

## **LEGAL PROFESSION**

**Contract – Sale and purchase agreement – Fraud – Warrant to act – Stakeholder’s duty – Whether there was a breach of warranty to act – Whether there was a breach of stakeholder’s duty**

### ***G Balan Govindasamy v Lee Moi Moi & Ors and Another Appeal***

[2017] 8 CLJ 530, Court of Appeal

**Facts** The respondents entered into a sale and purchase agreement (“the SPA”) to buy a piece of land from a fraudster, one Soh Chuan Seng (“the fraudster”) who claimed to be the owner of the land. The solicitors acting for the fraudster, the first appellant, forwarded to the solicitor acting for the respondents, the second appellant, a warrant to act signed by the fraudster. A land search also showed the fraudster as the registered proprietor. The respondents deposited with the second appellant who then forwarded the purchase sum to the first appellant as stakeholders. A private caveat was also lodged by the respondents on the land. After the land was registered in the name of the respondents, the balance purchase price was then released to various third parties by the first appellant. The second appellant was later informed of the fraud by the true owner of the land. Consequently, the respondents failed to acquire title to the land. The respondents sued the first appellant for damages for breach of warranty of authority to act and for breach of stakeholders’ duties. The respondents also sued their own solicitors, the second appellant, for negligence and the Registrar of Titles and the Selangor State Governments, the third and fourth appellants, and its officers, fifth and sixth appellants, for negligence and breach of statutory duties. The High Court held in favour of the respondents. Hence, this appeal.

**Issues** The main issues were (i) whether there was a breach of warranty to act; and (ii) whether there was a breach of stakeholder’s duty.

**Held** The High Court held that the first appellant was not liable for breach of warranty as there was no evidence to justify a finding that the warranty of authority was given on the basis that the first appellant identified the fraudster as the true owner of the land. However, the Court ruled that there was a breach of stakeholder’s duties as the first appellant had released the balance purchase price to the third parties breaching the clause in the SPA.