CTS CHEAH TEH SU
Est. 1989

# Land Fraud

## How Lawyers Can Protect Their Clients (and Themselves)

DATE

5 February 2025

AUTHOR

**Pang Kong Leng**
Partner

CTS LEGAL INSIGHT

Whilst land fraud is by no means a recent occurrence[1], the number of such cases has increased exponentially over the last 20 years[2]. This significant rise could, perhaps in no small part, be attributed to the computerisation of the land registration system in 1993[3].

According to newspaper reports, there were close to 500 cases involving land fraud between 2021 and 2023 alone[4]. In one of the most well-known cases regarding land fraud, two innocent parties spent close to 15 years embroiled in litigation, with the Court at each level overturning the preceding decision[5]. To add to the losing party's grief, it was subsequently held that the Apex Court's decision was erroneous[6].

In some instances, the fraud committed was aided and abetted by solicitors involved in the conveyancing transaction[7]. But innocent solicitors are occasionally caught in the web of deceit spun by fraudsters and find themselves cited as defendants for negligence[8].



1 *Saminathan v Pappa* [1981] 1 MLJ 121, PC.

2 H. Shahrul Natasha and H. Jady Zaidi, 'Exploring legal tenure security in Malaysia: does formal titling ensures rights to land owners?' (2024) 10(1) Cogent Social Sciences, https://doi.org/10.1080/23311886.2024.2433793; Loh J., 'Moving with the times: Computerised land titles' (Malaysian Bar), accessed 12 January 2025; Fatik Zolkepli, 'Nearly 500 land scam cases detected over past three years, says Bukit Aman CCID director' (The Star, 28 May 2024).

3 National Land Code (Amendment) Act 1992 (Act A832) came into force from 1 January 1993.

4 Fatik Zolkepli, 'Nearly 500 land scam cases detected over past three years, says Bukit Aman CCID director' (The Star, 28 May 2024).

5 *Boonsom Boonyanit v Adorna Properties Sdn Bhd* [1995] 2 MLJ 863, HC; [1997] 2 MLJ 62, CA; *Adorna Properties Sdn Bhd v Boonsom Boonyanit @ Sun Yok Eng* [2001] 1 MLJ 241, FC; *Kobchai Sosothikul v Pengarah Tanah dan Galian, Pulau Pinang* [2012] 3 MLJ 297, HC at p. 307 [13].

6 *Tan Ying Hong v Tan Sian San & Ors* [2010] 2 MLJ 1, FC at p. 8 [11], p. 20 [52]–[53].

7 In *Puspaleela a/p R Selvarajah & Anor v Rajamani d/o Meyappa Chettiar* [2019] 2 MLJ 553, FC at pp. 606–607 [164]–[165], the lawyer who acted for the immediate purchaser was held to be party to the fraud. See also *Abu Bakar bin Ismail & Anor v Ismail bin Husin & Ors* [2007] 4 MLJ 499, CA at p. 498 [3].

8 In *Puspaleela* (supra) at p. 579 [92] and p. 607 [166], the legal firm and partner who acted for the fraudster were sued for negligence and found guilty at the Court of Appeal before that finding was reversed at the Federal Court. In *Au Meng Nam & Anor v Ung Yak Chew & Ors* [2007] 5 MLJ 136, CA at p. 150 [23], the partners of the law firm who acted for the purchaser were sued for negligence.

## Modus Operandi of Fraudsters

Fraudsters implement elaborate schemes that could result in either the innocent landowner being deprived of his land without receiving any consideration[9], the innocent purchaser losing the purchase price paid without acquiring indefeasible ownership of the land[10], or the end-financier having disbursed the loan without security that prevails over the original landowner's title[11].

Their strategies include, *inter alia*:

- Changing the mailing address of the registered owner by forging his/her signature, obtaining a default judgment declaring the land to be beneficially owned by someone else, and selling and transferring the land more than once in haste[12];
- Impersonating the registered owners to sell and transfer the land and forging their signatures on the transfer form[13], and carrying out multiple sales[14];
- Acting as the purported attorney of the landowner to sell the land under a forged[15] or false[16] power of attorney; and
- Obtaining a court order for wrongful distribution of a deceased's estate and thereafter selling and transferring the land[17].

9 *Puspaleela a/p R Selvarajah* (supra).

10 *Adorna Properties Sdn Bhd* (supra).

11 *Tan Ying Hong* (supra).

12 *Setiakon Engineering Sdn Bhd v Mak Yan Tai & Anor* [2024] 5 MLJ 460, FC at pp. 478–479 [8]–[10], p. 479 [12], and pp. 481–482 [20]–[24].

13 See *Leong Chye @ Sze Leong Chye & Anor v United Overseas Bank (M) Bhd* [2021] 5 MLJ 759, FC at p. 774 [10].

14 *Puspaleela* (supra) at pp. 571–576 [39]–[80].

15 *Letchumanan Chettiar Alagappan @ L Allagappan v Secure Plantation Sdn Bhd* [2017] 4 MLJ 697, FC.

16 *Low Huat Cheng & Anor v Rozdenil bin Toni* [2016] 5 MLJ 141, FC at p. 150 [10].

