

# LEGAL PRACTICE TRIBUNAL

CITATION: *Legal Services Commissioner v Farnham* [2009] LPT 4

PARTIES: **LEGAL SERVICES COMMISSIONER**  
(**applicant**)  
v  
**FARNHAM**  
(**respondent**)

FILE NO: BS6546 of 2008

DIVISION: Legal Practice Tribunal

PROCEEDING: Discipline application

DELIVERED ON: 18 February 2009

DELIVERED AT: Brisbane

HEARING DATE: 18 February 2009

JUDGE: Mullins J  
Mr K Horsley and Dr M Steinberg, assisting

ORDER: **1. The respondent is publicly reprimanded.**  
**2. The respondent must pay a penalty of \$3,000 within six months.**  
**3. There is no order as to costs.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – MISCONDUCT, UNFITNESS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – where the respondent was both a director of and the solicitor acting for a group of companies – where the respondent gave an undertaking to pay the balance of another solicitor’s bill that assisted in the purchase of a hotel by one of the companies in the group – where the respondent breached the undertaking – where the respondent had not intended to give a personal undertaking, but that was the effect of the terms of the undertaking – where the respondent accepted he was guilty of professional misconduct

*Legal Services Commissioner v McColm* [2006] LPT 14, considered

COUNSEL: B I McMillan for the applicant  
D R W Tucker (*Sol*) for the respondent

SOLICITORS: Legal Services Commission for the applicant  
Tucker & Cowen for the respondent

LEGAL PRACTICE TRIBUNAL

MULLINS J

MR K HORSLEY  
DR M STEINBERG

No 6546 of 2008

LEGAL SERVICES COMMISSIONER

Applicant

and

DEAN GEORGE FARNHAM

Respondent

BRISBANE

..DATE 18/02/2009

ORDER

HER HONOUR: This application concerns the breach of an undertaking given by the respondent on 30 October 2006 and is not contested by the respondent. At the relevant time, the respondent was a solicitor and sole practitioner and acting for the Thirsty Camel Group of companies. He was also a director and secretary of the companies in the group. The Thirsty Camel Group of companies was proposing to purchase the Commonwealth Hotel in the town of Roma from In Roma Pty Ltd (In Roma).

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The complainant, who was also a solicitor, had been acting for In Roma. The complainant had rendered a tax invoice on 27 September 2006 for professional fees and outlays of \$19,262.37 (the complainant's bill) to In Roma for a number of transactions including preparation of security documents. In Roma was proposing to change its solicitors from the complainant to another firm of solicitors and had to pay the complainant's bill to obtain all relevant security documents.

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In order to facilitate the handing over of those security documents by the complainant to In Roma's new solicitors, Mr Goeytes, on behalf of In Roma, negotiated an arrangement with the Thirsty Camel Group of companies for meeting the payment of the complainant's bill. This was that Mr Goeytes would pay \$9,172 in respect of the complainant's bill, the complainant would then release the security documents to the new lawyers for In Roma, and the Thirsty Camel Group of companies would pay the balance of \$10,090.37 in finalisation of the complainant's bill.

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On 30 October 2006 the respondent, who was acting on behalf of the Thirsty Camel Group of companies, on his letterhead as a solicitor, sent an e-mail in the following terms to the complainant in relation to the complainant's bill:

"1. As part of our agreement with Mr Goytes in relation to other matters, it has been proposed that in relation to the securities you have prepared for Mr Goytes pay directly to you the amount of \$9,172 and upon payment of that amount to you, this letter is taken as my written undertaking to be responsible for the balance of the account. The total of the account is \$19,262.37.

2. That upon payment of the above amount by Mr Goytes you will release to Mullins Lawyers the documents you have prepared to date. As some of the entities involved in the securities will probably change it would be appreciated if those documents could be made available in word processing format to that where entities change they can be amended."

Mr Goytes paid the sum of \$9,172 to the complainant on 3 November 2006. One of the Thirsty Camel Group of companies then entered into a contract to purchase the Commonwealth Hotel from In Roma. The purchase was settled on 16 March 2007. On 15 March and 18 and 23 April 2007, the complainant made requests to the respondent for payment of the balance of the complainant's bill in accordance with the undertaking given by the respondent. The respondent denied to the complainant that he had given a personal undertaking and asserted that it had been given in his capacity as a director of the Thirsty Camel Group of companies. The outstanding amount of \$10,090.37 in respect of the complainant's bill was not paid by the respondent.

The respondent ceased to be an officer of the Thirsty Camel Group of companies on 11 June 2007 and has no interest in any

of those companies. The respondent ceased practice as a solicitor on 30 June 2007. A receiver was eventually appointed to the Commonwealth Hotel. On 13 February 2008 the respondent entered bankruptcy and, at the date of this hearing, remains an undischarged bankrupt.

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This discipline application was filed on 8 July 2008. The respondent admitted all allegations by the Statement in Reply that was filed on his behalf in October 2008. This application has proceeded to an early hearing.

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The respondent was admitted as a solicitor in 1993 and remains on the roll of solicitors. The respondent has no prior disciplinary history. He is presently working as a manager of a holiday park.

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At the time of giving the undertaking, the respondent suffered from a number of medical conditions that had been diagnosed in February 2006. Since the events the subject of the complaint, his health has improved.

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Even though the respondent had not intended to give a personal undertaking, that was the effect of the letter of 30 October 2006. The giving of that undertaking facilitated the handing over of documents by the complainant to the new solicitors for In Roma, which must have assisted the Thirsty Camel Group of companies in proceeding with the purchase of the Commonwealth Hotel.

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It was common ground at the hearing that the breach by a

solicitor of an undertaking to be personally responsible for the payment of an amount of money, which facilitates a property transaction which involved a company of which the solicitor was a director, is a serious breach of the standard of conduct expected of a solicitor.

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It was accepted by the respondent, and I find, that he was guilty of professional misconduct.

In the respondent's favour, it can be said that there was no element of dishonesty in his breaching the undertaking. It involved a relatively modest amount of money and the respondent was in poor health at the time. The respondent has also cooperated with the applicant and is remorseful of the matters giving rise to this application. The applicant submitted that, in the circumstances, it was appropriate for there to be a public reprimand of the respondent and a penalty imposed of \$3,000. The applicant relied on *Legal Services Commissioner v. McColm* [2006] LPT 14 as a guide to the amount of the penalty that should be imposed.

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The applicant did not seek an order for costs because the applicant considered that, taking all matters into account, there were exceptional circumstances to justify no order for costs against the respondent being made. The respondent did not demur from the applicant's submissions as to the appropriate orders. I accept these submissions of the applicant.

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The orders that I make are:

1. The respondent is publicly reprimanded. 1
  
2. The respondent must pay a penalty of \$3,000 within six months. 10
  
3. There is no order as to costs. 10

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