

## In the Matter of Morris George Scott Beattie

Case No: SCT/52  
 Date of Hearing: 23 October 2001  
 Appearing Before: Ms C C Endicott (Chairperson)  
 Mr M Byrom  
 Dr J Lamont (Lay Member)  
 Penalty: Struck Off

### Charge 1

The practitioner improperly exercised his power as attorney for his client VB to lend sums totalling \$282,000.00 to G Pty Ltd (G) as trustee of the G (Australia) No. 1 Trust ("the G Trust") in order to make payments of arrears of interest for which the practitioner was personally liable as guarantor and in circumstances in which no adequate security was provided by G to VB or to KS Mortgage Securities Pty Ltd (Securities), the practitioner's nominee mortgage company through which the loans were made.

### Particulars

- (a) At all material times:
- (i) G as trustee of the G Trust was the registered proprietor of land known as Birnamdale Estate comprising 28 subdivided lots being lots 1-3 and 25-28 on RP902541, lots 4, 5, 11, 12 and 22-24 on RP902542, lots 6-10 on RP902543 and lots 13-21 on RP902544 County of Ward, Parish of Mundoolun (the subdivision) and an undeveloped balance area, being Lot 200 on RP902545 County of Ward Parish of Mundoolun ("Lot 200"). The subdivision and Lot 200 had, prior to subdivision in about January 1997, comprised Lot 1 on RP172297 and Lots 6 and 7 on RP187416.
  - (ii) The subdivision and Lot 200 were subject to a first mortgage in favour of BD Pty Ltd ("BD") to secure a principal debt owed by G to BD of \$1.7 million together with interest thereon.
  - (iii) Lot 200 was, until the assignment referred to in sub-paragraph (d), subject to a second mortgage in favour of R, M & KA K ("K") to secure a principal debt owed by G to K of \$77,000.00 and interest thereon.
  - (iv) The practitioner was the sole director of G and the holder of three of the four issued shares in G.
  - (v) PA B was the sole beneficiary of the G Trust.
- (b) The practitioner held a power of attorney from VB prior to her death on 2 July 1998.

- (c) In his capacity as attorney for VB, the practitioner made loans to G as trustee of the G Trust, secured by second mortgage over the subdivision, as follows:

Date	Amount
28.08.97	\$ 60,000.00
30.01.98	\$ 10,000.00
06.02.98	\$130,000.00
20.03.98	<u>\$ 5,000.00</u>
	<u>\$205,000.00</u>

- (d) In his capacity as attorney for VB, the practitioner paid K the sum of \$77,000.00 as consideration for assignment of G's indebtedness to K in the sum of \$77,000.00 and an assignment of K's second mortgage over Lot 200, which mortgage was assigned on or about 20 April 1998 and then held (together with the second mortgage over the subdivision) as security for total advances on behalf of VB to G of \$282,000.00. The sum of \$77,000.00 was paid as follows:

Date	Amount
17.03.98	\$65,037.88
20.04.98	<u>\$11,962.12</u>
	<u>\$77,000.00</u>

- (e) G's debt to BD in the sum of \$1.7 million was due to be repaid on 31 October 1997 but G defaulted and did not make repayment to BD on that date.
- (f) As at 30 January 1998, G was in default in respect of interest payments due to BD and the sums of \$10,000.00 and \$130,000.00 advanced on 30 January 1998 and 6 February 1998 respectively from VB's funds were applied substantially in discharging those arrears of interest, BD having by letter dated 4 February 1998, offered to extend the date for repayment by G of the principal debt to 31 March 1998 provided G paid, within two business days, interest arrears due on 31 October, 30 November and 31 December 1997 at the penalty rate of 19% per annum and interest for the months of February and March 1998 at the ordinary rate of 14% per annum, which interest amounted, in total, to \$120,416.67.
- (g) By report dated 13 June 1996, TB, Valuers, had:
- (i) assessed the current value of Birnamdale Estate (then comprising Lot 1 on RP172297 and Lots 6 and 7 on RP187416) at \$1 million calculated as follows:
 

Lots 6 & 7 – 48.53ha @	
\$10,000/ha	\$485,300.00
Lot 1 – 131.79ha @	
\$4,000/ha	<u>\$527,160.00</u>
Total	<u>\$1,012,460.00</u>

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- (ii) assessed gross realisation values of the 28 lots comprising the proposed subdivision at figures amounting in total to \$2,047,500.00.
- (h) By report dated 22 September 1997, TB had re-assessed gross realisation values of the 28 lots comprising the subdivision at figures amounting in total to \$2,085,000.00.
- (i) The second mortgages from G to VB provided inadequate security for the loans made by the practitioner on behalf of VB.

