

**IN THE DISTRICT COURT
AT MANUKAU**

**CRI-2013-092-005585
[2016] NZDC 4365**

THE QUEEN

v

VICKI RAVANA LETELE

Hearing: 16 March 2016
Appearances: P Mabey QC for the Crown
J Bioletti for the Defendant
Judgment: 16 March 2016

NOTES OF JUDGE A J JOHNS ON SENTENCING

[1] Ms Letele, you were found guilty after a jury trial that proceeded in front of me last year in the Auckland District Court of 10 out of 11 charges of dishonest use of a document pursuant to s 228 Crimes Act 1961 which carries a maximum penalty of seven years' imprisonment.

[2] The facts as I find them, are that between 23 August 2010 and 6 January 2011 you together with a Miss Kumar and a Mr Rathore operated a fraudulent scheme whereby you used false documents to help purchasers obtain mortgages and buy properties in South Auckland.

[3] The sale of each property followed a similar pattern, you through your company Focus Property Limited, found appropriate properties for sale and suitable purchasers wanting to buy property.

[4] Rather than arrange for the purchasers to buy the properties directly from the original vendors, the process adopted was, first, that you would arrange for an interim entity to purchase the houses for an increased amount.

[5] Secondly, you would then arrange for one of Ms Kumar's entities to purchase the house from the first purchaser for a further increased amount, and finally, you would arrange for the ultimate purchaser to buy the house from the second purchaser for an amount which had again been increased.

[6] On almost each of the 10 transactions the properties were settled contemporaneously. This allowed the transactions to be completed solely using funds drawn down from the BNZ's loan facility.

[7] Each loan application was approved by a Mr Rathore at the BNZ. Mr Rathore was not able to be prosecuted in relation to his role in this offending because he had left New Zealand before he could be arrested.

[8] I am satisfied on the evidence that I heard, that the profits made by you and Ms Kumar are correctly set out in the schedule that was attached to the Crown's submissions for the purpose of sentencing.

[9] In relation to the transactions, you received \$512,340. Ms Kumar received \$132,775. She, from her profits, also paid money to Mr Rathore to process the applications at the BNZ, and her direct net profit is less than the figure I have referred to.

[10] In relation to the false documents that were used in relation to four of the counts in the indictment that you were convicted of, there were falsified loan applications to the Bank of New Zealand. All had false statutory declarations relating to gifts. All had sale and purchase agreements that were false, and in terms in count 11, which you were charged on your own, you purchased a house in your mother's name, and apart from providing false documents I have already referred to, also falsified an ASB bank statement.

[11] In relation to the individual documents, the loan applications for [address 1 deleted], Smith Avenue, Thompson Terrace, and Polo Prince Drive submitted were false because they overstated the purchaser's personal assets and/or income. The purchasers had low incomes and would not ordinarily be eligible for mortgages. In evidence the purchasers confirmed that they did not know about the false information submitted on the loan applications.

[12] You helped the ultimate purchasers fill out the loan applications for the BNZ, and would often accompany them to the bank to meet Mr Rathore, the BNZ representative who completed all the mortgage transactions in the scheme.

[13] I accept the submission made by the Crown that the purchasers that gave evidence before me were unsophisticated, and I accept that you did a lot of the speaking on their behalf at the bank.

[14] In relation to the statutory declarations, each was false because they represented that purchasers had been gifted a sum of money by way of a deposit for the property, and that no interest or repayment would be payable.

[15] The purchasers in evidence confirmed that they did not receive such a gift, and did not know about the gift certificates. In most cases they did not even know the person purporting to gift the deposit for their home.

[16] None of the purchasers gave their consent for these documents to be submitted to the bank, and the handwriting expert's analysis concluded that it was your handwriting on all the statutory declarations with the exception of the property at [address 2 deleted] which was count 3.

