

Conveyancing Claims -

Introduction

Conveyancing practice is an area of law with the highest percentage of practitioners in Malaysia. Due to its relatively straightforward, albeit highly procedural-intensive, shorter time commitment and the abundance of clients it is an approachable area of law.

Since there are many more conveyancing practices compared to litigators and commercial lawyers, conveyancing practices have produced the highest number of complaints received by Bar Council from the general public, the highest number of PII claims and the highest Disciplinary Board actions.

Plan A

Case Study No.1

Gelding & Partners, the Insured Practice (IP), was involved in a long-term representation with their client, Chris. Chris sought the IP's legal services in his bid to purchase a piece of residential property. Chris had been in contact with the owner of the property, Ross, and had even discussed and confirmed the sale price before bringing the IP into the picture.

During the meeting between the IP, Chris and Ross, Ross produced a temporary Identification Card (IC) as proof of identity, claiming that his original IC was lost. Based on the identification information provided, the IP drew up the Sale and Purchase Agreement (SPA). Ross however, did not append his signature onto the SPA; instead, he used his thumb impression. Chris then transferred a requisite 10% deposit into Ross' named bank account. A month after the above transpired, Chris and the IP discovered that "Ross" was not the true owner of the property and that the true

owner had recently passed away. By this time, the fraudster had disappeared with Chris' 10% deposit. Upon checking with the Bank, they also discovered that the account was opened in the name of the true owner fraudulently. The Bank made a mistake in issuing the fraudster with a bank account without proper verification of his identity as the bank was unable to proof that they too had conducted the requisite identification verification.

Chris made a police report against the fraudster. He then filed a suit against his lawyer, the IP, as well as the bank in question. In their defence, the IP sought to apportion blame on Chris, concluding that Chris himself had verified the fraudster to be the owner. The Court found that the IP was negligent as IP failed to safeguard the interests of Chris by conducting all reasonable searches and identity verifications.

Case Study No.2

Michael & Co (the IP) was approached by another law firm, Phil & Partners to assist in a sale and purchase transaction whereby Michael & Co would represent the vendor, Mary, who was unrepresented at the time. It was a sale and purchase transaction to transfer Mary's property to Phil and Partner's client, General Holdings Berhad. Phil & Partners had wanted to avoid a conflict and they also wanted Mary to be represented.

The IP agreed to represent Mary who was a foreign national who had been living in Malaysia for a long time. The IP only saw Mary once, when she had come into their office to sign the Sale and Purchase agreement. Representatives of Michael & Co and General Holdings Berhad were also at the meeting. The IP sighted Mary's travel documents ie passport and visa and verified her identity. The IP proceeded to explain to Mary the salient terms of

the SPA and obtained her verbal confirmation to sell the property to General Holdings Berhad. Mary confirmed so, and proceeded to sign the Memorandum of Transfer and SPA.

Two year later, the IP receives a suit from the true owner who claimed that she was the actual owner of the property. The True Owner claimed that the IP had acted negligently when they failed to perform proper identification of the fraudster. The true owner established ownership of the property.

In his judgement over the case, the judge prescribed that even though there was no relationship between the IP and the true owner, solicitors still do owe a duty of care to the true landowners ie solicitors should conduct reasonable checks on their client's identity.

Case Studies

In light of this, we have come to realise the grievousness of this issue. Whilst we cannot provide a complete list of wrong doings, we can provide broad-stroke remedial actions for Members to take on immediately into your practice and to keep reapplying them into each and every conveyancing matter.



Case Study No.3

Gooding and Associates, the IP in this matter represented the purchaser, Ready Credit Sdn Bhd, in the sale and purchase of a piece of commercial land from the vendor, Gus. The IP was then sued by the original owner of the property, Ben, who claimed that he was duped into transferring the property when he had no intentions of doing so.

The problem began when the original owner of the property, Ben, was asked by his brother Gus, to help him out financially – Gus had wanted to use the property as collateral to secure a loan from a financial institution. Ben agreed to assist his brother in this matter. Gus handed Ben many documents to sign. Blindly trusting Gus, Ben signed the documents not knowing that they were in actual fact Memorandum of Transfers assigning Gus the ownership of the property.

