

CASE UPDATE



The Singapore High Court considers the standard of care expected of solicitors in verifying the identity and instructions of their clients.

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Introduction

For any queries relating to this article, please contact:

Quek Mong Hua
quekmonghua@leenlee.com.sg

Brief prepared by:
Jacqueline Chua
Lee Jing Yan

Lee & Lee
50 Raffles Place, #06-00
Singapore Land Tower,
Singapore 048623
T : (65) 6220 0666

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1. To what extent are solicitors expected to verify their client's identity and instructions? In situations where solicitors take instructions from an intermediary, what steps should be taken to verify the intermediary's authority to relay the client's instructions? Are solicitors entitled to rely on documents signed and notarised by foreign notaries public in discharge of their duties, or are they required to carry out further and independent verification?
2. These were some of the difficult questions that were thrown up in the case of *Cristian Priwisata Yacob and another v Wibowo Boediono and another and another suit* [2017] SGHC 08, where the Singapore High Court found two solicitors liable in negligence for failing to verify their clients' identity and instructions, resulting in a fraudulent transfer of property.
3. The factual matrix underlying the case is complex and involves two distinct yet interrelated frauds, the subjects of Suit 71/2012 and Suit 169/2012 respectively. The first fraud involved sums transferred by the Plaintiffs to the Defendants for a proposed joint investment scheme in two residential properties in Singapore. The investments never materialised and action was commenced against the Defendants for the aggregate sum of S\$1,232,270.19/-.
4. The second fraud, which was the subject of Suit 169/2012, involved an elaborate conspiracy between three Defendants to transfer the Plaintiffs' property into one of their names without the Plaintiffs' knowledge or consent. Upon discovery of the fraudulent transfer, actions were commenced against them in conspiracy. Additionally, claims in negligence were brought against the two Singaporean solicitors who acted in the conveyance, Toh Wee Jin ("Toh") and Tan Lay Pheng ("Tan").
5. The Plaintiffs succeeded in all their claims. In respect of the fraudulent transfer of property, Toh and Tan were held liable in negligence for failing to verify the identity and instructions of their clients, thereby causing the loss of the property. The Court's findings on this aspect of the case will be the focus of this case update.

Salient Facts of Suit 71/2012

6. The Plaintiffs in Suit 71/2012 were Cristian Priwisata Yacob (“Cristian”) and Denny Suriadinata (“Denny”). They brought claims against the Defendants, Wibowo Boediono (“Wibowo”) and Isabelle Koh Teng Teng (“Isabelle”) for monies that were transferred to them for the purposes of joint property investments in Singapore. Wibowo had proposed that Cristian and Denny jointly invest with him in two condominiums, Parc Mondrian and Oasis Garden, with a view to selling them later for a profit. For several reasons, including the fact that Wibowo was a fellow Indonesian and the son of one of Cristian’s business counterparts in Indonesia, the Plaintiffs trusted Wibowo and agreed to the proposal. The Plaintiffs transferred an aggregate sum of S\$1,232,270.19/- to Wibowo and Isabelle as their share of the purchase price for the two condominium units. It transpired that the joint investment never materialised; the monies had not been used by Wibowo and Isabelle for the agreed investment purposes and when Wibowo could not be contacted, the Plaintiffs commenced Suit 71/2012 against Wibowo and Isabelle.
7. Wibowo and Isabelle’s defence was that, shortly after the proposal was made, the joint investment was mutually called off and the monies transferred were instead repurposed as part satisfaction of a much larger historic debt owed by Cristian to Kweh, Wibowo’s father. It was further alleged that the balance of the purported debt was paid for by the transfer of an apartment unit at Lorong Chuan (“the Chuan”) into Kweh’s name.

Salient Facts of Suit 169/2012

8. Suit 169/2012 was commenced by Cristian and his wife, Nila Susilawaty (“Nila”) in response to the defence filed in Suit 71/2012, specifically to recover the Chuan which they say was fraudulently transferred into Kweh’s name without their knowledge or consent. In the course of the proceedings, Toh and Tan were added as defendants in Suit 169/2012 for their respective professional negligence in acting in the conveyance of the Chuan.
9. In the conveyance, Toh acted on the instructions of Wibowo and Isabelle to act on behalf of Kweh as the “buyer” of the Chuan. However, before the transfer of the property, Toh also purported to act on behalf of Cristian and Nila to obtain a Replacement Certificate of Title (“RCOT”), which was an instrumental step in executing the transfer. At all times, however, Toh acted entirely on the instructions of Isabelle and Wibowo.
10. Tan was contacted by Toh to act for Cristian and Nila in the transfer of the Chuan soon after the RCOT was obtained. The transfer to Kweh’s name was executed and completed on 28 December 2011.

