

THE QUEEN

Respondent

and

STEVE ILIOPOULOS

Applicant

**RESPONSE TO APPLICANT'S WRITTEN CASE (CONVICTION)**

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Filed on behalf of:	Respondent
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**Part A and B: Particulars of Conviction and Sentence, Relevant Statutory Provisions and Maximum Penalties**

1. The Applicant was charged with 14 dishonesty offences. On 2 May 2016 the Applicant was convicted by a Supreme Court jury verdict of 12 of those charges and was sentenced on 9 August 2016.

Charge on Indictment	Offence	Maximum	Sentence	Cumulation
1.	Obtaining a financial advantage by deception [s 82(1) of the <i>Crimes Act 1958</i> ]	20 years (CCE Offence) [s 82(1) of the <i>Crimes Act 1958</i> & s 6I(1) of the <i>Sentencing Act 1991</i> ]	4 months	1 month
2.	Obtaining a financial advantage by deception [s 82(1) of the <i>Crimes Act 1958</i> ]	Acquitted		
3.	Obtaining a financial advantage by deception [s 82(1) of the <i>Crimes Act 1958</i> ]	20 years (CCE Offence) [s 82(1) of the <i>Crimes Act 1958</i> & s 6I(1) of the <i>Sentencing Act 1991</i> ]	6 months	1 month
4.	Obtaining a financial advantage by deception [s 82(1) of the <i>Crimes Act 1958</i> ]	Acquitted		
5.	Obtaining a financial advantage by deception [s 82(1) of the <i>Crimes Act 1958</i> ]	20 years (CCE Offence) [s 82(1) of the <i>Crimes Act</i>	18 months	3 months

Charge on Indictment	Offence	Maximum	Sentence	Cumulation
		1958 & s 6I(1) of the <i>Sentencing Act 1991</i> ]		
6.	Obtaining a financial advantage by deception [s 82(1) of the <i>Crimes Act 1958</i> ]	20 years (CCE Offence) [s 82(1) of the <i>Crimes Act 1958</i> & s 6I(1) of the <i>Sentencing Act 1991</i> ]	6 years	18 months
7.	Attempting to obtain a financial advantage by deception [s 321M of the <i>Crimes Act 1958</i> ]	10 years [s 82(1) & 321P of the <i>Crimes Act 1958</i> & s 6I(1) of the <i>Sentencing Act 1991</i> ]	5 years	15 months
8.	Obtaining a financial advantage by deception [s 82(1) of the <i>Crimes Act 1958</i> ]	20 years (CCE Offence) [s 82(1) of the <i>Crimes Act 1958</i> & s 6I(1) of the <i>Sentencing Act 1991</i> ]	7 years	Base
9.	Obtaining a financial advantage by deception [s 82(1) of the <i>Crimes Act 1958</i> ]	20 years (CCE Offence) [s 82(1) of the <i>Crimes Act 1958</i> & s 6I(1) of the <i>Sentencing Act 1991</i> ]	9 months	1 month
10.	Obtaining a financial advantage by deception [s 82(1) of the <i>Crimes Act 1958</i> ]	20 years (CCE Offence) [s 82(1) of the <i>Crimes Act 1958</i> & s 6I(1) of the <i>Sentencing Act 1991</i> ]	6 months	1 month
11.	Obtaining a financial advantage by deception [s 82(1) of the <i>Crimes Act 1958</i> ]	20 years (CCE Offence) [s 82(1) of the <i>Crimes Act 1958</i> & s 6I(1) of the <i>Sentencing Act 1991</i> ]	15 months	2 months
12.	Obtaining a financial advantage by deception [s 82(1) of the <i>Crimes Act 1958</i> ]	20 years (CCE Offence) [s 82(1) of the <i>Crimes Act 1958</i> & s 6I(1) of the <i>Sentencing Act 1991</i> ]	18 months	2 months
13.	Obtaining a financial advantage by deception [s 82(1) of the <i>Crimes Act 1958</i> ]	20 years (CCE Offence) [s 82(1) of the <i>Crimes Act 1958</i> & s 6I(1) of the <i>Sentencing Act 1991</i> ]	6 months	1 month
14.	Obtaining a financial advantage by deception [s 82(1) of the <i>Crimes Act 1958</i> ]	20 years (CCE Offence) [s 82(1) of the <i>Crimes Act 1958</i> & s 6I(1) of the <i>Sentencing Act 1991</i> ]	3 years	3 months