[17] In relation to the sale and purchase agreements, they were false because they represented either Barfoot and Thompson or J P Realty were involved in the property transactions. This was necessary so the loan application could be approved by Mr Rathore at his level in the bank without further review.

[18] During the trial I heard from the BNZ fraud investigator, Mr McPhee, who confirmed that if purchasers were applying for a mortgage where the sale is not through a real estate agent, the bank engaged a more stringent review process. For such private sales a credit manager would become involved and Mr Rathore would not have been able to make the decision himself.

[19] Evidence from representatives from Barfoot and Thompson and J P Realty, whose names appeared on agreements, confirmed they were not involved in any of the transactions, and did not give their consent for you to use their sale and purchase agreements. You managed to get hold of the documents which you then copied and used dishonestly.

[20] Again the handwriting expert's analysis concluded that it was your handwriting on all of the ultimate sale and purchase agreements, with the exception of one at [address 3 deleted] which was count 6 in the indictment.

[21] In relation to the bank statement in count 11, the bank statements provided in support of the mortgage and loan applications, and subsequent loan for Polo Prince Drive were false in that you created an ASB statement in your mother's name creating the illusion of significant salary payments and a high cash balance. Your mother did not have a bank account with the ASB and did not have the income or cash assets represented in the statement.

[22] In fact, the false bank statements were copied from your own ASB bank statements and modified to include additional salary and cash deposits.

[23] As a result, on 6 January 2011 the BNZ deposited the loan draw down of \$250,000 into the account of your mother. On the same day these funds were transferred to your personal BNZ account.

[24] In terms of the funds obtained and losses to the BNZ, I accept the Crown's submissions set out that the BNZ obviously relied on the false documents, and as a result it issued mortgages to borrow in circumstances it would not ordinarily do so,

and the scheme resulted in the BNZ lending a total of \$3,672,000 for 10 of the properties for which there was little or no security.

[25] The total amount outstanding from the loans as at 6 August 2015 is \$540,251.31.

[26] Of the 10 properties involved, two of the property owners' homes were the subject of mortgagee sales, and the bank suffered some loss in relation to each.

[27] I mention that because of course those people that were involved in those transactions, and subsequently had their houses sold through a mortgagee sale will have great difficulty ever being able to obtain loan finance for a home in the future.

[28] As I indicated, I accept the schedule which shows that as a result of these 10 transactions you received a total of \$512,340. That is made up of \$250,000 obtained in relation to the Polo Prince Drive property, and \$262,340 from the other nine transactions.

[29] As I said, Ms Kumar was paying Mr Rathore for his role in these fraudulent transactions of between \$4,000 and \$6,000 for each of them, which means that she would have received somewhere between \$70,000 and \$90,000 as a result of her offending.

[30] For the purposes of sentencing today I have submissions not only from the Crown which I have referred to, but also submissions from your counsel.

[31] I have been provided with a number of cases involving some similar offending, together with a huge amount of references from people who support you in the community for the work you have done since this offending occurred which I will come to in a moment, together with a pre-sentence report.

[32] The Crown in their submissions suggest that taking into account the purposes and principles of the Sentencing Act 2002 together with relevant case law that the scale of this offending is such that a starting point of four years' imprisonment is warranted.

[33] Mr Bioletti in his submissions has suggested a significant lower starting point of two years nine months' imprisonment, and has asked that with discounts for your lack of previous convictions and your work done since you have been on bail, and the offer of reparation that I consider a sentence of home detention.

[34] Ms Kumar pleaded guilty to 10 charges, and the starting point by the sentencing Judge was one of three years' imprisonment. She ultimately received an end-sentence of 12 months' home detention and 250 hours community work, but she obviously had significant mitigating factors, she pleaded guilty, and she gave a written statement signed by her to the Serious Fraud Office, and gave evidence against you at trial, and she too had no previous convictions.

