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Bryce-Richards-AG

Jurisdiction:	Jersey
Judge:	Deputy Bailiff
Judgment Date:	25 January 2007
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Text

[2007] JRC 17

ROYAL COURT

(Superior Number)

Before:

M. C. St. J. Birt, **Esq.**, Deputy Bailiff **with** Jurats de Veulle, Clapham, Le Cornu, Newcombe, Liddiard **and** Georgelin.

Ryan Edwin Bryce-Richards
and
Attorney General

Advocate S. E. Fitz for the Applicant.

Crown Advocate S. M. Baker for the Attorney General

Authorities

Harrison v AG [\[2004\] JCA 046](#).

(Exercising the appellate jurisdiction conferred on it by Article 22 of the Court of Appeal (Jersey) Law 1961)

Deputy Bailiff

- 1 This is an application for leave to appeal against a sentence of three years' imprisonment imposed on the applicant by the Inferior Number (Commissioner Sir Richard Tucker, with Jurats Le Brocq and Morgan) on 10th October 2006 for one offence of aiding, assisting or participating in fraudulent conversion.
- 2 The factual background was set out in some detail by the Crown Advocate when outlining the case before the Inferior Number. Advocate Fitz, on behalf of the applicant, accepts before this Court - as she did before the Inferior Number - that the Crown took an appropriate starting point of seven years to reflect the seriousness of the offending itself. Her main submission is that the Court below did not make a sufficient deduction for mitigation from that starting point, particularly given a comparison with the amount allowed for mitigation in the case of the applicant's co-accused, his former wife Mrs Christine Bryce-Richards. We can therefore summarise the facts comparatively briefly.
- 3 The applicant moved to Alderney in 1997. He had been engaged in forming offshore companies, particularly in relation to shipping matters, for a firm of accountants in Wales and he carried on this business for them in Alderney. There he met Christine Mauger, whom he was later to marry in October 1999 and whom we shall refer to as Mrs Bryce-Richards. She had her own trust company in Jersey, known as Crystal Trust Company Limited. She moved to live with the applicant in Alderney and later in 1997, Alderney International LLC was formed in Delaware. It was owned by Mrs Bryce-Richards but the applicant played a part in running it. In particular, it apparently took over the company formation business that he was carrying on.
- 4 In the early 1990s Robert and Joan Edmonds had retired to Alderney. At that stage Mr Edmonds was 77 and Mrs Edmonds 74. Mr Edmonds had been a successful businessman who had accumulated savings to the extent of approximately £4.5M. His assets comprised real property and bank deposits. Unlike her husband, Mrs Edmonds was not financially experienced. Her husband had dealt with financial matters throughout their marriage and she was entirely reliant upon him.
- 5 Mr and Mrs Edmonds met Mr and Mrs Bryce-Richards in Alderney in 1997. It is clear that Mr and Mrs Edmonds became extremely friendly with Mrs Bryce-Richards in particular. She began to help them with their financial affairs. In July 1998, Mr Edmonds created two trusts

known as the Ocean Trust and the Collette Trust. In each case, the trustee was Crystal Trust Company Limited. Letters of wishes were signed by Mr Edmonds in respect of each trust. After certain distributions on the death of himself and his wife, the effect of both letters was that the trust property was to be held for the benefit of Mr and Mrs Edmonds during their lifetimes and during the lifetime of the survivor following the death of either of them. Following the death of both Mr and Mrs Edmonds, and only at that stage, a BVI company called Westphail Limited was to become a beneficiary of the trust. Westphail was owned by Mrs Bryce-Richards. As part of the exercise, each of the assets owned by Mr and Mrs Edmonds was placed in the name of a separate BVI company and the shares in those companies were then transferred into one or other of the trusts.