11. Similar to Suit 71/2012, Wibowo and Isabelle's defence in Suit 169/2012 was that Cristian had agreed to transfer the Chuan to Kweh as final satisfaction of the historic debt he owed to Kweh, and that therefore the Chuan had been transferred with the Plaintiffs' knowledge and consent. They sought to rely on various documents which they claimed were signed by Cristian and or Nila before two separate notaries public in Indonesia.
12. Toh and Tan both took the position that because they are not alleged to be complicit, they were entitled to believe that there was no fraud committed by Wibowo, Isabelle and Kweh. Although they admitted that they had never met nor taken instructions directly from Cristian and Nila, they took the position that they were not professionally negligent because they were entitled to rely on the various documents purportedly signed by Cristian and or Nila before the said Indonesian Notaries, in fulfilling their obligations to verify their clients' identities and instructions.

The High Court's Findings

13. Whilst the two Suits were not formally consolidated, they were directed to be heard together. On the totality of the evidence, Wei J found that the evidence of Cristian, Denny and Nila were cogent and to be preferred over that of the Defendants. In the circumstances, he found that the Plaintiffs were all victims of an elaborate and audacious fraud perpetrated by Wibowo, Isabelle and Kweh that culminated in the transfer of the Chuan without their knowledge or consent. The learned Judge accepted the Plaintiffs' submissions, *inter alia*, that the alleged historic debt owed by Cristian to Kweh was the lynchpin of the defence, and found that there was scarcely any credible evidence to support it. The Court therefore held that Kweh, Wibowo and Isabelle were jointly and severally liable to the Plaintiffs in the tort of conspiracy to injure by unlawful means for the loss of the investment monies and the Chuan property.
14. Wei J then carried out an elaborate analysis of the defences of both Toh and Tan and held them jointly and severally liable in negligence for the loss of the Chuan, having breached their professional duties to Cristian and Nila in failing to verify their identities and instructions which otherwise would have avoided the fraudulent transfer from being executed. Wei J's findings are presented below in summary form.

On a solicitor's duty to verify the identity and instructions of his client

15. In determining the standard of care to be expected of solicitors to verify the client's identity and instructions, Wei J endorsed the relevant provisions of the Legal Profession (Professional Conduct Rules) 2010 ("PCR (2010)"), namely r 11D(1), 11D(2), 11F(1)(a), as well as Practice Direction No. 1 of 2008 ("PD (2008)"),

issued by the Council of the Law Society of Singapore¹. The PCR (2010) read with the PD (2008) sets out detailed guidelines on the relevant “know your client” checks to be conducted by solicitors before acting in any matter. These include:

- (a) Verifying the client’s identity using reliable independent data or information;
 - (b) Conducting a face-to-face meeting with the client and verifying original identity documents and obtaining certified true copies of the identity documents when a face-to-face meeting is not possible;
 - (c) Taking appropriate precautions to ensure that the client’s identity and particulars are adequately verified;
 - (d) Where an agent holds himself out to be acting on behalf of the principal, verifying the identity of the principal client, the agent, and establishing that the agent represents the client and has the specific authority to relay instructions to the lawyer;
16. Toh submitted that PD (2008) did not apply, since in its preamble it was expressed to be concerned with the prevention of money laundering and terrorist funding activities. Therefore, Toh submitted, it only applied to cases involving such activities. Wei J categorically rejected this submission. PD (2008) was of general application in order to inculcate a system where solicitors take proactive steps to minimise the risk of law firms being involved inadvertently in money laundering activities.
17. While the steps taken in verifying a foreign client’s identity are inconvenient and may incur expenses, Wei J held that this has to be balanced against the risk of harm to the client, particular in matters involving interests in real estate, where the capacity for harm is much greater.

Toh Wee Jin

18. Wei J held that on the facts of the case, the steps taken by Toh to identify and to confirm his instructions to act were insufficient. In coming to his decision, Wei J relied on the following findings.
- (a) Toh had had no prior dealings with Cristian and Nila.
 - (b) Although Toh purported to act for Cristian and Nila in applying for the RCOT, he never communicated directly with Cristian and Nila but instead was content to receive all his instructions from Isabelle and

¹ PCR (2010) and PD (2008) have since been superseded by the Legal Profession (Professional Conduct Rules) 2015 and Practice Direction No. 1 of 2015 respectively.