<b>Total Effective Sentence:</b>	11 years
<b>Non-Parole Period:</b>	7 years
<b>Pre-Sentence detention declaration pursuant to s 18(1) of the <i>Sentencing Act 1991</i>:</b>	276 days
<b>Other relevant orders:</b> Nil	

### **Part C: Summary of Relevant Facts**

2. The learned Sentencing Judge set out the facts which supported each charge in some detail in the sentencing remarks.<sup>1</sup> The Respondent adopts this as a summary of the relevant facts in this application. A number of additional documents assist in understanding the prosecution case. These documents are attached to the Respondent's List of Authorities.<sup>2</sup>

### **Part D: Ground 1**

3. **Ground 1 – The verdicts are unreasonable or cannot be supported.**

a) *Unreasonable verdict:*

3.1. It is respectfully submitted that the jury's verdict was reasonably open and the evidence led before the jury did not 'oblige' the jury to come to a different conclusion.<sup>3</sup>

b) *The Applicant's knowledge:*

3.2. A key issue for the jury to determine in this case was the Applicant's knowledge about the falsity of documents used in support of applications for finance.

3.3. It is submitted there was ample evidence for the jury to be satisfied that the Applicant:

- Knew that Loukia Bariamis ('LB') was making false representations;
- Directed or instructed LB to make the false representations and to present them to the financial institutions; and
- Intended the financial institution would act on the false representations.

c) *The Applicant's position in the Viking Group of companies:*

3.4. The Applicant was the Chief Executive Officer of the Viking Group. He was the founder and effective owner of this group of companies. While it is accepted that he would have relied on

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<sup>1</sup> *DPP v Iliopoulos & Bariamis* [2016] VSC 447, [3]-[52].

<sup>2</sup> *DPP v Iliopoulos & Bariamis* [2016] VSC 447, [3]-[52]. Summary of Prosecution Opening dated 22 September 2015 (Note that the Opening refers to 17 charges when there were only 14 charges on the final trial indictment), Summary of Charges and Exhibits provided to the jury during the prosecutor's closing address, A document handed to the jury during the prosecutor's closing address headed 'Table of Deceptions in Regards to the RFF – charge 6, 8 & 14', Exhibit List, Trial Exhibits

<sup>3</sup> *Badem (a Pseudonym) v. R* [2016] VSCA 200 at [40] – [47].

the advice of others in senior management roles, including LB and Bill Bariamis ('BB'), 'as the effective owner of the business the final decision was with him.'<sup>4</sup>

**d) Evidence of Loukia Bariamis – a difficult witness:**

3.5. LB was an important witness as she was the Chief Financial Officer of the Viking Group and 'cooked the books of the companies.'<sup>5</sup>

3.6. The prosecution case relied on the direct evidence given by LB in relation to the finance charges. However, the prosecution did not argue she was a credible witness who deserved to be accepted on all topics. The prosecutor made it clear that any part of her evidence could only be accepted by the jury after close scrutiny.

3.7. During the prosecutor's closing address he stated:

- He would not be trying to persuade the jury to 'accept LB as generally a truthful and reliable witness';<sup>6</sup>
- The prosecution had a duty to call all relevant witnesses and it was the jury's function to assess the witness's evidence and work out which part, if any, they accept and which parts they reject;<sup>7</sup>
- The prosecution did not accept parts of LB's evidence – for example LB's evidence that her husband BB was not involved in certain activities. The prosecution position was that LB was lying to protect her husband;<sup>8</sup>
- There were parts of LB's evidence the jury would find was untruthful;<sup>9</sup>
- The jury should 'be very cautious about accepting anything she told you' but the prosecutor did remind them that 'some of her evidence was not in dispute';<sup>10</sup>
- 'A person who has been involved in a crime has a motive to shift the blame and the very fact that the person has participated in dishonesty offences demonstrates that the person is

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<sup>4</sup> Trial Transcript, Prosecution Closing Address, p.2423.

<sup>5</sup> Trial Transcript, Prosecution Closing Address, p.2424.

<sup>6</sup> Trial Transcript, Prosecution Closing Address, p.2425.

<sup>7</sup> Trial Transcript, Prosecution Closing Address, p.2425.

