



Case Study 2: Honesty is Still the Best Policy

Cameron was a defendant in a civil suit and had a summary judgment ordered against her at the Sessions Court. The judgment ordered Cameron to pay costs and interest to the Plaintiff amounting to RM60,000. Messrs Savard & Co was then retained by Cameron to file an appeal to the High Court against the Sessions Court's judgment.

In abeyance of the outcome of the appeal, the Plaintiff through his solicitors, Messrs Reed & Co, requested Savard & Co and their client, Cameron, to deposit the judgment sum into their Reed & Co's Client's Account and for Reed & Co to hold the judgment sum as stakeholder. After both parties failed to come to an agreement about the terms of the stakeholding, Savard & Co ideally proposed that the full judgement sum be deposited into Savard & Co's Client's Account which they will then release to the Plaintiff should the appeal be dismissed following the manner and time instructed by their client, Cameron.

Savard & Co, through several correspondences to Reed & Co, gave the impression that Cameron had paid the judgment sum to Savard & Co when in fact Savard & Co was well aware that Cameron had only passed them a cheque with instructions not to cash it in as she does not have sufficient funds in her account.

Eventually, Cameron's appeal was struck off by the High Court and Reed & Co requested for the judgment sum to be released to them. Savard & Co responded to the request by highlighting that they were only to release the monies upon instructions from Cameron. This was later followed by another letter from Savard & Co informing Reed & Co that Cameron now proposes a lesser sum than the initial amount as the full and final settlement of the matter. Savard & Co then wrote to Reed & Co that Cameron had agreed to deposit the judgment sum into their Client's Account pending the disposal of the appeal to the Court of Appeal.

The Plaintiff then filed a suit against Savard & Co alleging misrepresentation and breach of duty of care. The Plaintiff claimed that Savard & Co, through their conduct and correspondences, misrepresented the Plaintiff to believe that the money was deposited into Savard & Co's Client's Account by Cameron. Cameron has since been declared a bankrupt. As a result, the Plaintiff is also alleging that they are unable to obtain the judgment sum from Cameron due to Savard & Co's negligence.

Best Practice Tips

- Although a lawyer should act for the best interest of their client, they should always disclose essential facts correctly to both parties.
- A lawyer should never mislead his/her client or the other party's representatives to believe something that they know to be untrue.
- Promises by clients should never be relied on without having it put down in writing. A person's word of promise is not definitive. Lawyers should be precautionary and should not jump into trusting without confirming it themselves.
- Following the Bar Council Ruling 14.1(3), a lawyer who receives instructions that are in conflict with the terms of stakeholding must obtain written expressed consent of all parties involved before carrying out the instructions.
- Clause 33(e) COI 2014 – To be covered under this clause of the policy scheme, the law firm must not put itself in a position which prejudices them and the Insurers.