- 6 In early 1999, Mr Edmonds fell ill and a decision was taken to move him to Jersey for medical treatment. After a spell in the General Hospital, he and his wife lived at the Little Grove Nursing Home for a while. However, a plan was then developed between Mrs Bryce-Richards and Mr and Mrs Edmonds whereby a property in Jersey would be purchased in her name which would be converted into two separate units of living accommodation. Mr and Mrs Bryce-Richards would live in one unit and Mr and Mrs Edmonds in the other, with Mrs Bryce-Richards assuming care of Mr and Mrs Edmonds. Pursuant to this plan, the property known as Cherry Garth, St Lawrence was purchased in August 1999 in the name of Mrs Bryce-Richards as she was the only person with housing qualifications. The arrangement, accepted by all parties, was that half of the purchase price of £600,000 would be a gift to Mrs Bryce-Richards and half would be a loan repayable to Mr and Mrs Edmonds. The Edmonds' property in Alderney was sold and the proceeds used towards the conversion of Cherry Garth or for medical expenses in respect of Mr and Mrs Edmonds, who continued to live at the Little Grove until the conversion was complete.
- 7 The fact that Mr and Mrs Edmonds were living in Jersey caused difficulties because the terms of the Ocean and Collette Trust were based on standard forms which contained a clause excluding Jersey residents from benefiting. Mrs Bryce-Richards' two fellow directors of Crystal Trust Company were Advocate Begg and his partner Jan Kenny. They had not been kept informed as to the position. When they discovered that Mrs Bryce-Richards was a potential beneficiary of the trust following the death of Mr and Mrs Edmonds, they insisted that alternative trustees should be appointed in view of the clear conflict of interest. Mr Frith of Chiltern Trust Company was approached. He saw Mr and Mrs Edmonds who confirmed that Mrs Bryce-Richards was only to benefit from the two trusts following the death of both of them. A plan was developed to transfer the trust funds to a new trust but unfortunately Mr Edmonds died on 14th October 1999 before this could be put into effect.
- 8 Following Mr Edmonds' death, Chilterns recommended that Mrs Edmonds should have an independent lawyer to advise her in relation to the new trust and Advocate Habin was appointed. She confirmed to him that Mrs Bryce-Richards was only to benefit following her death.
- 9 On 12th December 1999, the applicant approached a trust company in Liechtenstein called

Lexadmin inquiring about the possibility of re-domiciling two Jersey trusts in Liechtenstein. He said in mitigation that he was asked by Mrs Bryce-Richards to help her to transfer the business of her trust company out of Jersey on account of regulatory difficulties. He signed the initial letter and a number of subsequent letters to Lexadmin, although he says that these were drafted and typed by Mrs Bryce-Richards.

- 10 The services of Chilterns and Advocate Habin were dispensed with in early 2000 by letters signed by Mrs Edmonds but clearly drafted by Mrs Bryce-Richards. On 3rd March 2000, following further correspondence between the applicant and Lexadmin, a new trust called the Ballard Trust was established with Mrs Bryce-Richards as settlor and Lexadmin as trustee. In a letter of wishes signed by Mrs Bryce-Richards, she said that the trust was for the benefit of herself and Mrs Edmonds. It is the creation of the Ballard Trust which forms the nub of the case of fraudulent conversion. Whereas previously Mrs Bryce-Richard was only to benefit after the death of Mr and Mrs Edmonds, the assets of the two trusts had now been transferred to a trust where she was a primary beneficiary alongside Mrs Edmonds. The applicant accepts that he was aware that Mrs Bryce-Richards was not entitled to benefit while Mrs Edmonds was alive, but he chose to go along with Mrs Bryce-Richards' assertion that she was entitled to so benefit and he assisted her in establishing the Ballard Trust which enabled this to occur.
- 11 It is clear that the underlying companies were never transferred so as to be under the control of Lexadmin as trustee. They remained under the control of Mrs Bryce-Richards, who by that stage was the sole director, although subsequently the applicant and another were added as co-directors. Fairly soon after the creation of the Ballard Trust, monies were withdrawn from a number of the companies and used to benefit Mrs Bryce-Richards or the applicant and Mrs Bryce-Richards jointly. The details of the various payments were set out by the Crown for the Inferior Number. Suffice it to say that out of a total of approximately £2.5M worth of assets which were in the various underlying companies at the time of the creation of the Ballard Trust, some £1,780,989 was paid out for the benefit of Mr and Mrs Bryce-Richards. For example, sums were used to pay expenses and credit card bills incurred by Alderney International, a sum of £360,000 was withdrawn from an investment bond and then re-invested in the names of four Anguillian companies unconnected with the Ballard Trust, a real property in England was transferred into the name of Mrs Bryce-Richards and an investment bond was realised in order to pay off a bridging loan which had been incurred by Mr and Mrs Bryce-Richards when they purchased an apartment in Majorca in the name of a company. Although many of the transactions were undertaken by Mrs Bryce-Richards, the applicant also signed various documents in connection therewith. The Crown accepts that Mrs Bryce-Richards was the driving force for these withdrawals but the applicant was sentenced on the basis that he assisted Mrs Bryce-Richards in the establishment of the Ballard Trust and a number of the subsequent withdrawals and derived benefit therefrom in many instances.
- 12 Mrs Edmonds was not consulted about the creation of the Ballard Trust nor was she informed of any of the transactions carried out by Mrs Bryce-Richards and the applicant in relation to the trust property. Relations between Mrs Edmonds and Mrs Bryce-Richards

