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Case Study 5: Failure to Follow Client's Instructions

Messrs Keating & Co, the Insured Practice ("IP"), represented both the Purchaser and Vendor in a Sale and Purchase Agreement ("SPA"). The property in question was charged to Furama Bank as a security for a loan given to the Vendor. The purchase price was to be used to redeem the property from the bank. However, upon applying for a loan charge-off, it was discovered that the property had a restriction-in-title endorsed on the issue document of title. Any transfer, lease or charge of the property would require the permission of the State Chief Minister. It was also found that IP did not lodge a caveat on the property although reminded by the Purchaser.

Later, the SPA failed to be executed as the property in question was sold in an auction. The Claimants, who are the Purchaser and Vendor, brought a claim against IP alleging failure to protect their interest which resulted in the SPA frustrated.

The Claimants' claim against IP is based on IP's failure to write to the managing bank regarding the loan charge. IP contends that the failure to write to the bank was due to the fact that his clients, the Claimants, did not expressly inform him to do so. As a result, IP failed to obtain an injunction against the bank auction of the said property.

Best Practice Tips

- Following Rule 6 of the Bar Council Rulings, a lawyer is prohibited from acting for both the Purchaser and Vendor as it is a conflict of interest. This is because one cannot serve two masters loyally at the same time. Lawyers must at all times act for the best interest of their client and this will not be possible when representing two opposing parties.
- Conveyancing lawyers have a prime duty of conducting a land search in a Sale and Purchase matter. Lawyers must be of utmost surety that the land or property in question is not encumbered or subject to any other condition. Hence, lawyers should never take the risks of trusting the documents supplied by their clients and not performing any additional search to the facts given.
- If a property is charged, a solicitor must write to the chargee to request for an update on the status of the loan and if there are any stirring of foreclosure on the property.
- A legal practitioner should never rely on his/her client to relay instructions on compulsory legal duties as it is for the lawyer to know better than his/her client.
- Solicitors are exhorted to use a checklist when dealing with conveyancing matters as there are many prerequisites are that often forgotten.