### Particulars

#### The subdivision

- (i) The TB report dated 13 June 1996 assumed a sales period of nine months at the rate of three sales per month.
- (ii) The subdivision had been completed in early 1997 and titles issued to the 28 lots on or about 29 January 1997, but as at the times of the loans set out in sub-paragraph (c) none of the subdivided lots had been sold.
- (iii) The loans made on 30 January 1998 and 6 February 1998 were made for the purpose of enabling G to remedy its default in respect of the loan from BD.
- (iv) In the event that G was unable to effect sales of the subdivided lots, the loan from BD was likely to fall into further default and BD was likely to exercise its rights as mortgagee.

#### Lot 200

- (l) G has failed to repay the sum of \$282,000.00 or any part thereof.

## Charge 2

The practitioner in his capacity as one of two executors for the estate of G purchased units in the KS Trust in circumstances in which the practitioner knew or ought to have known that those units were worth substantially less than the price paid for them.

## Charge 3

The practitioner recommended to his clients AFM and AO that they purchase units in the KS Trust in circumstances in which the practitioner knew or ought to have known that those units were worth substantially less than the price paid for them.

### Particulars of charges 2 and 3

#### The WW Purchase

- (a) At all material times:
  - (i) The practitioner was the sole director and shareholder of KS Mortgage Securities Pty Ltd

(“Securities”) which was, in turn, the sole shareholder in KS Management Pty Ltd (“Management”) of which the practitioner was the sole director.

- (ii) Management was the trustee of the KS Property Trust No.1 (“the KS Trust”).
- (b) Pursuant to contract dated 28 May 1998, the KS Trust purchased from W for a consideration of \$880,000.00 the WW property.
- (c) By a collateral contract dated 21 July 1998 between W and G, it was agreed that:
  - (i) G would execute as lessee a lease of the WW property,
  - (ii) G would pay W the sum of \$370,000.00 on or before 30 June 1999,
  - (iii) in consideration of such covenants by G, W agreed that it had received from G on behalf of the KS Trust the sum of \$370,000.00 towards settlement of the contract.
- (d) The contract referred to in sub-paragraph (b) settled on 21 July 1998. Payment of the consideration of \$880,000.00 comprised:
  - (i) The sum of \$368,860.12 from funds available from a loan in the sum of \$440,000.00 made by P Nominees Pty Ltd (P), which loan was secured by first mortgage over the WW Property and by mortgage debentures given by Management and G and guarantees given by Management, G and the practitioner.
  - (ii) 10,000.00 Bartercard Trade Dollars
  - (iii) G’s promise to pay \$370,000.00 on or before 30 June 1999.
  - (iv) The KS Trust’s promise to pay 160,000.00 BXI Trade Dollars.

#### The VB Transactions

- (e) As at 21 July 1998, the debt owed by G to VB in respect of the loans particularised in sub-paragraphs 1(c) and 1(d), including interest, amounted to \$299,560.54.
- (f) By a form of authority dated 28 May 1998, the practitioner in his capacity as attorney for VB authorised himself “to apply repayment of the principal sum of \$282,000.00 together with accrued interest towards the purchase of 59 units in (the KS Trust) which I have today applied for and to pay the surplus to Management towards the application fee for entry into the Trust”.
- (g) On or about 21 July 1998, Securities acknowledged receipt of \$299,560.54 from G. The transaction evidenced by that receipt comprised:
  - (i) issue of 59 units in the KS Trust to VB for a consideration of \$295,000.00,
  - (ii) payment of an application fee of \$4,560.64 for

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which Securities accounted to Management.