The IP then came into the picture when he was sought by the Buyer, Ready Credit Sdn Bhd to handle the Sale and

Purchase of the property from the Vendor, Gus. The IP was instructed to include several conditions to the standard SPA that were out of the ordinary. Among others, was a condition that permitted the Vendor, Gus, to repurchase the property at a purchase price that involved very high interest rates. Secondly, there was also a delay in the completion of the MOT not because of any technical issues, but because the Buyers themselves instructed the IP to do so even though they had already paid the full purchase price to Gus. Thirdly, the purchase price was paid in full in cash to Gus.

When the case was eventually heard, the Judge concluded that the SPA was in actual fact a ruse that was masking as a money lending agreement. The Judge also concluded that if the IP had paid attention to the three signs ie the unconscionably high and illegal money lending rate clause, the delay in completing the MOT and the handover of cash even without the completion of the MOT he would have picked up the signs of an illegal money lending transaction.

Case Study No.4

The IP represented Mike in a sale and purchase transaction of a piece of land valued at RM500,000. During the proceedings, the IP and their client Mike negotiated and conferred only with Allen, who claimed to have Power of Attorney to make the necessary decisions on behalf of the owner of the land, Sam.

Mike was very interested in acquiring the land and to do so by paying the Vendor in a full cash settlement. Mike forwarded RM300,000 to his lawyer, the IP. The IP was supposed to have forwarded the money to Allen once the SPA was signed.

Five months went by and whenever Mike made contact with the IP to identify the holdup in the transaction, he was

given the cold shoulder. Discouraged that his own solicitors were doing more harm, Mike sought legal representation from another law firm who then demanded from the IP the return of Mike's RM300,000 deposit.

At this stage the IP confessed to Mike and his new solicitors that they had in fact forwarded the money to Allen who has since disappeared. The IP did so without consent from Mike. It was then revealed that Allen's Power of Attorney was fake and that the real owner of the land had put a caveat on the title negating any possible transfers. Mike was unable to retrieve his deposit. He then sued the IP.

Case Study No.5

The IP in this matter, Herald & Co, represented Donald in a sale and purchase transaction of a two adjoining pieces of land. Donald wished to purchase the land for manufacturing purposes. Prior to agreeing to the transaction, Donald visited the site and was aware that each piece of land contained a building complete with tenants.

Donald did not meet with any lawyers of Herald & Co, he instead dealt directly with its senior conveyancing clerk, Adam. Adam was also the agent who brokered the deal between Donald and the vendors. After Donald was satisfied with the property and agreed to the purchase price, Adam the clerk prepared and passed Donald the transfer documents and SPA to sign. Upon signing and initialling all pages, Donald returned all documents to Adam for processing.

Sometime after the successful transfer, Donald realised that the properties did not come with vacant possession. Upon review of his copy of the SPA, Donald realised that four additional pages were inserted which did not carry his initials. The IP was confronted by Donald and their senior partner admitted to negligently allowing their conveyancing clerk, Adam, to oversee the entire transaction without the supervision of any lawyer.

The additional pages of the SPA contained provisions giving right to the current tenants to continue their occupancy of the buildings for a further three years at a fixed rental, as well as a clause providing the tenants the option and priority to continue the occupancy after the time frame lapses.

Case Study No.6

The IP, Peter & Associates represented Tom in the sale and purchase of a three-storeyed shop house for RM1,000,000. Tom paid the requisite 10% deposit of RM100,000 to the vendor via the IP. In order to finance the balance RM900,000, Tom applied for, and was offered a loan by Gold Bank. Gold Bank subsequently hired the IP as well, to represent them and to prepare the necessary documentation to facilitate the loan agreement.

The IP completed the SPA as well as the loan agreements. Three months after these documents were signed and due to be finalised, the IP came to the realisation that they had failed to follow up on the notice of assessment of stamp

duty which was yet to be issued by the Collector of Stamp Duty. Knowing that their client's "plus-one month" time frame was nearing the end, the IP contacted the vendor to plead for a time extension.

Because of the IP's failure in keeping the deadline, Gold Bank retracted their offer to finance Tom's loan. Subsequently, the Vendor voided the agreement and retained the deposit. Only on Tom's pleadings with the Vendor personally did they decide to continue with the sale, albeit at a higher price. Tom then sued the IP for failing to keep his interest intact.

