced resignation claim.

Forced Resignation

Zamri Zakaria v Singer (Malaysia) Sdn Bhd [2022] 3 ILR

- **Facts:**

- Claimant owed the Company RM379,402.80 and entered into a Settlement Agreement to repay by instalments.
- First two instalments were paid; the third payment failed.
- Claimant attended a meeting and admitted inability to continue payment.
- Claimant tendered his resignation shortly after.
- Company later lodged a police report to recover the outstanding sum.
- Claimant alleged forced resignation and constructive dismissal.

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Cont.

- **Issues:**
 - Was the Claimant's resignation voluntary or forced?
 - Did the Company's conduct amount to a fundamental breach of contract?
- **Decision:**
 - Claim dismissed.
 - Resignation was voluntary, with no evidence of coercion, threat, or ultimatum.
 - Company's actions in seeking repayment and lodging a police report were lawful and reasonable.
 - Employer's conduct did not make continued employment intolerable.

Best Practices for Employers and Employees

Best Practices for Employers (CD)

- Where changes to salary, benefits, or job scope are contemplated, ensure employee consent is obtained or that the change is expressly permitted by contract
- Avoid unilateral salary reductions, unpaid leave, or demotions, as these may amount to a fundamental breach
- Exercise managerial prerogative in good faith and within contractual limits, especially during restructuring
- Where misconduct is alleged, ensure disciplinary action is proportionate to the offence
- While bound by findings of a Domestic Inquiry, ensure that any punishment imposed is reasonable

Cont.

- Where performance issues arise, address them through documented performance management, not threats or ultimatums
- Where an employee tenders a resignation, ensure it is voluntary, clear, and properly documented
- Avoid conduct that may be construed as coercion or forced resignation
- Maintain proper records of meetings, warnings, investigations, and communications at all times

Best Practices for Employees (CD)

- Where dissatisfaction or mistreatment arises, raise complaints formally with the employer
- Allow the employer a reasonable opportunity to investigate and remedy the issue before resigning
- Ensure the true reason for resignation is clearly stated and consistent in all communications
- Do not resign hastily; understand that voluntary resignation may defeat a constructive dismissal claim

Cont.

- Act promptly after any fundamental breach to avoid being seen as having accepted it
- Retain all relevant documents, emails, and records to support any future claim
- Understand that the burden of proof in a constructive dismissal claim is high

Best Practices for Employers (FR)

- Ensure any discussions regarding performance or disputes are professional and documented
- Avoid threats, ultimatums, or coercive statements that could be construed as forcing resignation
- Where an employee is underperforming or has financial obligations, provide clear, written instructions and options rather than pressure
- Maintain records of meetings, emails, and warnings to demonstrate actions were fair and reasonable
- Allow employees to consider their options and respond without undue influence

Cont.

- If a resignation is tendered, document it clearly as voluntary and mutually agreed, noting any notice period arrangements
- To prevent/rectify any hostile environment or intolerable working conditions that could be interpreted as constructive pressure

Best Practices for Employees (FR)

- Where pressured to resign, document all communications and interactions with the employer
- Do not resign immediately; consider whether the situation constitutes coercion, threat, or undue pressure
- Make a formal complaint if the employer's conduct feels coercive, giving the employer a chance to rectify
- Retain evidence of ultimatums, threats, or any steps by the employer that left no real choice
- Ensure any resignation letter clearly states your reasons, and maintain consistency across all correspondence

Cont.

- Understand that the burden of proof rests on the employee to show resignation was forced
- Avoid raising claims of forced resignation after resignation unless supported by clear evidence

Questions?

Upcoming Talks

Date	Topic	Speakers
27 April 2020 (Monday)	Impact on Commercial Contracts during Covid19	Cassandra Thomazios & Tommy Wong
29 April 2020 (Wednesday)	Resolving Construction Disputes Via CIPAA 2012	Hannah Patrick & Christine Toh
4 May 2020 (Monday)	Unfair & Constructive Dismissal Claims Due To Pay Cuts and Retrenchment	John Chan



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Thank you!

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