<sup>8</sup> Trial Transcript, Prosecution Closing Address, p.2425.

<sup>9</sup> Trial Transcript, Prosecution Closing Address, p.2425.

<sup>10</sup> Trial Transcript, Prosecution Closing Address, p.2426.

willing to be dishonest ... [and] is reason enough to be cautious about what she tells you’;<sup>11</sup>

- ‘The prosecution does not suggest that you should act on Loukia’s evidence alone to convict Steve Iliopoulos of any of the charges on the Indictment’;<sup>12</sup>
- ‘If you look at the other evidence just because she has told a lie, so many lies, does not mean she is lying about this if the other evidence supports that conclusion beyond reasonable doubt’.<sup>13</sup>

*e) Jury demonstrated an ability to carefully consider and analyse the evidence of Loukia Bariamis – acquitting the Applicant on charges 2 & 4:*

3.8. It is acknowledged that the evidence of LB was important to the prosecution case against the Applicant in a number of respects, particularly concerning the finance charges. It was less useful in relation to the equipment charges.

3.9. It is conceded that LB had honesty, credibility and reliability issues as raised by the Applicant’s Written Case.<sup>14</sup> Nonetheless, this did not provide an obstacle to conviction when all evidence was considered. Further, the jury demonstrated an ability to break down LB’s evidence and consider it on a charge by charge basis.

3.10. The evidence against the Applicant on charge 2 and 4 substantially depended on the jury accepting the evidence of LB. Despite this reliance, the jury acquitted the Applicant on each of these charges, demonstrating an ability to carefully scrutinise the evidence of LB in arriving at individual verdicts on individual charges.

*f) The finance charges – charges 6, 7, 8 & 14:*

3.11. The prosecution case against the Applicant, in relation to the finance charges, relied on the following evidence to establish the Applicant’s knowledge as to the falsity of documents used in the finance applications:

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<sup>11</sup> Trial Transcript, Prosecution Closing Address, p.2427.

<sup>12</sup> Trial Transcript, Prosecution Closing Address, p.2427.

<sup>13</sup> Trial Transcript, Prosecution Closing Address, p.2428.

<sup>14</sup> Applicant’s Written Case (Conviction), at [38].

- The direct evidence given by LB about the Applicant's knowledge;
- The circumstantial evidence and the inferences which could be drawn from the evidence as a whole;
- The use of tendency reasoning as set out in the tendency notice and argued before the jury.<sup>15</sup>

LB's evidence concerning charges 2, 4, 6, 8 & 14:

3.12. As the Applicant was acquitted in relation to charge 2 & 4 the prosecution case concerning those charges have not been individually analysed.

3.13. LB gave evidence supporting these charges, namely the Applicant was aware of the false documents that LB submitted to the banks to induce them to approve finance.<sup>16</sup>

Charges 6 & 8 – an overview:

3.14. There was ample evidence of the Viking Group improperly operating the receivable finance facility. Fraudulent invoices that were submitted to the bank fell into three categories:

- Invoices for related companies – for example invoices to Perth Freightlines were rebadged, purporting to be invoices to Linfox Linehaul. Invoices from related companies should not have been submitted for the receivable finance facility;<sup>17</sup>
- Legitimate invoices had the amount of work performed fraudulently increased; and
- Invoices were issued to fictitious companies – for example Ryan's transport.<sup>18</sup>

3.15. Receivable finance facilities were first offered to the Viking Group in August 2008. The limits on these facilities were increased in 2009 and 2010. It was a method by which the Viking Group could sell their invoices to the CBA, so instead of waiting 30 or 60 days to get paid the CBA would pay them straight away. The CBA paid 80% of the value of the invoice, 20% being kept as security.<sup>19</sup>

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<sup>15</sup> Trial Transcript, Prosecution Closing Address, p 2864.

<sup>16</sup> Trial Transcript, Prosecution Closing Address, p.2427.

<sup>17</sup> Trial Transcript, Prosecution Closing Address, p.2496.

<sup>18</sup> Trial Transcript, Prosecution Closing Address, p.2498-99.

<sup>19</sup> Trial Transcript, Prosecution Closing Address, p.2495.

