

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL**

FINDINGS

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND, 26
Drumsheugh Gardens, Edinburgh**

against

**GREGOR KERR ROBERTSON
MAIR, Solicitor, Biggart Baillie
LLP, 7 Castle Street, Edinburgh
(hereinafter referred to as “the
Respondent”)**

1. A Complaint dated 26 November 2009 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as “the Complainers”) requesting that Gregor Kerr Robertson Mair, Solicitor, Biggart Baillie LLP, 7 Castle Street, Edinburgh (hereinafter referred to as “the Respondent”) be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged by the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 27 May 2009 and notice thereof was duly served on the Respondent.
4. Just prior to the Complaint calling, a fresh Complaint dated 20 May 2009 was lodged with the Tribunal. When the case called for hearing on 27 May 2009, it was confirmed that the new Complaint replaced the old

Complaint and it was also confirmed that the Respondent withdrew his Answers to the first Complaint and now pled guilty to the new Complaint as libelled.

5. The Respondent was present and represented by his solicitor Mr William Macreath, Solicitor, Glasgow. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. References were lodged on behalf of the Respondent.
6. After having heard submissions from both parties the Tribunal found the following facts established:-

6.1 The Respondent was born on 23rd June 1957. He was admitted as a solicitor on 14th and enrolled as such on 29th both days of January 1982. At all material times the respondent was a member of Biggart Baillie LLP, 7 Castle Street, Edinburgh.

Mr A (otherwise Mr B)

6.2 On 22nd January 2004 the respondent received instructions to act for a man who called himself Mr B (see paragraph 6.5 below) who gave an address in Leeds. Mr B wanted to raise finance to provide working capital for Company 1 which was a new venture which was to supply secure parking devices for motorcycles. Mr B said that he owned Property 1, which was to be put up as security. The respondent noted at the time that he was told by Mr B that title to the farm was in the joint names of Mr A and his cousin (referred to as "Mr. C.") It was intended that the funds would be advanced by HSBC Bank plc.

6.3 The respondent accepted instructions to act for Mr B and a solicitor – client relationship was thus constituted between them.

6.4 On 3rd February 2004, during a telephone attendance with Mr B,

the respondent enquired as to the whereabouts of the title deeds of Property 1. Mr B stated that these were held by the Bank of Scotland in Dunfermline and that he would attend at the bank personally to uplift them the next time he was in Scotland.

- 6.5 A search was instructed by Shepherd & Wedderburn LLP on behalf of HSBC Bank plc. The search was not disclosed to the respondent though its import was disclosed. The search indicated that the proprietor of Property 1 was Mr D, residing at Property 2. This did not accord with the information provided by Mr B who had on or about 22 January 2004 stated to the respondent that his full name was Mr B, and that he resided at Property 3.
- 6.6 On 12th July 2004 a telephone conversation took place between a colleague of the respondent and a representative of HSBC Bank plc. The bank's representative told a colleague of the respondent that Mr B had stated the property was in the joint names of himself and Mr D. It was suggested that Mr D was in a nursing home. The bank's representative said that he did not want to start to process documentation relating to the proposed loan until he was satisfied that the property was owned jointly and that Mr D was able to grant the proposed charge.
- 6.7 On 13th July 2004, a colleague of the respondent spoke by telephone with Mr B who again stated that the property was owned jointly. He stated that he owned eighty per cent and that his cousin Mr D owned the other twenty per cent. He stated that Mr D was in a nursing home and that an attorney dealt with her affairs. He stated that he would obtain details of the attorney.
- 6.8 The respondent continued to seek clarification from Mr B of the details of the ownership of the property. On 4th July 2005, in a telephone call, Mr B stated that ownership was jointly between himself and his female cousin. The respondent pointed out that

the Land Register appeared to indicate the owner was Mr D but Mr B said this was wrong and stated that it should read “Mr A and Mr C.” The respondent obtained instructions from Mr B to obtain a Land Register Office Copy of the Land Certificate.