- (h) The effect of the transaction particularised in sub-paragraph (g) was that:
  - (i) G's debt to VB in the sum of \$299,560.54 was released and
  - (ii) VB was issued with 59 units in the KS Trust.

### The G Transactions

- (i) At all material times prior to the death of G on 18 February 1997, the practitioner held a power of attorney from G.
- (ii) On or about 19 February 1996, the practitioner as attorney for G, executed a form of General Mortgage Investment Authority addressed to CL authorising CL to invest at its discretion the sum of \$90,000.00 on first mortgage security on terms more particularly set out in the Authority.
- (k) On or about 21 February 1996, the practitioner paid to V Pty Ltd ("V") trading as CL, from funds held in trust for G, the sum of \$90,000.00 and V executed a Declaration of Trust recognising that it held the money from G on trust. V was a company controlled by one DL.
- (l) In or about February 1996, V loaned to an unknown third party ("the third party") the sum of \$90,000.00 representing the money held by V in trust for G.
- (m) In or about May 1996, V repaid the sum of \$10,000.00 in respect of the moneys held by it on behalf of G.
- (n) The practitioner was an executor of the estate of G following his death on 18 February 1997. The other executor, JHG, by letter dated 12 March 1997, authorised the practitioner to give instructions to the practitioner's firm, on behalf of the estate and to deal with the assets of the estate.
- (o) As at July 1998, the debt owed by the third party to G's estate in respect of the advance made by V as trustee for G particularised in sub-paragraph (l) including interest amounted to \$92,635.18.
- (p) By a form of authority dated 28 May 1998, the practitioner in his capacity as executor of G's estate authorised himself "to apply repayment of the principal sum of \$80,000.00 together with accrued interest towards the purchase of 17 units in the (KS Trust) which I have today applied for and to pay the surplus to Management towards the application fee for entry into the Trust".
- (q) On or about 21 July 1998 G's estate was issued 17 units in the KS Trust for a consideration of \$85,000.00 and was credited with payment to Management of an application fee in respect of the issue of the units in the sum of \$7,635.00. By letter dated 19 October 1999 to JHG, the practitioner advised that the estate of G had been issued with 13 units in the KS Trust at a par value of \$5,000.00 per unit. The 13 units represented the 17

units issued on or about 21 July 1998 less the 4 units transferred to AFM particularised in sub-paragraph (v).

- (r) The effect of the transaction particularised in sub-paragraph (q) was that:
  - (i) the third party's debt to G's estate in the sum of \$92,635.18 was discharged and
  - (ii) the G estate was issued with 17 units in the KS Trust.

### The AFM Transactions

- (s) By a form of Authority dated 18 February 1997, AFM authorised the practitioner at his discretion to lend the sum of \$90,000.00 on "first or second mortgage property secured loans which do not exceed 80% of the value of the security offered" on terms more particularly set out in the Authority.
- (t) On or about 6 March 1997, the practitioner loaned to I Pty Ltd ("I") (a company controlled by DL) the sum of \$90,000.00 secured by second mortgage over property at, Fortitude Valley, Brisbane.
- (u) I repaid the sum of \$20,000.00 in or about August 1999 and paid interest until November 1999, but not thereafter.
- (v) By letter dated 4 August 1999, the practitioner recommended to AFM that she purchase for a consideration of \$20,000.00, 4 units in the KS Trust and on or about 9 August 1999, AFM applied to Securities for the issue of those units; the practitioner transferred to AFM 4 units held by the estate of G.
- (w) In or about February 2000, the practitioner agreed as attorney for AFM to accept from I 216,000 Trade Limited Dollars in lieu of the outstanding principal debt (\$70,000.00) and interest (\$2,000.00) and released the second mortgage referred to in sub-paragraph (t).

### The AO Transaction

- (x) The practitioner acted for AO as executrix of the estate of her brother, EN.
- (y) By letter dated 30 September 1998, the practitioner recommended to AO that an amount of \$26,200.00 expected to be paid to her by way of distribution from her brother's estate be applied to the purchase of five units in the KS Trust for a consideration of \$25,000.00 and payment of an application fee (\$1,200.00).
- (z) On or about 30 September 1998, AO applied for such units and the practitioner transferred the sum of \$26,200.00 in payment for the units and in respect of the application fee.

