

The Solicitors Complaints Tribunal

- The tribunal further orders that Tom Partos pay the costs of and incidental to this application and the costs of the substituted service application, including the costs of the recorder and the clerk of the tribunal to be assessed by Monsour Legal Costs Pty Ltd.

Reasons

Charges 1, 2, 3, 4, 6 and 8 are all incidences of misappropriation of clients' funds from the trust account. There is a deliberate course of conduct evident in the documents with demonstrated dishonesty which, in the opinion of the tribunal, amounts to professional misconduct.

Charge 10 was the preparation of a false trust account statement delivered with the intention of deceiving the

client, which took place over a considerable period of time which, in the opinion of the tribunal, amounts to professional misconduct.

In relation to charge 11, we were not satisfied to the appropriate standard that the evidence supports the charge.

Charge 12 deals with transfers without a written authority and the tribunal finds the charge is proven and that it amounts to professional misconduct.

Tom Partos was a senior employee and was entrusted with the carriage of the trust account of the practitioner and has fallen short, to a substantial degree, of the standard of professional conduct required and expected of a person in such a position.

The public should be protected from such a person in the same way as the public would expect to be protected from a practitioner who behaves in a similar manner.

In the Matter of Peter Jensen

Case No: SCT/70
Date of Hearing: 30 April 2002
Appearing before: Mr P Cooper (Chairperson)
Mr M Conroy
Ms I Vallin-Thorpe (Lay Member)
Penalty: Struck off

Charge 1 — GL & CRL sale to J

On or about 25 June 2001, when acting for GL & CRL in a sale to J, the solicitor misappropriated \$105,645.41 of client funds.

Particulars

- At all material times the solicitor was the principal of Jensens Solicitors ('the firm') of 130 Bundall Road, Bundall, Queensland and acted for GL & CRL ('the clients') in the sale of Unit 4, Sapphire Place, 13 Christina Court, Mermaid Waters, Queensland to one J.
- On settlement of the said sale transaction on 25 June 2001, the solicitor received on behalf of his clients a bank cheque for \$105,645.41 drawn in favour of the firm.

1.3 That same dated, 25 June 2001 without the knowledge or authority of his client, the solicitor deposited the said bank cheque for \$105,645.41 into his personal account no. 15-6014 conducted by him with Westpac Banking Corporation Bundall, Queensland.

1.4 The said moneys were never paid to the clients but rather were utilised for the solicitors own purposes and constituted a misappropriation of client funds.

1.5 The sum of \$500 has been repaid by the solicitor to the client and the balance of \$105,145.41 was paid from the Legal Practitioners Fidelity Guarantee Fund.

Charge 2 — GMK sale to V

On or about 19 July 2001, when acting form GMK in relation to a sale to V, the solicitor misappropriated \$42,031.25 of client funds.

Particulars

- At all material times the solicitors was the principal of Jensens Solicitors ('the firm') of 130 Bundall Road, Bundall, Queensland and acted for Gwendoline Margaret Kent ('the client') in relation to the sale by her of 20 Canterbury Chase, Ashmore, Queensland

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to one Vost and in the purchase by her of Unit 1, 6 Raftery Street, Ashmore, Queensland.

- 2.2 On settlement of the said sale transaction on 19 July 2001, the solicitor received total funds of \$171,942.05 represented by:
- (a) bank cheques to facilitate the client's purchase \$129,910.80
 - (b) cheque in favour of Jensen's solicitors being balance sale proceeds \$42,031.25
- 2.3 The client's purchase transaction was settled the following day, 20 July 2001 when the said cheques totalling \$129,910.80 were utilised.
- 2.4 As to the said cheque for \$42,031.25, the solicitor, without the knowledge or authority of his client, deposited it in account number 63309-4940 in the name of Paul Jensen his father then held at the National Australia Bank, Bundall, Queensland upon which account he had authority to operate.
- 2.5 The said payment in paragraph 2.4 constituted misappropriation of client funds.
- 2.6 On 20 July 2001, the solicitor paid stamp duty of \$1,360 and a transfer registration fee of \$88, a total of \$1,448, on behalf of the client, leaving total misappropriated funds of \$40,583.25 (\$42,031.25 minus \$1,448).
- 2.7 The client has since been paid \$19,841.62 from the Legal practitioner Fidelity Guarantee Fund in partial repayment of her loss.

Charge 3 — KSC & JAJC sale to B

On or about 27 June 2001, when acting for KSC & JAJC in a sale to B, the solicitor misappropriated \$162,130 of client trust funds.

Particulars

- 3.1 At all material times the solicitor was the principal of Jensens Solicitors ('the firm') of 130 Bundall Road, Bundall, Queensland and acted for KSC & JAJC ('the clients') in the sale by their home at 1 Cowell Drive, Andrews, Queensland to B.
- 3.2 On settlement of the said transaction on 27 June 2001, the solicitor received a bank cheque for \$162,130 drawn in favour of the firm, which cheque he deposited in the firm's general trust account to the credit of his clients' individual trust ledger account.

