

IN THE COURT OF APPEAL

[1997] QCA 083

SUPREME COURT OF QUEENSLAND

Appeal No. 8662 of 1996

Brisbane

Before Fitzgerald P
McPherson JA
Williams J

[The Queensland Law Society Incorporated v. Mead]

BETWEEN:

THE QUEENSLAND LAW SOCIETY INCORPORATED

Appellant

AND:

MAXWELL JAMES MEAD

Respondent

REASONS FOR JUDGMENT - THE COURT

Judgment delivered 22 April 1997

On 18 September 1996, the Statutory Committee of the appellant, the Queensland Law Society Incorporated, found the respondent guilty of professional misconduct and ordered his suspension from practice as a solicitor of this Court from 18 October 1996 until 30 June 1999. An order for costs was also made against the respondent. The appellant asks that the order that the respondent be suspended from practice be set aside and that an order that he be struck off the Roll of Solicitors of this Court be substituted, and that he be ordered to pay the taxed costs of and incidental to this appeal.

The respondent, a sole practitioner aged 47 years who was admitted to practice as a solicitor in 1975, had previously been found guilty of professional misconduct by a differently constituted Statutory Committee on 28 March 1995. On that occasion, he admitted that:

- (a) between 25 October 1990 and 7 January 1994, he borrowed amounts totalling \$54,467.53 from clients, Martin and Phillipa Slater, contrary to r. 86 of the appellant's Rules;
- (b) he preferred his own interests to those of his clients and failed to give his clients proper advice in those transactions;
- (c) between 24 March 1992 and 17 January 1994, he paid amounts totalling \$1,625 received on account of unexpended counsel's fees into his general account instead of his trust account, contrary to sub-s. 7 (1) of the Trust Accounts Act 1973;
- (d) on 24 December 1992, he wrongfully withdrew sums totalling \$6,000 from his trust account which he paid to himself in circumstances other than those set out in sub-s. 8(1) of the Trust Accounts Act; and
- (e) on or about 8 March 1993, he committed a similar breach of sub-s. 8(1) of the Trust Accounts Act, the amount involved being \$1,250,000.

The respondent was fined \$10,000 and ordered to pay costs totalling \$7,818.28 by 12 equal monthly instalments commencing on 30 April 1995. At the time of the proceeding the subject of the present appeal, arrears of \$6,118.28 remained unpaid.

Many of the matters of complaint the subject of the present proceeding had occurred prior to the first finding of professional misconduct against the respondent on 28 March 1995, but significant misconduct occurred after that date. The matters established against the respondent in the present proceeding can be summarised as follows:

- (i) he acted for both Gary James White and Valerie Haydon in respect of a loan by White to Haydon contrary to r. 85 of the appellant's Rules, Haydon not being an excepted person within the meaning of that term in r. 85. On 2nd April 1993, White loaned \$154,733.15 to Haydon in connection with a purchase by Haydon as executor of the will of Marcal Jose de Souza. The loan was not documented and no security was given by Haydon to White.
- (ii) between 30 March 1993 and 16 September 1994, he withdrew amounts totalling

\$6,637.91 from moneys held in his trust account on behalf of Haydon in payment to himself for professional costs and disbursements without having first sent an account of his professional costs and disbursements and without authorisation from Haydon.

- (iii) between 2 June and 6 July 1993, he withdrew amounts totalling \$38,827.15 from moneys held in his trust account on behalf of Haydon, which payments were not authorised by Haydon; the money was paid to himself for professional costs and disbursements in respect of other clients.
- (iv) he breached an undertaking given by letter dated 8 October 1993 to Arthur Brown and Associates, solicitors of Townsville, to protect that firm for its fees in the sum of \$800 owing in respect of the estate of de Souza, in that he disbursed moneys held by him in trust in respect of the said estate which were sufficient to meet the fees payable to Arthur Brown and Associates without first paying those fees and thereafter failed or refused to make payment of the fees.
- (v) on 27 January 1994, he transferred the sum of \$3,629.75 held in his trust account on behalf of Maxwell Briggs to his general account and, on the same date, he drew cheques on his general account to pay disbursements as follows:

<u>Payee</u>	<u>Amount</u>
AJ Williams	755.00
Queensland Medical Imaging	404.50
Helen Coles	990.00
Heather-Anne Brinker-Bell	820.00
Frank Monsour	450.00
Mark Wakeling	415.00

On 7 July 1995, the cheque in favour of Helen Coles was forwarded to her and on 10 July 1995 the cheque in favour of Heather-Anne Brinker-Bell was forwarded to her. None of the other cheques were forwarded, and the respondent did not otherwise pay the disbursements in respect of which such cheques were drawn. The respondent accordingly

breached sub-s. 8(1) of the Trust Accounts Act 1973 as amended.

- (vi) between 17 February 1994 and 6 October 1995, he borrowed sums totalling \$9,315 from Martin and Phillipa Slater, in breach of r. 86 of the appellant's Rules. In so acting, he preferred his own interests to those of his clients. Initially, security of limited, if any, value was given, but at all times after 20 January 1995 the amounts owed by the respondent to Mr & Mrs Slater were unsecured.
- (vii) between 31 March and 27 April 1994, he received sums totalling \$85,457.85 from White to be used for the purchase by White of shares in Javalon Pty Ltd (of which the respondent was a director) but, in breach of sub-s. 8(a) of the Trust Accounts Act, paid the sum to Javalon by way of unsecured loan and not as consideration for the issue of shares. The respondent acted for both White and Javalon in the transaction in breach of r. 85 of the appellant's Rules, in that White was not an excepted person within the meaning of that term in r. 85. Further, the respondent failed to take reasonable steps to protect the interests of White and Javalon in that he failed to document the transaction or to provide for any security to be given by Javalon to White.
- (viii) on 20 April 1994, he received sums totalling \$100,000 from Kurt J. Kanitz to be used for the purchase by Kanitz of shares in Javalon Pty Ltd but, in breach of sub-s. 8(a) of the Trust Accounts Act, paid the sum to Javalon by way of unsecured loan and not as consideration for the issue of shares. The respondent acted for both Kanitz and Javalon in the transaction in breach of r. 85 of the appellant's Rules, in that Kanitz was not an excepted person within the meaning of that term in r. 85. Further, the respondent failed to take reasonable steps to protect the interests of Kanitz and Javalon in that he failed to document the transaction or to provide for any security to be given by Javalon to Kanitz.
- (ix) On 20 April and 28 October 1994, he received sums totalling \$88,000 from Ray and Neeltje McIntosh to be used for the purchase by Mr & Mrs McIntosh of shares in Javalon

Pty Ltd but, in breach of sub-s. 8(a) of the Trust Accounts Act, paid the sum to Javalon by way of unsecured loan and not as consideration for the issue of shares. The respondent acted for both Mr and Mrs McIntosh in the transaction in breach of r. 85 of the appellant's Rules, in that Mr & Mrs McIntosh were not excepted persons within the meaning of that term in r. 85. Further, the respondent failed to take reasonable steps to protect the interests of Mr & Mrs McIntosh and Javalon in that he failed to document the transaction or to provide for any security to be given by Javalon to Mr & Mrs McIntosh.

- (x) between 7 and 31 October 1994, he borrowed sums totalling \$44,936.54 from Mr & Mrs McIntosh while clients in breach of r. 86 of the appellant's Rules; Mr & Mrs McIntosh were not members of any of the classes of clients excepted from the operation of r. 86.
- (xi) between 7 April and 7 July 1995, he transferred funds totalling \$27,700 from moneys held in his trust account on behalf of a client, Esme Lorraine Graves Millroy as executrix of the will of Mavis Isobel Littlemore, into his general account for a purpose not authorised by sub-s. 8(1) of the Trust Accounts Act 1973 and without authority, as a result of which the trust moneys became intermingled with his own money.
- (xii) on 11 and 14 August 1995, he transferred amounts totalling \$2,719.80 from moneys held in his trust account on behalf of Josefine March to his general account, and thereby overpaid his general account in respect of costs and outlays in the sum of \$125.80. Further, on 17 August 1995, he transferred a further \$3,186.05 from moneys held in his trust account on behalf of March to his general account, at which time there was no amount due and payable by March to the respondent for professional costs and disbursements, or otherwise. On or about 5 September 1995, the respondent drew cheques on his general account in respect of refunds due by March to the Ipswich Hospital and Medicare totalling \$3,311.85, but did not send the cheques to the payees or at any time make payments to them.