- 6.9 On 24th January 2006, Messrs A B & A Matthews, Solicitors, Newton Stewart, wrote to the respondent advising that they represented Company 2. They advised that Mr B had agreed to grant a first charge over Property 1 to secure a loan in the sum of £120,000. Messrs AB & A Matthews asked for the title deeds to be forwarded. They also sought exhibition of a Property Enquiry Certificate and enquired whether the farm was subject to any tenancies or leases. From that time on it was Mr B’s position that Company 2 rather than HSBC Bank plc would be the providers of the finance to be secured over the farm.
- 6.10 On 29th March 2006, the respondent met Mr B. The respondent again sought clarification about the ownership of Property 1. He was told that Mr A was the owner notwithstanding that title was held in the name of Mr D.
- 6.11 Mr B explained the background was that his full name was Mr B. He said that he was “hedging” against Lloyds underwriters. He said that he did not include the middle name when taking title but used the middle name which had been taken from his female cousin. He also stated that he had the title deeds at home and would bring these to the respondent in due course.
- 6.12 On 9th May 2006 the respondent wrote to Mr B reminding him that he only had a copy of the Land Certificate and it would be preferable if the original could be produced as the solicitors acting for Company 2 would wish to have sight of it. On the same date, the Respondent wrote to Messrs A B & A Matthews and enclosed an office copy of the Land Certificate. He stated

that he intended to obtain and produce a full copy of the Land Certificate and title plan. He enclosed conveyancing drafts for revisal purposes.

- 6.13 On 1st June 2006, Messrs A B & A Matthews wrote to the respondent advising that they understood that Mr B and Company 2 had had further discussions and it was agreed that Mr B would transfer a one third share of Property 1 into the name of Company 2.
- 6.14 The respondent spoke to Mr B by telephone on 27th June 2006. The question of transferring a one third share of property 1 was discussed. At a meeting on 5th July 2006, the respondent reported to Mr B that the only query on title which had been raised by Messrs A B & A Matthews was that they wished a full copy of the title plan. Mr B advised the respondent that he had this in hand. He said that he would speak to his former solicitors to make the necessary arrangements. He instructed the respondent that he was not required to do anything further in respect of that issue.
- 6.15 On 18th August 2006, Messrs A B & A Matthews wrote to the respondent and stated that agreement had now been reached whereby Mr B would grant a first charge over Property 1. The loan would be £250,000.00. £200,000.00 had already been paid by Company 2. The balance of £50,000.00 would be released when the security had been signed.
- 6.16 On 21st August 2006, Messrs A B & A Matthews forwarded a draft Standard Security for revisal. Certain observations were raised. One of these observations was a request of a full copy of the Land Certificate and title plan to be exhibited.

- 6.17 On 23rd August 2006, the respondent exhibited a form 12A report to the solicitors acting for Company 2. The report was clear (i.e did not disclose anything adverse). In the application which instructed the report the respondent applied to search against Mr D. The Searchers were asked to search against said Mr B at the Property 1 address. No reference was made in the search instructions to a Mr B residing in Leeds.
- 6.18 On 24th August 2006 there was a meeting between Mr B and the respondent. The respondent considered the proposed Standard Security and explained its implications in detail. He pointed out that the Standard security reflected the wording of the copy Land Certificate showing that the proprietor was Mr D whereas Mr A was known to him (the respondent) as Mr B. Mr A again stated that at the time of purchase title to the property was taken in the name of Mr D to keep it at “arms length” from his involvement as a Lloyds name. Mr B was reminded that he had to produce the principal Land Certificate.
- 6.19 On 24th August 2006, the respondent wrote to Messrs A B & A Matthews. He confirmed that the Standard Security had been signed and he enclosed this deed together with a Letter of Obligation. He answered outstanding observations relating to title. He confirmed that the Land Certificate and title plan would follow. The Standard Security designed the Granter as Mr D, residing at Property 1. Mr B signed the Security as “Mr A” and this was witnessed by the respondent. On 1st September 2006 Mr B telephoned and advised that he had received the balancing payment of £50,000.00 and advised that he would be happy for the Security to be registered.
- 6.20 On 16th October 2006 the respondent wrote to Mr B confirming that he had been asked by the lender’s Solicitor to forward the principal Land Certificate and asked if this was available. A

reminder was sent on 31st October 2006 asking whether Mr B had located the principal Land Certificate. On 2nd November 2006 the respondent wrote to Messrs A B & A Matthews and stated that the principal Land Certificate had been lost or misplaced and that he was ordering a duplicate from the Land Register. He ordered a replacement on that same date.

