

PRESENT HERE BUT NOT THERE



Messrs Wakeman and Carbuckle ("IP") represented the purchaser, Sheldon to prepare the SPA for a residential property. The Vendor, Tremorton Pty Ltd ("Tremorton") was unrepresented. Two months after the execution of the SPA, Sheldon discovered that the property was being auctioned off by Bank ABC.

Sheldon filed a writ against the IP claiming damages and alleged that the IP breached the duty of care by misrepresenting and advising him that the property was free from encumbrances. He also alleged that the IP failed to make proper land searches and failed to lodge a private caveat to secure his interest.

The IP admitted that the SPA contained a recital which mentioned that the property was free from encumbrances. Nonetheless, upon realising that mistake the IP decided to rectify the SPA manually and made a remark that the property was charged to Bank ABC. The SPA also had a clause regarding the redemption of the property. The land search done by the IP also confirmed the position

of the property being charged to Bank ABC at the time.

Since Sheldon was not a Malaysian citizen, consent from the State Authority was needed before the presentation could be made. The IP faced some difficulties in obtaining the consent since Tremorton did not provide the quit rent and assessment receipts for the properties. The IP also could not lodge a private caveat since Sheldon did not provide sufficient funds for that purpose. Nevertheless, the IP decided to lodge a caveat using their money first pending receipt of funds from Sheldon.

Since the consent could not be obtained on time, the redemption sum could not be forwarded to Bank ABC. Bank ABC decided to exercise their right and auction off the property. The IP informed Sheldon that he could exercise his right and terminate the SPA at that point. Nonetheless Sheldon kept mum and did not give any instructions to the IP. Only after the property was successfully auctioned off, the IP received a writ from Sheldon.

In reviewing the IP's risk management processes to determine if their original Base Excess should be reinstated, the Insurer found the following:



The conveyancing checklists employed by the IP were general and not tailored to this specific transaction. The IP should have taken additional steps to obtain the consent from the State Authority.



The checklist stated that the vendor, although unrepresented, should be responsible to secure the consent from the State Authority. This step should have been fulfilled at the time of the execution of the SPA. However, since both parties signed the consent form on the day the SPA was executed, the exemption is accepted.



Although the IP manually rectified the SPA to ensure it correctly reflected the position of the property being charged to Bank ABC, the IP failed to rectify and amend the other duplicates of the SPA.



The caveat was not lodged immediately or soon after the SPA was executed. The checklist employed by the IP provided that the caveat will only be lodged after the client has paid the relevant bills, and before sending the SPA for stamping. Although the purchaser did not provide sufficient funds for the caveat, the IP still managed to file a caveat on the property to protect the purchaser's interest by using their own money.