17 *Kamarulzaman bin Omar & Ors v Yakub bin Husin & Ors* [2014] 2 MLJ 768, FC at pp. 772–773 [4]–[5].

## Proposal for Assurance Fund

The Federal Court has, on more than one occasion, recommended that Parliament consider setting up an assurance fund to compensate innocent landowners who are wrongly deprived of their lands[18]. As we wait for legal reform to materialise, legal practitioners should take proactive steps to safeguard not only their clients' interests but also their own.

## Steps to Protect Against Land Fraud

Several sets of solicitors are usually involved in a land deal — one acting for the vendor/transferor, another for the purchaser/transferee, and another for the end-financier (if financing is involved). Recent land fraud cases usually involve more than one transaction or transfer.

For solicitors acting in a conveyancing transaction, the routine preliminary steps involve:

- Verifying the identity of the parties;
- Carrying out a bankruptcy or winding-up search on the parties; and
- Conducting a land search on the register document of title to determine the identity of the registered proprietor and of any encumbrance on the land.

18 See *Leong Chye* (supra) at p. 803 [76]; *Puspaleela* (supra) at pp. 568–569 [17]–[22].

In addition, conveyancing solicitors should also take the following precautionary measures:

- Exercise extra vigilance when verifying the identity of a purported landowner, especially when the identification particulars presented do not match the details reflected in the title deed[19] or they only have temporary identity cards[20];
- Investigate whether any previous registered owner's title to the land was obtained pursuant to a default order, which may be liable to be set aside and wipe out the current vendor's title[21];
- Inquire into previous sales and transfers, to determine whether there was any haste in effecting the transactions and the proposed sale[22];
- Scrutinise whether the vendor had the financial capacity to acquire the land in the first place[23];
- Obtain a valuation report to ascertain the market value of the land, especially when the purchase price is substantial[24];
- Probe into the validity of the power of attorney under which any vendor purports to sell or transfer[25];
- Ascertain whether the vendor is himself an immediate purchaser, so that the purchaser can become the subsequent purchaser[26];

19 *Rajamani a/p Meyappa Chettiar v Eng Beng Development Sdn Bhd & Ors* [2016] 3 MLJ 660, CA at pp. 681–682 [90]–[95], overturned on appeal by the Federal Court in 2019.

20 *Au Meng Nam* (supra) at pp. 155–156 [41]–[42].

21 *Setiakon Engineering Sdn Bhd* (supra) at pp. 493–494 [68]–[71].

22 Ibid at p. 505 [118]; *Au Meng Nam* (supra) at pp. 155–156 [41]–[42].

23 *Setiakon Engineering Sdn Bhd* (supra) at p. 505 [118].

24 Ibid.

25 *Letchumanan Chettiar Alagappan* (supra) at p. 714 [9]; *Low Huat Cheng* (supra) at p. 150 [10].

26 *Kamarulzaman bin Omar* (supra) at pp. 796–797 [43].

- Look out for unusual terms of purchase, e.g. a huge sum paid upfront[27];
- Witness the execution of the conveyancing documents[28];
- Exercise extra caution if the purchase price is below market value[29];
- Ensure that there is adequate documentary proof of payment of the purchase price[30], especially when payment is said to be by cash[31]; and
- Prepare the real property tax gain (*cukai keuntungan hasil tanah*, "CKHT") forms and ensure that an amount to cover the real property gains tax payable was retained by the vendor's solicitors[32].

## Conclusion

These precautionary steps are recommended in light of the appellate courts' decisions in cases involving land fraud. We may question or challenge the correctness of some of these decisions, but it would be prudent to discharge our duties as solicitors *ex abundanti cautela*.

*The author wishes to express his gratitude to his colleague, Michelle Chin Zi Shan, Advocate and Solicitor of the High Court of Malaya, for her assistance in preparing this article.*

27 *Au Meng Nam* (supra) at pp. 155–156 [41]–[42].

28 *Bank Pertanian Malaysia Bhd v Nara'rifah bt Darus* [2014] 6 MLJ 870, CA at p. 879 [23]–[25].

29 *Au Meng Nam* (supra) at p. 156 [43]–[44].

30 *Bitara Angkasa Sdn Bhd v Cheok Lam Chuan & Ors* [2024] 1 MLJ 541, CA at p. 566 [50].

31 *Jalani Mohamed & Anor v Shahrom Abdullah & Anor* [2024] 4 CLJ 868, CA at p. 892 [78].

32 *AGS Harta Sdn Bhd v Liew Yok Yin* [2010] 1 MLJ 309, CA at pp. 316–317 [18]–[19].

CTS CHEAH TEH SU
Est. 1989

If you have any questions on this article

## Please get in touch with the author.

**Pang Kong Leng**
Partner
pang@ctslawyers.com.my

OFFICE

Cheah Teh Su
L-3-1, No. 2, Jalan Solaris
Solaris Mont' Kiara
50480 Kuala Lumpur, Malaysia

GET IN TOUCH

T +60 3 6203 6918
E cts@ctslawyers.com.my
W www.ctslawyers.com.my
in www.linkedin.com/company/cheah-teh-su

CTS © 2025 Cheah Teh Su. All rights reserved.