- 6.21 On 6th November 2006 Registers of Scotland wrote to the respondent enclosing a form to be completed in order to process the request for a substitute certificate. On 9th November 2006 the application form was returned by the respondent with an explanation that Mr B had advised him that in the course of relocating his business premises the original Land Certificate held by him had been lost. It was said that Mr B had carried out an exhaustive search and had made extensive enquiries including contacting his former solicitors who had acted in the acquisition of the subjects. The respondent sought a substitute Land Certificate on this basis. On 10th November 2006 Registers of Scotland wrote to the respondent and advised that a substitute Land Certificate had been made up. They confirmed that it was retained in connection with a pending application, namely the application for registration of the Standard Security in favour of Company 2.
- 6.22 On 4th December 2006, Messrs A B & A Matthews wrote to the respondent confirming that they had received the Land and Charge Certificates and were holding the titles on behalf of Company 2.
- 6.23 On 6th December 2006 Messrs A B & A Matthews wrote to the respondent advising that Company 2 had agreed to lend Mr B a further £500,000.00. Further information was provided regarding this agreement and they advised that a Deed of Variation to the

existing Standard Security would be required. A draft Deed of Variation was duly forwarded to the respondent.

- 6.24 On 20th December 2006, the respondent sent a fax to Company 2, with copies to Messrs A B & A Matthews and to Mr B confirming that Mr B had signed the deed of variation and other ancillary documents.
- 6.25 On 10th January 2007, a letter was sent by Messrs Stevenson & Marshall LLP, Solicitors, Dunfermline to the respondent. The letter stated that they acted for Mr A of Property 1 who had been contacted by Messrs Brodies in connection with a debt apparently owed by him to Company 3. The letter also stated that they had been contacted by Solicitors in Leicester regarding the same matter. They advised that the title deeds were held by them in the name of Mr D. They asked that the respondent contact them as a matter of urgency regarding what appeared to be “a case of mistaken identity”.
- 6.26 The respondent spoke to Mr B by telephone later the following day (11th January 2007) and faxed to him a copy of the letter from Stevenson & Marshall. On 12th January 2007 Mr B advised the respondent by telephone that the position was “not as bad as it looks”. He stated that it was not something he could discuss by telephone and arranged to meet the respondent on 16th January 2007.
- 6.27 A meeting took place between Mr B and the respondent on 16th January 2007. Mr B acknowledged that what he had done was fraudulent. He stated that he was sure he would be able to sort matters out. He intended having a meeting with Company 2 and stated that he was sure that he would be able “to strike a deal” with Company 2 to have the Security discharged. The respondent advised Mr B that, strictly speaking, this ought to be done

through Company 2's solicitors but that this might depend on the agreement reached with him. The respondent warned Mr B that Stevenson & Marshall and their client might easily become aware of the true situation. The respondent advised Mr B that the Security should be discharged and removed from the title as a matter of urgency.

- 6.28 Mr B accepted that his actings had been fraudulent. He requested the respondent not to contact Messrs A B & A Matthews at least until he had a chance to speak to Company 2.
- 6.29 On 19th January 2007 a letter was sent to the respondent by Messrs Stevenson & Marshall asking for confirmation that the fraud had been reported to SOCA.
- 6.30 On 5th February 2007 there was a meeting between Mr B and the respondent. Mr B stated that he had had a number of meetings with Company 2 and had concluded that this was not the time to make them fully aware of the fraudulently granted (and worthless) security. The issue of alternative funding to repay Company 2 was discussed. Mr B again instructed the respondent not to produce any further information to Company 2 or others as he (Mr B) was trying to resolve matters.
- 6.31 On 6th February 2007, Messrs Stevenson & Marshall wrote to Mr Ross in his capacity as senior partner of Biggart Baillie. They advised that they had not received a response to their letter of 19th January 2007 sent to the respondent. They sought answers to the questions which had been previously posed. Mr Ross dealt with the correspondence with Stevenson & Marshall from this point on.

6.32 On 19th February 2007 Mr B wrote to the respondent at length stating that he took full responsibility for bringing about the situation that he now found himself in. He wrote:-

“I wish to record that you and your colleagues are exonerated completely and I extend my sincere and un-reserved apologies... you have acted for me in good faith for fully three years and throughout that period I have consistently held myself out as the owner of Property 1.”

Mr B went on to state that it was never his intention for the situation to develop as it did. He stated that he had assumed that the stage could never be reached where he would grant a security over Property 1 in favour of Company 1, He stated:-

“Throughout this process I thought it would not be possible to do this without producing the principal title deeds which I knew were held by another party. When it transpired that a duplicate copy of the Land Certificate could be produced, and was sufficient to satisfy Company 1’s solicitors, I was faced with the appalling prospect of confessing at that late stage at a time when everything was leading to the point of requiring him to release his funds to exchange for the security... I fully understand and appreciate professional responsibilities which require you to respond to queries raised with you by your fellow practitioner including Stevenson & Marshall I would ask that unless and until it becomes absolutely necessary we should not draw to their attention that I falsely granted the security over their client’s property.”

