

TORT

Negligence – Land searches– Failure to maintain true and accurate record – Duty of care – Statutory duty – Whether duty breached – National Land Code 1965, sections 22, 384, 385, 386

Pendaftar Hakmilik, Pejabat Pendaftaran Wilayah Persekutuan Kuala Lumpur dan Kerajaan Malaysia v Poh Yang Hong

[Civil Appeal No.01(f)-59-12/2015(W)], Federal Court

Facts The respondent, Poh Yang Hong, entered into a sale and purchase agreement with a vendor, Ng Lai Yin (“the Vendor”), to purchase a property (“the Property”) following a private search at the first appellant’s office, Pendaftar Hakmilik, Pejabat Pendaftaran Wilayah Persekutuan, Kuala Lumpur, which confirmed the Vendor to be the registered proprietor of the Property. However, whilst the registration was pending, the respondent found the Property to be registered under one Mohamad Nor bin Mohamad. Another search was conducted and the Property was found to be registered under two names with two different titles. The respondent alleged that the first appellant had breached their duty of care by misrepresenting the true and actual particulars of the Property, and by failing to maintain true and accurate records. The respondent sued for damages in negligence. The appellants denied the claim and maintained that there was no duty of care and that the information was accurate at the time it was provided. The High Court held in favour of the respondent which was upheld subsequently by the Court of Appeal. An appeal was made to the Federal Court.

Issue The issue was whether the first appellant owed a duty of care towards the respondent.

Held In dismissing the appeal, the court held that the appellants were liable for negligence as they owed a duty of care to the respondent to maintain the register and register all lands caused to be registered. The appellants were also to ensure that the information contained in the Register is correct, true and accurate and that it reflects the true and actual description of the title to the land as well as the true identity of the registered proprietor itself.