

28 FEBRUARY 2022

## The Effect Of Not Producing The A.R. Card In An Affidavit Of Service

### Contact Persons:

Datuk D P Naban  
Senior Partner

+603 6209 5405  
naban@rdslawpartners.com

Nagarajah Muttiah  
Partner

+603 6209 5400  
naga@rdslawpartners.com

Nur Syafinaz Vani  
Partner

+603 6209 5422  
syafinaz@rdslawpartners.com

Rosli Dahlan  
Partner

+603 6209 5420  
rosli@rdslawpartners.com

R Rishi  
Partner

+603 6209 5400  
rishi@rdslawpartners.com

Kenny Lam Kian Yip  
Senior Associate

+603 6209 5400  
kenny@rdslawpartners.com

Shaun Tan Cheng Hong  
Senior Associate

+603 6209 5400  
shaun@rdslawpartners.com

The recent decision by the Federal Court in *Goh Teng Whoo & Anor v Ample Objectives Sdn Bhd* clarifies whether the non-production of an A.R. card in an affidavit of service prevents a judgement in default of appearance from being sealed by court.

### Brief Facts

The respondent initiated an action against the appellants by filing a writ and statement of claim (the Writ). Upon extraction of the Writ, the respondent proceeded to serve the Writ on the appellants by A.R. Registered Post pursuant to Order 10 rule 1(1) of the Rules of Court 2012. This rule makes it clear that a Writ must be served by personal service or by A.R. Registered Post to the defendant's last known address. The respondent's solicitors then affirmed an affidavit of service stating that the Writ was posted to the appellants' last known address. However, the respondent's solicitors did not tender the A.R. card as an exhibit in their affidavit of service and neither did they state as to whether the A.R. card was returned to them. The respondent merely produced an endorsement on the writ by stating the day and date the Writ was posted.

Since the appellants did not enter an appearance within the stipulated time given in the Writ, the respondent entered a judgement in default of appearance (JID) against the appellants. The appellants then filed an application to set aside the JID. It was only at this juncture that the respondent produced the A.R. card as an exhibit in its affidavit in reply. The A.R. card disclosed that the service of the Writ on the 1<sup>st</sup> appellant was received by the 1<sup>st</sup> appellant's brother. The respondent in its affidavit also stated that the A.R. card for service on the 2<sup>nd</sup> appellant was not returned.

The appellants' application to set aside the JID was dismissed by the High Court and subsequently, their appeal was also dismissed by the Court of Appeal. Both the courts held that there was no requirement for the A.R. card to be

**REIMAGINING  
LEGAL  
SOLUTIONS**

produced as an exhibit in the affidavit of service for a JID to be sealed. Mere proof of the posting receipt was sufficient to show that the Writ was duly served. The courts relied on Section 12 of the Interpretation Acts 1948 and 1967 (the Interpretation Acts), which provides as follows:

*“Where a written law authorises or requires a document to be served by post, then, until the contrary is proved, service-*

- a) shall be presumed to be effected by properly addressing, prepaying and posting by registered post a letter containing the document; and*
- b) shall be presumed to have been effected at the time when the letter would have been delivered in the ordinary course of the post.”*

## Leave Granted By The Federal Court

The Federal Court granted leave to the appellants’ on the following question:

*“ Whether, considering the relevant provisions in Orders 10, 13 and 62 of the Rules of Court and S. 114(f) of the Evidence Act and S. 12 of the Interpretations Acts 1948, 1967, where service of a Writ is alleged to have been carried out by way of sending the same to a Defendant by Registered Post pursuant to O. 10, R. 1(1) of the Rules of Court, 2012, can the Court seal a judgment in default of appearance notwithstanding that the Affidavit of Service does not exhibit the A.R. Registered Card containing an endorsement as to receipt by the Defendant himself or someone authorized to accept service of the same on his behalf?”*

## The Federal Court’s Decision

The Federal allowed the appeal and commented that the wording of “registered post” in Section 12 of the Interpretation Acts is wide enough to cover A.R. Registered Post. The reading of Section 12 is such that it only starts to run when it can be shown that the document was served by A.R. Registered post to the Defendant’s last known address pursuant to Order 10 Rule 1(1) of the Rules of Court 2012.