6.33 On 16th March 2007, Mr B attended a meeting with the respondent and Mr Ross. It was agreed that Mr. Ross would draft a response to Messrs Stevenson & Marshall. Mr B stated that he would write personally to Mr D and suggest a meeting between them. Mr B appeared confident that Mr D would agree to meet

with him. Following the meeting Mr Ross sent a letter by fax to Mr B for his approval. The proposed draft letter was addressed to Mr. G at Stevenson & Marshall. It stated that all correspondence previously sent had been written on the instructions of Mr B and in complete accordance with information supplied to the respondent which the respondent had had no reason to question. Mr. Ross sought to point out that he had yet to see a letter in which the respondent purported to act of “Mr D of Property 1”. The draft letter advised that once investigations had been completed then it would be the intention of Mr. Ross to be in further contact with Stevenson & Marshall.

- 6.34 On 20th June 2007, the respondent wrote to Mr B referring to a telephone conversation that morning. Following upon a request by Mr B, an engrossed discharge of the worthless Standard Security previously condescended upon was forwarded to him. In his covering letter the respondent enclosed a signing schedule and gave details as to the correct method of execution. He advised that if the deed was signed by two Directors, or a Director and the Company Secretary, then there would be no need for a witness. He enclosed a printout from Companies House confirming that Mr and Mrs H were Director and Company Secretary respectively of Company 2.
- 6.35 On Mr B’s instructions an amended discharge was sent to Mr B by the respondent on 9th July 2007. The respondent’s file contains a copy of a Discharge by the Company in favour of Mr D purporting to have been signed for and on behalf of Company 2 by Mr and Mrs H as Director and Company Secretary at Leeds on 11th July 2007. The signatures on the discharge are not those of Mr H or Mrs H, who were unaware of the existence of the discharge until they were told of it by the police. The complainers believe and aver that the signatures were forged and uttered by Mr B or by someone on his behalf.

6.36 On 16th July 2007 the respondent forwarded the Discharge to the Registers with relevant registration forms and registration dues.

6.37 The respondent prepared the discharge to be executed by Company 2 and on Mr B's instructions forwarded it to Mr B despite the fact that he was aware that Company 2 was represented by A.B &A. Matthews, Solicitors who had not at any time indicated that they were no longer acting. The respondent did not take any steps to advise Company 2 to take advice. It was or ought to have been obvious to the respondent that by proceeding in this way he ran the risk that the execution of the discharge would be forged and uttered.

6.38 The respondent failed to make a report to the Money Laundering Officer in his firm of the foregoing set of circumstances which were manifestly suspicious.

7. Having considered the submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

7.1 His failure to advise the Money Laundering Reporting Officer in his firm of the foregoing circumstances when he was under a duty so to do.

7.2 His continuing to act for his client in the knowledge of the client's fraud, and his preparation of a discharge of the standard security in circumstances where there existed an obvious risk of further fraud in relation to the execution of the discharge.

7.3 His forwarding the deed for execution other than via the solicitors whom he knew to be acting and his failure in terms of The Solicitors (Scotland) Practice Rules 1986 to give advice in

writing about the possible legal consequences of signing the deed and about the entitlement to legal advice.

8. Having noted the references lodged and having taken account of the submissions made on behalf of the Respondent the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 27 May 2009. The Tribunal having considered the terms of the amended Complaint dated 20 May 2009 at the instance of the Council of the Law Society of Scotland against Gregor Kerr Robertson Mair, Solicitor, Biggart Baillie LLP, 7 Castle Street, Edinburgh; Find the Respondent guilty of Professional Misconduct in respect of his failure to advise the Money Laundering Reporting Officer in his firm of a set of circumstances when he was under a duty to do so, his continuing to act for his client in the knowledge of his client's fraud and his preparation of a discharge of the Standard Security in circumstances where there existed an obvious risk of further fraud in relation to the execution of the discharge and his forwarding the deed for execution other than via the solicitors whom he knew to be acting and his failure in terms of the Solicitors (Scotland) Practice Rules 1986 to give advice in writing about the possible legal consequences of signing the deed and about the entitlement to legal advice; Censure the Respondent and Fine the Respondent in the sum of £10,000 to be forfeit to Her Majesty; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00 and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but such publicity shall be deferred until the outcome of any criminal proceedings against Mr B.

(signed)

Alistair Cockburn

Chairman

9. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Chairman