deteriorated towards the end of 2000 and, in April 2001, Mr and Mrs Bryce-Richards left Jersey for Majorca. They did not return and Mrs Edmonds did not see either of them after that date. Mrs Edmonds received no distribution from the Ballard Trust from the time it was set up until her death. In March 2001, Mrs Edmonds instructed Advocate Michel of Pickersgill & Le Cornu to act for her, *inter alia*, in relation to finding out what happened to the trusts settled by her late husband. Advocate Michel failed to obtain satisfactory responses from the applicant or Mrs Bryce-Richards and in due course he laid a complaint before the police in August 2001.

- 13 Mrs Edmonds died on 6th January 2003. She had been in bad health for some time. Although she still had some funds in her own bank account, these would have run out had she survived for a number of years and her lawyer told police of her concern about the prospect of running out of money in her old age.
- 14 Warrants were issued for the arrest of Mrs Bryce-Richards and the applicant in autumn 2003. Mrs Bryce-Richards was arrested in Cardiff on 20th November 2003. She was eventually returned to Jersey where she stood trial before a jury and was convicted at the end of July 2005. The applicant remained in Majorca and in due course extradition proceedings were commenced. The applicant was arrested by the Spanish authorities pursuant to that request on 2nd August 2005. He was then remanded in custody in Spain. He contested the extradition unsuccessfully and he was brought back to Jersey on 31st March 2006. As already indicated, he in due course pleaded guilty and was sentenced by the Royal Court on 10th October 2006.
- 15 Following her conviction, Mrs Bryce-Richards was sentenced to seven years' imprisonment, a starting point of nine years having been taken with an allowance of two years to cover what was described as 'limited mitigation'. She was also made the subject of a confiscation order and a sentence of seven years' imprisonment consecutive was imposed in default of her compliance with the confiscation order.
- 16 In moving its conclusions in relation to the applicant, the Crown took a starting point of seven years' imprisonment to reflect the lesser role played by the applicant compared with Mrs Bryce-Richards. The Crown then allowed a full third for the applicant's guilty plea. Allowing for the other mitigation, including the time spent in custody in Spain awaiting extradition, the Crown moved for a sentence of three years' imprisonment. When passing sentence, the Inferior Number agreed with the Crown's starting point but declined to articulate exactly how much had been allowed for the various heads of mitigation, including the time spent in custody in Spain, but agreed with the Crown's conclusions and imposed a sentence of three years' imprisonment.
- 17 Although Advocate Fitz accepts that a starting point of 7 years is appropriate she argues that, particularly comparing the applicant's position with that of Mrs Bryce-Richards, the Inferior Number did not allow sufficient deduction for mitigation. We would summarise her

submissions as follows:

(i) Mrs Bryce-Richards did not plead guilty. There was, therefore, no deduction for such a plea. The Court allowed a deduction of 2 years from the starting point of 9 years for the mitigation in her case, resulting in a sentence of 7 years. That is a 22% reduction from the starting point.

(ii) The applicant has all the mitigation available to Mrs Bryce-Richards such as previous good character, but has the following additional mitigation available. First his co-operation; the applicant has made considerable efforts to locate assets with a view to satisfying the confiscation order made against Mrs Bryce-Richards. This contrasts with Mrs Bryce-Richards who we are told has not co-operated. Secondly, there are health issues. The applicant has a number of illnesses which are contained in the papers. Thirdly, he pleaded guilty at an early stage avoiding the need for a lengthy trial. Fourthly, he is remorseful.