3.16. Carly Hartley gave evidence that she was responsible for sending the false documents to the bank, but she only did this after sending them to LB to finalise the false manipulation of these documents. The submission of the false invoices and aged debtor trial balances had the effect of increasing the sales, and correspondingly the debtors, for the Viking Group.<sup>20</sup>

Charge 6 – analysis:

3.17. The prosecution case, and argument to the jury concerning charge 6, was as follows:

- This charge related to the 2009 annual review, which the CBA conducted on the credit facilities the Viking Group had. The Viking Group were applying for increased limits and the bank approved the increased limits on the receivable finance facility;<sup>21</sup>
- The Applicant falsely represented to the CBA the aged debtor trial balances for the Viking Group of companies contained true and correct details of debts owed to it;<sup>22</sup>
- The submission of false invoices allowed the Viking Group to access funds in the receivable finance facility to which it was not entitled;<sup>23</sup>
- The aged debtor trial balances was the end result of submitting false invoices to the bank;<sup>24</sup>
- It was not in dispute that the aged debtor trial balances for three of the Viking Group companies contained false particulars of debtors.<sup>25</sup> This was set out in a table headed ‘Table of Deception in Regards to the RFF – charges 6, 8 & 14’;<sup>26</sup>
- The Applicant participated in the process of applying for the credit limit to be increased, and was aware that because of the false invoices submitted to the bank the sales and debtors figures had been greatly exaggerated;<sup>27</sup>
- Barry Heib (‘Heib’) gave evidence there were four meetings between the bank and the Viking Group representatives regarding the increase in the facilities;<sup>28</sup>

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<sup>20</sup> Trial Transcript, Prosecution Closing Address, p.2500.

<sup>21</sup> Trial Transcript, Prosecution Closing Address, p.2507.

<sup>22</sup> Trial Transcript, Prosecution Closing Address, p.2502.

<sup>23</sup> Trial Transcript, Prosecution Closing Address, p.2502.

<sup>24</sup> Trial Transcript, Prosecution Closing Address, p.2503.

<sup>25</sup> Trial Transcript, Prosecution Closing Address, p.2508.

<sup>26</sup> Trial Transcript, Prosecution Closing Address, p.2508.

<sup>27</sup> Trial Transcript, Prosecution Closing Address, p.2510.

<sup>28</sup> Trial Transcript, Prosecution Closing Address, p.2510.

- The first meeting was on 29 June 2009 and on this occasion the Applicant, BB and LB attended on behalf of the Viking Group. Heib stated that various aspects of the credit application were discussed in this meeting;<sup>29</sup>
- The second meeting was on 31 July 2009 and on this occasion the Applicant and BB attended on behalf of the Viking Group;<sup>30</sup>
- The third meeting was on 19 August 2009 and on this occasion LB and BB attended on behalf of the Viking Group. At this meeting Heib said that they were getting to the bottom of some balance sheet issues the bank had;<sup>31</sup>
- The fourth meeting was on 17 September 2009 and on this occasion the Applicant, LB and BB attended on behalf of the Viking Group. Heib indicated the purpose of the meeting was to review the structure of the new facilities and to make sure the Viking Group was happy with them before they were finalised;<sup>32</sup>
- LB gave evidence that:
  - The Applicant knew that false invoices were being submitted to the bank and that she was forwarding to the bank financial reports under the name of Alex Vovos when she had, in fact, prepared those reports;<sup>33</sup>
  - The Applicant told her ‘basically to do what she needed to do in relation to the final financial reports to get the credit facilities approved’;<sup>34</sup>
  - She had numerous conversations with the Applicant about submitting false invoices to the bank to obtain extra funds from the CBA and he approved of this;<sup>35</sup>
  - She copied the Applicant into all emails to the CBA, this evidence was supported by Roslyn Ticknell-Best (‘Ticknell-Best’) and Heib from the CBA;
- It was argued that a CEO of a group of companies would be in a position to know that the aged debtor trial balances had been inflated significantly;<sup>36</sup>
- Heib gave evidence that the Applicant told him he did read his emails, he just didn’t respond to them;<sup>37</sup>

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<sup>29</sup> Trial Transcript, Prosecution Closing Address, p.2510.

<sup>30</sup> Trial Transcript, Prosecution Closing Address, p.2510.

<sup>31</sup> Trial Transcript, Prosecution Closing Address, p.2511.

<sup>32</sup> Trial Transcript, Prosecution Closing Address, p.2511.