Wibowo. This included information on the alleged debt owed by Cristian to Kweh, the alleged agreement to transfer the Chuan in satisfaction of the debt, and the instructions that the original Certificate of Title to the Chuan had been lost.

- (c) Toh made no attempts to initiate direct communication with Cristian and to verify Cristian and Nila's instructions or consent prior to making the RCOT application. This was so even though Wibowo had purportedly provided Toh with an email address at which he was supposed to be able to contact Cristian.
- (d) Toh also made no attempts to independently verify the existence of the alleged debt with Kweh, who was alive at the time of the transfer.

19. Wei J therefore found that Toh had acted negligently in failing to verify the identity and instructions of his clients. He found that Toh should have been far more proactive in attempting to independently confirm and verify his instructions directly with Cristian and Nila, instead of relying on Isabelle and Wibowo's instructions, particularly given their relationship with Kweh. In Wei J's own words, "to rely on an intermediary who is taking instructions from the creditor and would-be buyer is fraught with risk."²

Tan Lay Pheng

20. Tan was also held to have breached his professional duty to verify the identity and instructions of his clients Cristian and Nila. In coming to his decision, Wei J made the following findings:

- (a) Tan also had had no prior dealings with Cristian and Nila. It was Toh who referred the matter to Tan for the purposes of Tan acting for the purported sellers, Cristian and Nila.
- (b) Despite the fact that he knew that it was an unusual transfer in that it was made to satisfy a purported debt owed by Cristian to Kweh, Tan never conducted a face-to-face meeting with Cristian and Nila to verify the existence of that debt, nor did he ask for their identity documents.
- (c) Although Tan sent an email and received a response purportedly from Cristian to confirm the transaction, this was insufficient since email addresses could be easily set up, and there had been no other direct confirmation from Cristian and Nila.

21. Wei J therefore held that Tan had breached his duty of care in failing to take reasonable steps to verify his instructions.

² At [260].

Whether solicitors are entitled to rely on notarised documents without further verification

22. The High Court also considered Toh's and Tan's arguments that they were entitled to rely on certain key documents without further verification as they were apparently signed and notarised in Indonesia, and therefore had not acted unreasonably. In particular, Toh relied on alleged Statutory Declarations and RCOT Application Forms, while Tan relied on a Letter of Authority handed to him by Toh (who in turn received it from Wibowo and Isabelle).
23. Wei J rejected this submission on three main grounds.
- (a) Whilst evidence as to existing conveyancing practice may be relevant, there should be convincing evidence of the conveyancing practice that the defendant asserts and relies on. Wei J noted that Toh and Tan did not bring any independent evidence in support of this alleged conveyancing practice.
 - (b) Even if there is such evidence, it does not follow that the proving an established practice was conclusive of the matter.
 - (c) Whilst it is true that Singapore can and does take judicial notice of the seal of a notary public, that in the absence of convincing contrary evidence raises a presumption of authenticity, it does not necessarily follow that a solicitor is *always* entitled to rely on the fact that a document has been notarised as being sufficient to fulfil his obligation to verify the identity and instructions of his client.³
24. Given the circumstances surrounding the transfer of the Chuan, Wei J held that Toh and Tan should have taken further steps to verify the identity and instructions of their clients, and that the receipt of apparently genuine notarised documents alone was not sufficient to discharge their professional duties.

Concluding Remarks

25. This case serves as a timely reminder to all solicitors of the importance of verifying their clients' identity and instructions, particularly in situations where the client resides overseas. It is not sufficient to rely solely on the receipt of notarised documents without more, especially when the facts warrant the solicitor to act with greater vigilance. This is particularly where the capacity for harm to the client is much greater than the inconvenience, as in this case when interests in real estate are being transferred without direct communication with the client.

³ [242]

CASE UPDATE



26. The Plaintiffs were successfully represented by M/s Lee & Lee's Quek Mong Hua, Benjamin Yam, and Jacqueline Chua.

About Lee & Lee

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The following partners lead our departments:

Kwa Kim Li
Managing Partner
kwakimli@leenlee.com.sg

Quek Mong Hua
Litigation & Dispute Resolution
quekmonghua@leenlee.com.sg

Owyong Thian Soo
Real Estate
owyongthiansoo@leenlee.com.sg

Tan Tee Jim, S.C.
Intellectual Property
tanteejim@leenlee.com.sg

Adrian Chan
Corporate
adrianchan@leenlee.com.sg

Louise Tan
Banking
louisetan@leenlee.com.sg