

In the Matter of Bruce Graeme Da Costa

Case Number: SCT/111
Date of Hearing: 29 October 2003
Appearing Before: Mr M Conroy (Presiding Member/Practitioner Member)
Mr M Byrom (Practitioner Member)
Ms E Jordan (Lay Member)
In Attendance: Mr J W Broadley (Clerk)
Penalty: Struck off

Charges

1. Between in or about June 2002 and July 2002, the Solicitor acted as a Solicitor without having at the time, a practising certificate as required by s38 of *Queensland Law Society Act 1952*.

Particulars

- (a) At all material times, the Solicitor was admitted to practice as a Solicitor, having been admitted on 6 June 1998 and carried out conveyancing work through a company BPL under the business name 'PTS';
 - (b) Between in or about June 2002 and July 2002, the Solicitor acted for AW and KW in the purchase by them from NEPL of Lot 686 Floribunda Place, Ormeau, Queensland.
 - (c) At the time of the said transaction, the Solicitor did not hold a practising certificate pursuant to s38 of *Queensland Law Society Act 1952* as is required by law to do.
2. Between in or around December 2002 and January 2003, the Solicitor acted as a Solicitor whilst under suspension from practice by virtue of an Order of the Solicitors Complaints Tribunal made 22 October 2002.

Particulars

- (a) At all material times, the Solicitor was admitted to practice as a Solicitor, having been admitted on 6 June 1998 and carried out conveyancing work through a company BPL under the business name 'PTS';
- (b) By Order dated 22 October 2002, the Solicitors Complaints Tribunal ordered that the Solicitor be suspended from practice for a period of two years from 22 October 2002, namely until on or about 21 October 2004;
- (c) Notwithstanding the Order of the said Tribunal, between in or about December 2002 and January 2003, the Solicitor acted for PB and JB in the sale to DS and SS, of the property situated at 79 Koolan Crescent, Shailer Park, Queensland;
- (d) By virtue of the abovementioned Order of the Solicitors Complaints Tribunal, the Solicitor was prohibited from acting as a Solicitor for the duration of the period of suspension of that Order.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr D G Searles, Solicitor of Messrs McCullough Robertson Solicitors
- (b) For the Practitioner:
The Practitioner appeared in person.

Findings and Orders

1. The Tribunal grants leave to the Queensland Law Society Incorporated to amend the Notice of Charge in paragraph 2(c) by inserting "and" between "P" and "J".
2. The Tribunal finds the matters set out in the Notice of Charge dated 26 June 2003 proved and that those charges constitute professional misconduct.
3. The Tribunal finds the Practitioner guilty of professional misconduct.
4. The Tribunal orders that the Practitioner's name be struck from the Roll of Solicitors of the Supreme Court of Queensland.
5. The Tribunal further orders that the practitioner pay the costs of the Queensland Law Society Incorporated, including any reserved costs, the costs of the Clerk to the Tribunal and the recorder, such costs to be agreed between the parties, or failing agreement as assessed by Monsour Legal Costs Pty Ltd.

Reasons

Findings on Charges

1. The practitioner does not dispute either charge and has admitted he acted in both matters, the subject of the two charges.
2. The evidence relied upon by the Queensland Law Society clearly indicates that the practitioner acted as a solicitor in the matters, the subject of both charges.
3. The authorities of *Sanderson* [1927] VLR 394 at p397 with reference to Cussen J's Decision and Justice Fitzgerald, New South Wales Court of Appeal in the matter of *The Law Society of New South Wales v Mr Michael Thomas Seymour* [1999] NSW Court of Appeal Decisions 117, clearly enunciate the test of what constitutes as acting as a solicitor.
4. On the *Brigginshaw* test, the evidence by the Queensland Law Society clearly satisfies the necessary standard of proof.
5. The evidence of the Queensland Law Society clearly shows the practitioner did not have a current practising certificate at principal level since 30 June, 2002 and, furthermore, the practitioner was on 22 October, 2002 found guilty of professional misconduct and suspended from practice for a period of two years from that date.
6. The Tribunal accepts the submissions of the Queensland Law Society that the practitioner acted as a solicitor at the relevant times and further accepts the submissions supported by judicial authority that there was no current profession of Conveyancer in Queensland, nor was there either at the times that the charges were brought nor at the time the conduct occurred.
7. In all the circumstances, the practitioner's conduct constitutes Professional Misconduct in that he is in breach of s38(1)(b) of the *Queensland Law Society Act*.

Penalty

The Tribunal notes on the question of penalty that the practitioner has previously appeared on 27 February, 1997 before the former Statutory Committee, as then constituted under the *Queensland Law Society Act*, in relation to what was described as five serious matters of Professional Misconduct.

On that occasion, he was fined \$2,500 and ordered to pay the costs of the Queensland Law Society.

The Tribunal further notes that, in the appearance on 22 October 2002, the practitioner was found guilty of Professional Misconduct and was suspended from practice for a period of two years.