In the course of the earlier proceeding determined by the Statutory Committee on 28 March

1995, the respondent through his counsel submitted on more than one occasion that the breaches of r. 86 then under consideration were the only breaches committed by the respondent, which was incorrect. Some of the borrowings from Mr & Mrs Slater which are the subject of the present proceeding had also occurred by that time. One such borrowing, in an amount of \$500, had occurred only a few weeks earlier, on 3 March 1995. The respondent had also borrowed substantial amounts from Mr & Mrs McIntosh prior to 28 March 1995. Further, although his counsel stated at the earlier proceeding that the respondent had previously acted in ignorance but was then "aware from these proceedings that really there is no exception to the rule, and that in fact the safest position for any solicitor is to have no business dealings with a client", the respondent continued to borrow from clients after that time.

Two of the charges which the respondent admitted at the earlier hearing before the Statutory Committee on 28 March 1995 involved the transferring of moneys from his trust account to his general account other than in circumstances set out in s.8(1) of the Trust Accounts Act 1973. Some ten days after being dealt with by the Statutory Committee the respondent transferred \$2,000 from the trust account of Mrs Millroy to his general account without authority. Thereafter until 7 July 1995 he made a further thirteen transfers of money from that trust account to his general account contrary to s.8(1) of the Trust Accounts Act. The total of those transfers came to \$27,700. Commencing that unlawful conduct some ten days after being dealt with by the Statutory Committee for similar offences was a gross breach of the trust and confidence which members of the public are asked to place in members of the legal profession.

The position was further compounded by the fact that on 6 June 1995, 8 September 1995 and 6 October 1995 the respondent borrowed moneys from a client contrary to Rule 86. The aggravating factor is that the client in question was also the client involved in the breaches of Rule 86 dealt with by the Statutory Committee on 28 March 1995.

Some of the breaches, including some which occurred after the earlier proceeding, involved

dishonesty.

The respondent made no restitution and gave no indication of remorse. Nor was any evidence given seeking to explain his conduct. However, it was submitted that he had cooperated and offered no challenge to the charges against him. Reliance was placed upon the circumstance that the respondent had practised as a solicitor in his own business or firm for a substantial period as a factor which indicated that his fitness to practice would be re-established after the period of suspension imposed, which it was argued was consistent with a sound exercise of discretion by the Statutory Committee.

The conduct particularised establishes that in the months following his first being dealt with by the Statutory Committee the respondent acted in blatant disregard of the standards of professional behaviour expected of him. In the light of that there is no proper basis for concluding that the respondent would be fit to resume practice or apply for a practising certificate after serving a period of suspension from 18 October 1996 until 30 June 1999.

In Mellifont v. The Queensland Law Society Incorporated (1981) Qd. R. 17 Andrews J (with the concurrence of Connolly J) said at 30:

"The public interest calls for effective vigilance over members of the profession and its standards of professional behaviour and great concern to ensure as well as possible that the public may confidently place their business and affairs in its hands."

That largely reflects what was said by Hutley JA in Law Society of New South Wales v. Moulton (1981) 2 NSWLR 736 at 751. Whilst a solicitor remains on the roll he is being publicly held out by this court as a person to whom a citizen may entrust his business affairs.

The conduct of the respondent demonstrated by the findings of the Statutory Committee on 28 March 1995 and again on 18 September 1996 clearly establishes that he is no longer a fit and proper person to be on the roll of solicitors.

The appeal should be allowed and orders made in the terms sought by the appellant.