



### Case Study 3: Keep Your Boundaries in Check



It started off as a civil suit between a stock broking company, Mazuma, and TNS Property Holdings ("TNS"). Messrs Connors, the Insured Practice ("IP"), represented TNS while Messrs Blake represented Mazuma. Blake applied to the court for an extension of time to enter their client's defence.

The first allegation against IP arises when IP filed for a Judgment in Default ("JID") against Mazuma although Blake had already faxed their client's defence to IP; however, IP insists that they had only done so because Blake filed the defence a week passed the due date. Furthermore, IP wrote to the High Court to request for Mazuma's defence to be rejected on the grounds that it was filed out of time.

The second allegation against IP is Blake claiming that IP did not copy the letter to court to them whilst IP contends that they have in fact done so. Based on the contents of the said letter, it is shown that Blake was copied but it remains disputable as to whether this was in fact done.

Later, the JID was granted in favour of TNS but IP did not serve a copy of the JID to Blake or their client, asserting that there was no such duty to do so before the issuance of a Writ of Seizure and Sale ("WSS") by the court. The WSS was issued to IP to seize and sell Mazuma's movable assets.

Mazuma claims that during the execution of the WSS, the IP acted beyond their capacity as a lawyer by forcibly entering Mazuma's office premises and ordering all the employees to evacuate the building. Moreover, IP brought along 5 other individuals, who are not authorised individuals, to intimidate Mazuma's employees that attempted to challenge IP's orders.

Mazuma has now brought an action against IP, claiming that IP has committed trespass, tarnished the reputation and image of Mazuma and acted unlawfully by entering a JID without informing their lawyers beforehand.

#### Best Practice Tips

- Lawyers should always act in a manner which does not prejudice their legal profession and reputation.
- When carrying out a Writ of Seizure and Sale, a lawyer should not act beyond his/her capacity as a lawyer.
- Although lawyers are required to act in the best interests of their client, the lawyer should not break the rules or act against the regular code of conduct to fulfil their client's expectations.
- Lawyers should also avoid bad publicity as it could be detrimental for the legal practice or on him/her individually.
- Rule 56 of the Legal Profession (Practice and Etiquette) Rules 1978 states that: a solicitor must notify the other party's solicitor of their intention to enter a JID and seven days shall have lapsed since the notice was given before entering a JID.
- All correspondences between the parties must be filed accordingly in the event it is required as proof of evidence. Although a letter to the other party has been sent, this should be further put in writing through email for confirmation if possible.
- Clause 32(e) COI 2014 states that misconduct of a lawyer is not covered by the Malaysian Bar's Professional Indemnity Insurance Scheme unless the lawyer is an innocent partner in the claim.

