

1. On 28 May 2020 the Legal Profession Complaints Committee resolved pursuant to section 426 of the Legal Profession Act 2008 (WA) (**LP Act**), that the practitioner, BENJAMIN LUKE GARVEY (**practitioner**), then an employee of an incorporated legal practice (**Firm**), between about 14 May 2012 and about 25 September 2012, in the course of acting for PTH Pty Ltd as trustee for the PT Trust (**PT**) in relation to a loan agreement between PT and F Pty Ltd (**F**) for the financing of F's purchase of a 2012 Western Star 6964FXC prime mover (**PT transaction**) and between about 4 July 2012 and about 25 September 2012, in the course of acting for MFT Pty Ltd as trustee for the MF Trust (**MFT**) in relation to a loan agreement between MFT and F for the financing of F's purchase of a 2012 Freightliner Coronado prime mover (**MFT transaction**), engaged in unsatisfactory professional conduct within the meaning of sections 402 and 438 of the LP Act in that his conduct fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner, by:
 - 1.1 Failing to give early and proper consideration to the application of the *Personal Property Securities Act 2009* (Cth) (**PPSA**) to the circumstances of the PT transaction and the MFT transaction, necessarily requiring the practitioner to obtain a proper working knowledge and understanding of the PPSA.
 - 1.2 Alternatively, in circumstances where the practitioner had conduct of the PT matter and the MFT matter (albeit under the supervision of Mr S), and did not have a proper working knowledge or understanding of the PPSA to carry out the clients' instructions and to register PT's and MFT's purchase money security interest (**PMSI**) to give the clients super-priority over other security interests, failing, on receipt of PT's and MFT's instructions, to advise Mr S

that he did not have the professional expertise to carry out the instructions and further professional assistance was required.

- 1.3 Failing to provide any timely or adequate advice to PT and MFT about the application of the PPSA to the PT transaction and the MFT transaction.
- 1.4 Failing, in all the circumstances, to follow PT's and MFT's instructions to obtain appropriate security for PT's interest in the Western Star prime mover and MFT's interest in the Freightliner prime mover, or alternatively to take steps to ensure that PT's and MFT's respective PMSI was fully protected and had super-priority over all other security interests.

Outcome: Fine \$1,500

Public Remand