

# Hindsight is Insight

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The situations in the case studies below could have been avoided if the lawyers had implemented good practices in their firms.

## CASE STUDY No 1: Don't Forget To Remember Me – Limitation Period

On 1 April 2006, John met an accident which caused him to suffer severe head injuries. Unfortunately, John passed away 7 days later. John's father, Jack, appointed Carrie, then a legal assistant at Messrs ABC in October 2006 to bring a dependency claim against the parties responsible for his son's accident. Pursuant to Section 7(5) of the Civil Law Act 1957, the limitation period to file the dependency claim is 3 years from the date of John's death, ie 7 April 2009.

Due to delays and difficulties in obtaining the medical reports from the hospital, Carrie held on to filing of the suit. By September 2011 and

January 2012, Carrie was still writing to the hospital to request for the necessary medical reports, not realising that the limitation had already set in on 7 April 2009. Thus, even in 2011, ie 2 years after the limitation period had passed, no suit was filed.

In 2013, Carrie received a call from Jack enquiring about the progress of the case. Carrie then realised that she had failed to file the suit before the 3 years limitation period expired.

### Red Alert!

- ✗ Failure to diarise the limitation date for fatal accident claims.
- ✗ Failing to recognise the different limitations periods for personal injury and fatal accident claims.
- ✗ Failure to have a proper follow up system in place to secure supporting documents.

## CASE STUDY No 2 : Oops I Did It Again – Failed To Attend Court Twice!

Messrs Spears & Co was appointed to defend Crockers in a civil suit by Jimmy. Simultaneously, Crockers instructed Spears & Co to file a separate suit against Jimmy to recover outstanding debts from Jimmy. Britney was the legal assistant assigned to both case.

In the first suit, on the day of the trial it was adjourned to 10 May 2011 as the Court ordered for the list of 300 questions prepared by Jimmy's solicitors to be made available to the Court and Spears and Co. Britney mistakenly diarised 10 June 2011 as the next hearing date. However, when Britney wrote to Crockers to inform them of the next hearing date, she informed them of the correct date ie 10 May 2011.

On 10 May 2011, both Britney and Crockers were absent. As a result of this, judgment in default was granted against Crockers. Although it was unclear why Crockers was absent in court, the judgment in default could have been avoided if Britney was present in court.

In the second suit where Spears & Co was instructed to sue Jimmy for unpaid debts, Britney filed the suit in 2010. On the date of the hearing, Britney failed to attend court resulting in the suit being struck off. This was not made known to Crockers nor the partners of Spears & Co.

Crockers only became aware of this when they met with Spears & Co to discuss the first suit but at this point, Britney had left the firm. As time limits had set in, Crockers were unable to file an appeal or to apply to reinstate the suit against Jimmy.

Not surprisingly Crockers sued Spears & Co. When the Panel Solicitor defending Spears & Co requested documents, Messrs Spears & Co were

unable to provide any documents as their files were destroyed in a fire. Further they were not able to provide the Insurer and Panel Solicitor even with the basic facts of the case as they said the file was solely handled by Britney, who has since left the firm. At all times, the two suits were handled solely by Britney without any supervision!

### **Red Alert!**

- ✗ No internal system within the firm to record and monitor court dates.
  - ✗ No proper back-up of clients' files.
  - ✗ Failure to implement proper supervisory procedures between partners and legal assistants.
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## **CASE STUDY No 3 : You Can Go Your Own Way – Except When It Involves Your Client's Instructions**

Messrs Fleetwood Mac & Associates was instructed by the Bank of Albatross ("BA") to file a Bankruptcy Notice against Mr Kravitz for defaulting on payments agreed and due under a Consent Judgment. The Consent Judgment was entered into in 1996 and provided for costs but no agreement was reached on the cost nor was it taxed.

When Fleetwood Mac & Associates filed the Bankruptcy Notice against Mr Kravitz, they included costs of RM600 although this was not an agreed cost or derived at by taxation. Mr Kravitz successfully managed to set aside the Bankruptcy Notice.

Fleetwood Mac & Associates was then instructed by BA to appeal the decision and to file a fresh

bankruptcy notice against Mr Kravitz at the same time. Messrs Fleetwood Mac & Associates appealed against the decision but failed to file a fresh bankruptcy notice against Mr Kravitz. Fleetwood Mac & Associates conducted a bankruptcy search and discovered that Mr Kravitz was already an adjudged bankrupt. Hence, a fresh bankruptcy notice was not filed as Fleetwood Mac & Associates were under the impression that a bankruptcy notice could not be filed against an adjudged bankrupt.

The court dismissed the appeal. By then, the time limit to execute the Consent Judgment had expired. As such, BA brought an action against Messrs Fleetwood Mac & Associates for failing to file a fresh bankruptcy notice.

### **Red Alert!**

- ✗ Failure to prepare Bankruptcy Notice accurately.
- ✗ Lack of cross checking or supervision of the Notice against supporting documents.
- ✗ Lack of awareness and knowledge of bankruptcy laws proceedings and procedures.
- ✗ Failure to diarise the Limitation Period.

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## **CASE STUDY No 4 : Come What May - You Should File A Caveat As Soon As Possible**

Messrs McGregor Kidman was appointed by the purchaser in a conveyancing transaction. McGregor Kidman prepared the Sale and Purchase Agreement ("SPA") dated 10 September 2007, however the sale was subject to the purchaser securing State Authority approval.

Upon payment of deposit, McGregor Kidman advised the purchaser to file a caveat to protect their interest. On 3 October 2007, the purchaser executed a statutory declaration and Form 19B to enter the private caveat and paid part fee to the firm in respect of the SPA. McGregor Kidman only lodged the caveat on 1 March 2009

(a year and a half later!) as they allegedly received instructions from the purchaser to withhold filing the caveat until the State Authority approval was obtained. These instructions were not confirmed in writing.

A land search subsequently carried out revealed that another private caveat was lodged on the property in 2008 by a third party and the vendor had transferred the property to that third party. The purchaser then brought a claim against McGregor Kidman and denied giving instructions to McGregor Kidman to delay filing the caveat.

### **Red Alert!**

- ✗ Failure to file a private caveat immediately upon payment of deposit by the Purchaser.
- ✗ Lack of knowledge of protocols and best practices to protect client's interest.
- ✗ Failure to obtain client's written instructions and/or confirm instructions in writing.

## **CASE STUDY No 5 : Tighten Up – Don't Be Too Quick To Release Stakeholder Sums!**

Messrs Black & Keys were the vendor's solicitors in a SPA. Under the terms of the SPA, Black & Keys were to hold the balance purchase price as stakeholders and only release it to the vendor upon delivery of vacant possession.

The balance purchase price was paid by the purchaser's solicitors to Black & Keys under the stakeholding terms. Subsequently, Black & Keys were notified that the purchaser has not secured vacant possession of the property as there were structures erected by the owners of the adjacent land on the common border.

The purchaser's solicitor later informed Black & Keys not to release the balance purchase price until the dispute on vacant possession was resolved. The vendor wrote to Black & Keys to inform them that some of the structures were removed and vacant possession has been given to the purchaser. Without rightfully checking with the purchaser and obtaining their confirmation, Black & Keys released the balance purchase price to the vendor.

### **Red Alert!**

- ✗ Not aware of the strict duties that bind a stakeholder; not securing written consent from all parties prior to the release of stakeholder sums.
- ✗ Failure to carry out stakeholders duty and comply with the stakeholding terms.
- ✗ Not aware that they can file an Interpleader to seek directions where there is a dispute on the terms of the release of stakeholder sums.