### OUR EXPERTISE:

- Administrative Law
- Appellate Advocacy
- Competition Law
- Civil & Commercial Disputes
- Contractual Disputes
- Construction & Arbitration
- Debt Recovery
- Defamation
- Employment & Industrial Relations
- Intellectual Property
- Probate
- Judicial Review & Administration Law
- Shipping & Maritime
- Tax & Customs Disputes
- Trusts

Failure to do so means the service will be deemed to be bad service.

There is nothing in Section 12 to state that posting by registered post is conclusive proof of service. The provision merely provides that when a document is served by registered post, the document is presumed to be served until the contrary is proven. Thus, it is a rebuttable presumption of law wherein evidence can be tendered to prove to the contrary.

A defendant who has no knowledge of being served with the document is given the opportunity to rebut the presumption that he was duly served with the document and to provide an explanation as to why the JID should not be entered against him. In this case at hand, the Federal Court observed that the courts below had erred in deciding that posting of the Writ by AR Registered post was conclusive proof of service, without giving the appellants an opportunity to explain as to why the JID should not be entered against them.

The appellants here had successfully rebutted the presumption of service by raising facts which had merit. With regards to the 1<sup>st</sup> appellant, he had tendered evidence to prove that he was no longer living in the address in which the Writ was posted. His brother had received the document but did not inform him of the same. For the 2<sup>nd</sup> appellant, he admitted to residing in that address but denied receipt of the Writ. The respondent's failure to produce the A.R. cards duly signed by the appellants or anyone authorised on their behalf corroborated the appellants' version of facts.

The respondent's failure to contradict the appellants' contentions that they did not receive the Writ is to be taken as an admission of the facts raised by the appellants.

Accordingly, the court cannot seal a judgement in default of appearance where the affidavit of service does not exhibit the A.R. card, containing an endorsement as to receipt by the defendant or someone authorised on his behalf to accept service of the document.

**OUR EXPERTISE:**

Administrative Law

Appellate Advocacy

Competition Law

Civil &amp; Commercial Disputes

Contractual Disputes

Construction &amp; Arbitration

Debt Recovery

Defamation

Employment &amp; Industrial Relations

Intellectual Property

Probate

Judicial Review &amp; Administration Law

Shipping &amp; Maritime

Tax &amp; Customs Disputes

Trusts

## Contact Persons:

Datuk D P Naban  
Senior Partner

+603 6209 5405  
naban@rdslawpartners.com

Nagarajah Muttiah  
Partner

+603 6209 5400  
naga@rdslawpartners.com

Nur Syafinaz Vani  
Partner

+603 6209 5422  
syafinaz@rdslawpartners.com

Rosli Dahlan  
Partner

+603 6209 5420  
rosli@rdslawpartners.com

R Rishi  
Partner

+603 6209 5400  
rishi@rdslawpartners.com

Kenny Lam Kian Yip  
Senior Associate

+603 6209 5400  
kenny@rdslawpartners.com

Shaun Tan Cheng Hong  
Senior Associate

+603 6209 5400  
shaun@rdslawpartners.com



## About Us

We are a full-service commercial law firm with a head office in Kuala Lumpur and a branch office in Penang. Our key areas of practice are as follows:-

- Appellate Advocacy
- Banking & Finance (Conventional and Islamic)
- Capital Markets (Debt and Equity)
- Civil & Commercial Disputes
- Competition Law
- Construction & Arbitration
- Corporate Fraud
- Corporate & Commercial
- Personal Data Protection
- Employment & Industrial Relations
- Energy, Infrastructure & Projects
- Construction & Arbitration
- Fintech
- Government & Regulatory Compliance
- Intellectual Property
- Medical Negligence
- Mergers & Acquisitions
- Real Estate Transactions
- Shipping & Maritime
- Tax, SST & Customs
- Tax Incentives
- Trade Facilitation

## Commentary

This case highlights that cause papers such as writ which is served by A.R. registered post must be posted to the defendant's last known address. Mere production of the A.R. card in the affidavit of service will not suffice in order for the Courts to seal a JID. The A.R. card must also contain an endorsement as to receipt by the defendant or someone authorised on his behalf to accept service of the document.

The document must only be received and signed by the defendant himself or someone authorised on his behalf. Additionally, the mere receipt by a 3<sup>rd</sup> party would not amount to effective proof of service. Mere proof of posting is not conclusive proof of service under Section 12 as the defendant must be accorded the opportunity to raise facts and evidence to rebut the presumption of service.

Authored by Shamelan Lonen, an Associate with the firm's Dispute Resolution team.

**REIMAGINING  
LEGAL  
SOLUTIONS**