### The Representations

- (aa) Each of the letters referred to in sub-paragraphs (q), (v) and (y) represented that:
  - (i) the KS Trust's major asset comprised the WW

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property which had been valued as at 21 July 1998 by a registered valuer at between \$880,000.00 and \$1,203,000.00 as a redevelopment site,

- (ii) the WW property had been acquired on 21 July 1998 for \$880,000.00,
- (iii) a nett return on investment of at least 7% per annum was anticipated,
- (iv) participation in the trust "may provide future capital gain in the event of a sale of the property as a redevelopment site".

(bb) The practitioner failed to disclose to JHG, AFM and AO that:

- (i) the vendor had accepted in settlement of the purchase price of \$880,000.00:

Cash - \$368,860.12

10,000.00 Bartercard Trade Dollars

G's promise to pay \$370,000.00 on or before 30 June 1999

The KS Trust's promise to pay 160,000.00 BXI Trade Dollars

- (ii) having regard to the substantial discrepancy between the contract price of \$880,000.00 and the consideration received by the vendors, a prudent investor would seek an explanation of the discrepancy and obtain further valuation advice (the valuation referred to in the said letters having been obtained by P),
- (iii) the WW Property was mortgaged to secure debts due to P (\$440,000.00) and the vendors (160,000 BXI Trade Dollars),
- (iv) the KS Trust's equity in the WW Property was therefore likely to be substantially less than the sum of \$405,000.00 which represented the total consideration paid or treated as having been paid by VB (\$295,000.00) the estate of G (\$65,000.00) AFM (\$20,000.00) and AO (\$25,000.00) for the issue of a total of 81 units.

### Charge 4

The practitioner acted in circumstances of conflict between the interests of AFM and those of the beneficiaries of the G estate and preferred the interests of those beneficiaries to AFM's interest.

### Particulars

- (a) During June and July 1999 the practitioner was contacted by ME (on behalf of herself and also JS) and by DJS who were seeking payment of bequests of \$6,000.00 due to each of them and by Mr N Cremin of the Queensland Law Society acting on complaints made by ME.

- (b) The purpose and effect of AFM purchasing on 9 August 1999 the units particularised in subparagraph 3(v) was to enable bequests to be paid to ME, JS and DJS on 10 August 1999.

- (c) The practitioner failed to disclose to AFM that on 3 August 1999, P had given to the KS Trust notice of default pursuant to the first mortgage over the WW Property and notice of exercise of power of sale.

### Appearances

- (a) For the Council of the Queensland Law Society Incorporated:  
Mr BD Bartley of Brian Bartley & Associates, solicitors
- (b) For the practitioner:  
Mr A J Macsporrán of counsel instructed by Deardens, solicitors

### Findings and Orders

1. The tribunal finds the facts as alleged in the four charges contained in the amended notice of charge which were admitted by the practitioner to be proven.
2. The tribunal finds the practitioner guilty of professional misconduct on the charges as admitted.
3. The tribunal orders that the name of Morris George Scott Beattie be struck from the Roll of Solicitors of the Supreme Court of Queensland.
4. The tribunal orders that Morris George Scott Beattie pay the costs of the Queensland Law Society Incorporated of these proceedings, including the costs of the Clerk and the Recorder, such costs to be agreed and in default of agreement as assessed by Monsour Legal Costs Pty Ltd.
5. The tribunal further order that the costs be paid within three (3) months from the date of agreement or assessment of the costs.

### Reasons

The practitioner has been charged with four counts of conduct, which has caused almost \$400,000.00 of clients' funds to be invested in property without adequate security, when the Practitioner ought to have known that his conduct was highly likely to expose his clients to loss of those funds.

The practitioner has not contested the matters set out in the amended notice of charge. The admitted conduct of the practitioner constitutes serious breach of his duty as a solicitor.

This tribunal's jurisdiction is protective jurisdiction, and the tribunal is charged to protect the interests of the public, the interests of the legal profession, and to ensure the administration of justice.

The conduct of the practitioner shows an unfitness for the practitioner to continue in the practice of a solicitor in this State.