- 3.3 That same day, 27 June 2001, without the knowledge or authority of his clients, the solicitor withdraw the said sum of \$162,130 from his clients' individual trust ledger account and deposited it in account number 63309-4940 in the name of Paul Jensen, his father at the National Australia Bank, Bundall, Queensland upon which account he had authority to operate.
- 3.4 The said payment in paragraph 3.3 constituted a misappropriation of client trust funds.
- 3.5 None of the funds have been repaid by the solicitor to the clients but the clients have been compensated in full from the Legal Practitioners Fidelity Guarantee Fund.

Charge 4 — HV purchase from K

On or about 23 March 2001, when acting for HV in relation to the purchase from one K, the solicitor misappropriated \$231,865.85 of client trust funds.

Particulars

- 4.1 At all material times the solicitor was the principal of Jensens Solicitors ('the firm') of 130 Bundall Road, Bundall, Queensland and acted for HV ('the client') in relation to the purchase of 30 Hillsborough Close, Robina Queensland from K.
- 4.2 On or about 23 March 2001, the client paid the balance purchase moneys of \$231,865.85 to the solicitor by National Australia Bank cheque number 1083705 which cheque was deposited in the firm's general trust account to the credit of the client's individual trust ledger account.
- 4.3 That same day, 23 March 2001, without the knowledge or authority of his client, the solicitor withdrew the said sum of \$231,865.85 from his client's individual trust ledger account and deposited it in account number 63309-4940 in the name of Paul Jensen, his father at the National Australia Bank, Bundall Queensland upon which account he had authority to operate.
- 4.4 The said payment in paragraph 4.3 constituted misappropriation of the client trust funds.
- 4.5 None of the moneys have been repaid by the solicitor to the client but the client has been compensated in full by payment from the Legal practitioner Fidelity Guarantee Fund.

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Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr DG Searles, solicitor, McCullough Robertson Lawyers
- (b) For the practitioner:
Mr WM Potts, solicitor, Price & Roobottom, solicitors

Findings and Orders

1. The tribunal grants leave to the Queensland Law Society Incorporated to amend the notice of charge in the following manner:
 - (a) in notice of charge particular 4.2 in the final line, after the words “firm’s general trust account” insert a full stop and delete the words “to the credit of the client’s individual trust ledger account”;

- (b) in notice of charge particular 4.3 in the second line after the word “from” delete the words “his client’s individual” and in lieu thereof insert the “firm’s general” and delete the word “ledger” after the word “trust” in the same line.
2. The tribunal finds the charges, as amended, proven by the admission of the practitioner’s legal representative.
3. The tribunal accepts the practitioner’s plea of guilty to the charges of professional misconduct, as amended, and finds the practitioner guilty of professional misconduct.
4. The tribunal orders that the name of Peter Jensen be struck from the Roll of Solicitors of the Supreme Court of Queensland.
5. The tribunal further orders that Peter Jensen pay the costs of and incidental to this charge including the costs of the clerk and the recorder, such costs to be assessed by Monsour Legal Costs Pty Ltd.

In the Matter of Jennifer Mary Cheney

Case Number: SCT/55
Date of Hearing: 30 April 2002
Appearing Before: Mr P Cooper (Chairperson)
Mr M Conroy
Ms I Vallin-Thorpe (Lay Member)
Penalty: Struck Off

Charge — Failure to supervise

That between 30 November 1999 and 27 October 2000, the solicitor failed to properly supervise her employee bookkeeper Tom Partos to ensure that he conducted estate administration files properly and that he did not improperly deal with client trust moneys.

Particulars — Estate EJS deceased

- 1.1 At all material times the solicitor carried on practice as Chelmer Legal Practice and acted for one JPB (‘the client’) the executrix and beneficiary of the estate of LVC deceased in the administration of that estate.

- 1.2 At all material times the solicitor employed her husband Tom Partos (‘the employee’) as a bookkeeper and delegated to him the responsibility for the firm’s general trust account and general account bookkeeping including the drawing of cheques on those accounts and the more mechanical aspects of the administration of deceased estates and conveyancing files.
- 1.3 As at 5 July 2000, there was the sum of \$49,209.25 standing to the credit of the individual trust ledger account for the estate of EJS deceased.
- 1.4 On or about 5 July 2000, the employee caused the sum of \$12,567.90 to be withdrawn from the client’s individual trust ledger account by cheque drawn on that account in favour of one JPB.
- 1.5 JPB was in no way connected with the administration of the estate of EJS deceased and was a beneficiary of another unrelated estate of LVC deceased which the solicitor was acting in the administration of around the same time.
- 1.6 The said moneys were withdrawn without the knowledge or authority of the executor of the estate of EJS deceased and constituted misappropriation of those moneys.