<sup>33</sup> Trial Transcript, Prosecution Closing Address, p.2511.

<sup>34</sup> Trial Transcript, Prosecution Closing Address, p.2511.

<sup>35</sup> Trial Transcript, Prosecution Closing Address, p.2512.

<sup>36</sup> Trial Transcript, Prosecution Closing Address, p.2512.



- The evidence of LB that she copied the Applicant into the emails supports her evidence that he knew about the scheme and encouraged her to submit the invoices;<sup>38</sup>
- This was a joint criminal enterprise where the Applicant and LB agreed to make the false representations to the bank knowing them to be false and knowing they would induce the bank to approve the financial facilities being sought.<sup>39</sup>

Charge 8 - analysis:

3.18. The prosecution case, and argument to the jury concerning charge 8, was as follows:<sup>40</sup>

- This charge related to the 2010 annual review, which the CBA conducted on the credit facilities the Viking Group had. The Viking Group were applying for increased limits and the bank approved the increased limits on the receivable finance facility;<sup>41</sup>
- When the review started in mid-2010 the Viking Group was again experiencing cash flow problems and the CBA had granted temporary excesses;<sup>42</sup>
- There was no dispute that LB committed this offence, the issue was whether the Applicant and BB were a party to the offending;<sup>43</sup>
- The effect of LB and Carly Hartley submitting false invoices to the bank was that the debtors were overstated by over \$7 million;<sup>44</sup>
- Some of the representations made at the meetings in June and July of 2010, and the representations contained in BB's strategic over-view document, made it clear that both the Applicant and BB were a party to those frauds;<sup>45</sup>
- The first meeting took place on 17 June 2010 a file note was produced of that meeting (**exhibit AV**). The Applicant, LB and BB all attended this meeting on behalf of the Viking Group. Heib and Gerrit Knauth ('Knauth') attended on behalf of the CBA and stated the meeting was to discuss the Viking Group's cash flow problems and to

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<sup>37</sup> Trial Transcript, Prosecution Closing Address, p.2513.

<sup>38</sup> Trial Transcript, Prosecution Closing Address, p.2513.

<sup>39</sup> Trial Transcript, Prosecution Closing Address, p.2518.

<sup>40</sup> The prosecutor indicated, during his closing address, that he was not relying on particular e) in relation to charge 8

<sup>41</sup> Trial Transcript, Prosecution Closing Address, p.2521.

<sup>42</sup> Trial Transcript, Prosecution Closing Address, p.2522.

<sup>43</sup> Trial Transcript, Prosecution Closing Address, p.2522.

<sup>44</sup> Trial Transcript, Prosecution Closing Address, p.2523.

<sup>45</sup> Trial Transcript, Prosecution Closing Address, p.2523 & p.2525.

consider a request for a temporary excess. Heib and Knauth gave evidence that it was mainly LB who explained why it was that the Viking Group were experiencing cash flow problems.<sup>46</sup> They noted that BB did provide input about software problems;<sup>47</sup>

- The second meeting took place on 30 June 2010 a file note was produced of that meeting (**exhibit AW**). The Applicant, LB, BB and Natalie Rompotis (legal counsel) all attended this meeting on behalf of the Viking Group. Heib, Knauth and Malcolm Bull ('Bull') attended on behalf of the CBA.<sup>48</sup> There was a long discussion about collecting outstanding debts within 45 days.<sup>49</sup> During the meeting there was discussion about significant new work which had been obtained from Amcor, Toll, Linfox, V/Line, Aldi, TNT and other national companies.<sup>50</sup> Heib recalled the conversation, regarding the business mix, was driven by BB. Heib recalled BB talking about Aldi and TNT.<sup>51</sup> Linfox and V/Line were mentioned in the file note (**exhibit AW**) and were mentioned at this meeting.<sup>52</sup> Lies were told in this meeting about who, and to what extent, the Viking Group was doing work for. These lies would not have been told in such a meeting unless all three members of the Viking Group's management team (The Applicant, LB and BB) were in on the lie. The Applicant and BB were in a good position to know who the Viking Group's major clients were. Both the Applicant and BB were responsible for attracting new business and assessing profitability of new clients. The Applicant was the CEO and George Lerias, Michael Duckworth and Mark Hooper gave evidence that BB was very familiar with the Viking Group's customer base. If Linfox and / or V/Line were major customers both the Applicant and BB would have known. Similarly if such a lie was told in a meeting, without their prior knowledge, they would have been able to identify it as an obvious lie immediately. Neither the Applicant or BB said during the meeting, we don't do any work for V/Line or we only do a minimal amount of work for Linfox;<sup>53</sup>

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<sup>46</sup> Trial Transcript, Prosecution Closing Address, p.2525.