[35] Before considering the various cases referred to, in terms of the purposes and principles of the Sentencing Act 2002 I need to hold you accountable for the harm done to the victims and the community by your offending. I need to promote a sense of responsibility and acknowledgement of that harm by you. In white collar crime it is particularly important to denounce the conduct of the person involved in an attempt to deter you and others from like offending.

[36] I need to take into account the gravity of the offending, and the Crown in their submissions submit that the offending is serious, and your personal culpability is high. This is not accepted by Mr Bioletti.

[37] The Crown base their submission on the basis of the degree of premeditation and the sophistication of the offending, and submit that the entire scheme was yours.

[38] The Crown submit that because you found the properties and the buyers, and you organised the sale and purchase agreements and went to the bank with the ultimate purchasers.

[39] Also if there were any difficulties at any stage of the transactions you would solve the problems, for example if a legal executive at the law firm who was doing these transactions found there was insufficient funds to settle the final purchase she

would call you, and you would arrange for a reduction of the purchase price by way of what is called a “vendor allowance.”

[40] Mr Bioletti in his submissions says that the key person in this offending was Ms Kumar because she was the one that managed to find Mr Rathore who was prepared to process these loan documents, and for which he received cash payments.

[41] Mr Bioletti’s submission is that that without Ms Kumar having found Mr Rathore then this whole scheme would not have occurred.

[42] Whilst I acknowledge that she is the person that sourced Mr Rathore, you had asked her to find somebody in the bank to do so, and I accept the Crown’s submission that this was your scheme, and that your fingerprints are over every piece of each of these transactions.

[43] I need to be consistent in sentence, which is why the Crown have provided a number of authorities to guide the Court in that regard.

[44] In terms of the aggravating features, I consider that the extent of the loss and the harm done to the bank is significant, in the BNZ victim impact statement they refer to the fact that the system relies on trust of others. They obviously have suffered significant loss, one property that had to be sold under a mortgagee sale had a shortfall of just over \$19,000 and of course there was the loss in relation to the property you purported to buy in your mother’s name of \$521,225.

[45] They indicated in the victim impact statement that incidents do have an impact on staff, particularly those affected and caught up in the investigation, but ends by saying these incidents are not common, and the majority of people who deal with banks are very trust worthy and honest, and that is of course what they rely on.

[46] The Crown also say there is the aggravating feature of this breach of trust I have just referred to in the victim impact statement, and refer to the vulnerability of banks being reliant on people’s honesty, and the extent of the premeditation present

in this offending and I accept that all those aggravating features are present in your offending.

[47] In the case of *R v Vargin*, in relation to looking at the various matters the Court needs to take into account in deciding appropriate sentence, the Court of Appeal said at paragraphs 22 and 23, “Culpability is to be assessed by reference to the circumstances and such factors as the nature of the offending, its magnitude and sophistication, the type, circumstances, and number of the victims, the motivation for the offending, the amounts involved, the losses, the period over which the offending occurred, the seriousness of breaches of trust involved, and the impact on victims.”

[48] In paragraph 23 it went on to say, “It is in the assessment of culpability that comparison with other cases is to be undertaken. Matters of mitigation such as reparation, co-operation with investors, plea, remorse and personal circumstances necessarily must be assessed in each particular case.”

[49] Mr Bioletti has submitted that the motivation for your offending was not to provide you and your family with a lavish lifestyle, and the Crown accept there is no evidence of this, but at the end of the day you did receive a considerable amount of money, and it cannot be said that receiving that amount of money was for altruistic reasons.

[50] The Crown have referred to a number of authorities, but the two authorities that I consider are of most assistance are the cases of *R v Wang* [2014] NZCA 252 where Mr Wang was found guilty of four charges laid by the Serious Fraud Office, two charges of using a document, and two of money laundering in relation to two property transactions.

[51] The case involved mortgage hydrolocising which consists of presenting false information to a lending institution in order to obtain more money than otherwise would have been lent if the true position had been known.