(iii) In addition to the above conventional mitigation there is the issue of the 8 months which the applicant spent on remand while he contested extradition in Spain. The Spanish court, when granting extradition, indicated that the period on remand in Spain should be credited. Miss Fitz pointed out that, contrary to his written summary of conclusions, which said some allowance should be made for the time spent on remand in Spain, the Crown Advocate had urged at the hearing before the Inferior Number that the Court should allow in full the period of 8 months in the interests of comity because of what the Spanish Court had said. Miss Fitz argued that the Inferior Number could not have allowed the full 8 months in arriving at a sentence of 3 years.

- 18 So putting all these submissions together Miss Fitz submitted that one must deduct a full one third for the guilty plea as the Crown had conceded. This reduced the 7 years starting point to one of 4 years 8 months. From this there must be deducted the 8 months for the time spent on remand in Spain bringing the period down to 4 years. This meant that only 1 year had been allowed for all other mitigation. This amounted to 14% of the starting point. Thus, she argued that, for greater mitigation than was available to Mrs Bryce-Richards, the applicant had received a lower percentage reduction than Mrs Bryce-Richards. This showed obvious disparity between the two of them and the sentence should therefore be reduced substantially.
- 19 We propose to consider first the issue of the time spent on remand in Spain. In *Harrison v AG* [2004] JCA 046, the Court of Appeal made it clear at paragraphs 187 and 188 that it is a matter of discretion as to whether time spent in custody overseas pending extradition should be allowed for. At paragraph 188 the Court of Appeal said this:

"An important factor in considering the exercise of this discretion is the extent to which the offender has brought the period of the overseas custody upon himself. Where an offender opposes extradition the custodial period of such opposition will not normally be taken into account. Furthermore, even where an offender does not, or has ceased to oppose extradition, there is

no rule that a full day for day allowance must be made . ***The fact remains that the offender has ultimately brought the period of overseas custody upon himself by absconding from the jurisdiction and travelling to that overseas country.*** The need for him to be remanded in custody pending the necessary paper work for extradition has arisen because of his actions. Nevertheless the court should normally make some allowance for the period spent in overseas custody and should certainly do so where there is any element of delay attributable to the prosecution".

- 20 It is of course true that those remarks were made in the context of a person who had absconded, whereas that is not the case here. The applicant was already in Spain. Nevertheless, in our judgment the general principle applies and it is a matter of discretion. If a person chooses to oppose extradition he must take the consequences. Automatically to allow a day for day reduction is almost to encourage opposition to extradition on the basis that a person has absolutely nothing to lose by such opposition if there is such automatic allowance.
- 21 However, in this case the court in Spain indicated that it expected a full allowance to be made and Crown Advocate Baker urged both in the Court below and in this Court that, for that reason alone, in the interests of comity the Court should allow the full 8 months.
- 22 The Inferior Number indicated when passing sentence that it had given credit for the period and we see no reason to doubt that they had given allowance for the full period as asked for by both the Crown and the defence. The question, therefore, is whether this Court should interfere on the basis that a period of only 12 months was allowed for in respect of all other mitigation.
- 23 The Court below pointed out that sentencing was an art, not a science. Regrettably, the starting point mechanism can easily lead to a mechanical and mathematical approach to sentencing. That is quite inappropriate. We must ask ourselves whether a sentence of three years for what the defendant did in this case, taking into account the mitigation available to him is manifestly excessive. We cannot possibly say that it is.
- 24 However, Miss Fitz urges also the ground of disparity. The test there is whether right thinking members of the public with knowledge of all the relevant facts would consider that something had gone wrong with the administration of justice and that a real sense of injustice would be occasioned.
- 25 Miss Fitz' argument in this respect is that for greater mitigation the applicant received a deduction of 14% from a starting point figure whereas Mrs Bryce-Richards received a deduction of 22% from her starting point figure. As we have already indicated we deprecate a mathematical approach to sentencing. The test for this Court is whether a sentence of three years for the applicant, taking into account his offending and the mitigation available

to him, when compared with a sentence of 7 years for Mrs Bryce-Richards, taking into account her offending and the mitigation available to her, is such as to lead to a sense that there is a disparity which requires intervention by an appellate court.

26 We bear in mind that this was a serious breach of trust and we have no hesitation in concluding that there is no such disparity in this case. A minor difference in percentage reduction of the type described in the case and jointly give rise to a successful appeal on the ground of disparity.

27 We grant leave to appeal on the basis that the points were properly arguable, but we dismiss the appeal.