

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, BARRY STARK (**practitioner**), then the managing director and principal of an incorporated legal practice (**Firm**); between about 14 May 2012 and about 25 September, 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 loan 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 neither the practitioner, who was supervising the work being done by the Firm in respect of the PT transaction and the MFT transaction, nor Mr G, a solicitor employed by the Firm who had conduct of the PT matter and the MFT matter under the practitioner's supervision, had 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 obtain further professional assistance in relation to the application of the PPSA to the circumstances of the PT transaction and the MFT transaction, or not accept the instructions of PT and MFT.

- 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, alternatively take steps to ensure that PT's and MFT's respective PMSI was fully protected and had super-priority over all other security interests.
- 2 That the practitioner, then the legal practitioner director of an incorporated legal practice within the meaning of section 98 of the LP Act, and responsible for the management of the legal services provided by the Firm pursuant to section 105(2) of the LP Act, between 30 January 2012, when the PPSA came into effect, and 25 September 2012, when PT's security interest in the Western Star prime mover and MFT's security interest in the Freightliner prime mover were registered on the PPSR, engaged in unsatisfactory professional conduct within the meaning of sections 402 and 438 of the LP Act, by failing to take reasonable steps to implement and/or maintain appropriate management systems to ensure the provision of legal services by the Firm was in accordance with the professional obligations of Australian legal practitioners under the LP Act by failing to take reasonable and appropriate steps to ensure that the Firm's legal practitioners practicing in the areas of law that might be affected by significant reforms in the law, such as the PPSA, received appropriate legal training so as to ensure that its legal practitioners obtained a proper working knowledge or understanding of the reforms or would at least be able to identify, prior to the commencement of a retainer, whether the Firm had the legal expertise necessary to fulfil the client's instructions, and if not, either

advise the client that specialist legal assistance would be required if the instructions were accepted or return the instructions to the client.

Outcome: Fine \$2,500

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