[52] On this occasion Mr Wang received 1.92 million, and the properties were subject to mortgagee sales. However the shortfall was repaid to the bank. This was considered a rare case where the only financial loss to the banks was the cost of the investigation, but the Judge made clear that the loss to the victims was not factored in as an aggravating feature in the determination of the starting point, and there the starting point was one of two and a half years' imprisonment.

[53] The Crown submit that your case is much more serious because there were 10 transactions. The total amount involved was over three and a half million, and there was loss of a little over \$540,000 to the bank.

[54] The second case is probably one that is most on point, and that is the *Serious Fraud Office v Essex* where the prisoner appeared for sentence having pleaded guilty to one representative charge of using a document to defraud, and another unrelated charge. The Judge adopted a starting point of four years' imprisonment for the fraudulent offending. A final sentence of two and a half years' imprisonment was imposed, taking into account mitigating factors such as a plea of guilty, and letters of apology.

[55] On that occasion the prisoner purchased New Zealand Debt Repay which was a company that offered financial assistance to home owners who found themselves in financial difficulties.

[56] It would enter into sale and buy back agreements where clients would sell their properties to the company and agree to repurchase them 12 months later for a higher price. In the meantime the clients signed an occupational licence.

[57] In accordance with the terms of the purchase of NZ Debt Repay the prisoner refinanced all the properties owned by it, and in doing so used false information in relation to his income, employment and ownership of the properties, and particularly failed to disclose the buyback agreements to the banks. In total he obtained just under 1.5 million from four different banks, and there was a loss to the BNZ of \$500,000. He was sentenced on the basis of the little under 1.5 million as having been stolen.

[58] The Judge identified the aggravating features of abuse of trust to the banks, and the occupiers of the house, vulnerability of the occupiers, the amount of money involved, the loss sustained, and the degree of premeditation.

[59] My view is that that case is probably most on point, and taking into account the matters I have referred to, and my view that the scheme was yours, and you facilitated each step of it, that a starting point for sentencing today is one of four years' imprisonment.

[60] In terms of mitigation, I have read each and every one of the references provided for you. I have heard from the pastor of your church who has talked about your role within your church, and the Grace Foundation set up by you and your father.

[61] It seems that in 2011 you became involved with the church, and you set up this foundation which has provided phenomenal services to people marginalised in our community.

[62] The pastor that spoke on your behalf said that the trust has no government funding. It owns a number of houses, mostly in Auckland but in other areas, the houses are used to assist people with mental health issues, people that are considered high risk sex offenders, and people whose partners have been released from prison in endeavours to reconcile families, and I acknowledge that you have done phenomenal work since you have been on bail, and that that is a significant mitigating factor for you.

[63] I consider also that you have no previous convictions is also a powerful mitigating factor, but you did not plead guilty to these charges on what I consider is the face of overwhelming evidence, right down to the fact that you had a handwriting expert who identified you as falsifying all the gift declarations and sale and purchase agreements.

[64] In my view, the case against you Ms Letele was overwhelming, and I fail to see why you elected to go to trial, against that I appreciate that is your choice.

[65] Mr Bioletti in his submissions has suggested that you should get a further discount because in essence the bank does have eight properties where they are making profits because the people are servicing their loans, and has attempted to make calculations about the type of profit the bank would make. I do not accept that this is an appropriate submission, it is not something I can take into account, and it is certainly not something that can mitigate against that starting point.

[66] I acknowledge that you have accepted your offending and take responsibility for it. I acknowledge also as a mitigating factor that you have offered to pay reparation of \$100 to \$200 a week, but the bank here are not seeking reparation.

[67] I can therefore discount that starting point of four years, and I propose to do so by 20 percent. My view is that that is an extremely generous discount Ms Letele for the mitigating factors that I have referred to, and in the circumstances in relation to each of the counts in the indictment you are now convicted and sentenced to three years two months' imprisonment.

A J Johns
District Court Judge