

# CASE STUDIES: RESPONSIBILITY OF A STAKEHOLDER

## THE CALL OF DUTY

Written by Tan Sue Vern, Jardine Lloyd Thompson Sdn Bhd

A stakeholder is one who holds documents, money or any form of property pending the outcome of a future event. For example, in sale and purchase transactions involving land, a stakeholder holds the purchase price monies as a stakeholder pending the completion of the Sale and Purchase agreement. In most of these transactions, the stakeholder is often the lawyer representing the purchaser or vendor as opposed to an independent third party. However, a lawyer called upon to act as a stakeholder must remain neutral in his duty as a stakeholder DESPITE his appointment to represent either the purchaser or vendor. A lawyer acting as a stakeholder is required to hold the property or money according to the terms of the undertaking, pending the future outcome of the event.

The importance of adhering to the terms of stakeholding is also set out under Ruling 14.1(3) of the Bar Council Ruling.

### **(3) Terms of Stakeholding to be strictly adhered to**

*A Solicitor acting as stakeholder for two or more parties must strictly adhere to the terms of the stakeholding at all times. No money or document held by a Solicitor as stakeholder shall be released, utilised, applied or otherwise dealt with by such Solicitor except in accordance with the terms of the stakeholding or with the express written consent of all relevant parties. For example, a Solicitor holding the final 5% of the purchase price under a Sale and Purchase Agreement prescribed by the Housing Development (Control & Licensing) Regulations 1989 must not (for whatever reason) release the same before the expiry of the stakeholding period(s) and/or in contravention of Schedule G Agreement or Schedule H Agreement as the case may be.*

The case studies below illustrate the implications that may arise from a lawyer's failure to adhere to his instructions as a stakeholder.

### **Case Study 1:**

B was party to a joint venture agreement with A. B then subsequently entered into another agreement with C to obtain a loan to perform its duties under the joint venture agreement with A. Under the subsequent agreement, (hereafter referred to as A2), B was to transfer 30% of the shares to C. C would then re-transfer the shares back to B when B has made the payment to A under the terms of the joint venture agreement. The A2 was drafted by lawyer Z. After the shares were transferred to

C, C passed the relevant share documents to Lawyer Z to be held as a stakeholder. In line with A2, the covering letter accompanying the share documents stipulated that the documents were to be re-transferred back to B only when B has made the relevant payment to A. The terms of the stakeholding also stipulated that in any other case, all share documents be returned to C. However, before B could make the relevant payment to A, the JV agreement fell apart. In light of this, B then advised Lawyer Z to send the share documents back to B so that B could effect the re-transfer of shares. In breach of his stakeholder's duties, Lawyer Z transferred the share documents back to B. C then brought an action against Lawyer Z for breaching his duty as a stakeholder.

### Case Study 2:

A prepared a will for his wife B and C to have the assets distributed in equal shares including a double storey link house and appointed D and E as executors under the will. A year after the will was executed, A passed away. The executors, D and E were subsequently granted probate in line with the will.

5 years later, B met with Lawyer Y to inform him that a buyer had been found for the house and retained Lawyer Y to act in the SPA of the said house. The vendors on the SPA were the executors, D and E. When the SPA was duly completed and keys to the property were handed to the purchasers, the proceeds were held by Lawyer Y as a stakeholder. The terms of the stakeholding provided that Lawyer Y was to hold the balance purchase price and release the purchase price to the vendors i.e. the executors, D and E who were empowered under the will to distribute equally to B and C.

Lawyer Y stated that B verbally instructed him to then remit the purchase price of the property to C's account. B later informed Lawyer Y that C had refused to give B her 50% share in the purchase price monies. B then brings an action against Lawyer Y for breaching his duty as a stakeholder.

### Points To Note:

From the case studies above, it is clear that a lawyer can hold **any form of property** as a stakeholder be it property such as money, share documents, jewelry, titles etc. In any case, the terms of the stakeholders duty must be strictly adhered to at all times.

As demonstrated by the cases above, lawyers often make the mistake of releasing stakeholder sums or documents upon receiving instruction, without giving much thought to whether the person giving the instructions has the authority to give such instructions in line with the terms of the stakeholding. In example 1, Lawyer Z released the documents upon receiving instructions from B when it was clearly stipulated that the documents were to be released to B only when B has made payment under the JV agreement to A. Similarly, in example 2, Lawyer Y acted on instructions given by B who was not the relevant party under the terms of the stakeholding.

In any case, even if you receive instructions from an authorised person according to the terms of the stakeholding, if those instructions are in conflict with the terms of the stakeholding, you should obtain the express written consent of ALL relevant parties. This is in line with the Bar Council's Ruling 14.1(3) and reflects good practices and it protects the lawyer as well.

In conclusion, it is imperative that lawyers who act as stakeholders adhere strictly to their duties as stakeholders as set out in the terms of stakeholding to avoid facing unnecessary legal actions being brought against them.