<sup>47</sup> Trial Transcript, Prosecution Closing Address, p.2526.

<sup>48</sup> Trial Transcript, Prosecution Closing Address, p.2526.

<sup>49</sup> Trial Transcript, Prosecution Closing Address, p.2526-27.

<sup>50</sup> Trial Transcript, Prosecution Closing Address, p.2527.

<sup>51</sup> Trial Transcript, Prosecution Closing Address, p.2527.

<sup>52</sup> Trial Transcript, Prosecution Closing Address, p.2528.

<sup>53</sup> Trial Transcript, Prosecution Closing Address, p.2532.

- Linfox was mentioned in the strategic overview document produced by BB a few weeks later;<sup>54</sup>
- The Viking Group, in its dealing with the bank, rebadged Viking Group companies as ‘Linfox’ and ‘V/Line.’ When Viking Fleet Service did work for Perth Freightlines the bank was told the work had been done for Linfox. When Viking Transport Express did work for Perth Freightlines it was recorded under the name of ‘V/Line’ for purposes of paperwork supplied to the CBA;<sup>55</sup>
- No Viking Group company did any work for V/Line, while Viking Fleet Service did a small amount of work for Linfox. The amount of actual money owing by Linfox to Viking Fleet Service in mid 2010 was just over \$2500. The work actually done for Linfox was very minor;<sup>56</sup>
- The fraudulent use of Linfox and V/Line in the aged debtor trial balance was done with the knowledge of the Applicant and BB that it was to be used to induce the CBA to provide additional finance. They appeared in the documents as major customers, this was a lie intended to deceive the bank;<sup>57</sup>
- Brendan Barry-Murphy (‘Barry-Murphy’), a CBA banker, gave evidence that BB had told him he had a relationship with Lindsay Fox;<sup>58</sup>
- The documents produced to the bank suggested the Viking Group was doing over \$1 million work for Linfox per month at that time. That is very different from actually doing about \$3000 work for Linfox per month which appeared to be the true position;<sup>59</sup>
- BB told Barry-Murphy that a substantial amount of work was being done for Linfox, which was a lie and he knew it to be a lie, because he knew it would be looked on favourably by the CBA during an application by the Viking Group for increased finance;<sup>60</sup>

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<sup>54</sup> Trial Transcript, Prosecution Closing Address, p.2528.

<sup>55</sup> Trial Transcript, Prosecution Closing Address, p.2529.

<sup>56</sup> Trial Transcript, Prosecution Closing Address, p.2529.

<sup>57</sup> Trial Transcript, Prosecution Closing Address, p.2530.

<sup>58</sup> Trial Transcript, Prosecution Closing Address, p.2530.

<sup>59</sup> Trial Transcript, Prosecution Closing Address, p.2531.

<sup>60</sup> Trial Transcript, Prosecution Closing Address, p.2531.

- The third meeting occurred on 22 July 2010 and the Applicant, LB and BB attended on behalf of the Viking Group. Heib, Knauth and Bull attended from the CBA. A file note of this meeting was produced (**exhibit AX**):
  - Bull conducted a whiteboard exercise to determine where all of the Viking Group's cash flow was going.<sup>61</sup> The results of this exercise were set out at p.2 of the file note;
  - BB presented a paper headed 'Viking Group Division Strategic Overview 2010 to 2011' which was **exhibit AZ**;
  - Knauth had a clear memory of BB presenting that paper and could recall BB talking about Aldi. He was not challenged about this recollection;<sup>62</sup>
  - The paper produced by BB contained false representations intended to induce the CBA to believe the Viking Group was a lot more profitable and had a much better customer base than it actually did. This document stated that 'The Aldi contract is of particular interest as VFS (Viking Fleet Service) is now the exclusive supplier of heavy vehicle maintenance to the retailer for Victoria.'<sup>63</sup> Lee Buchanan and Steven Smith, from Aldi, gave evidence that no one from Aldi would ever consider such an exclusive arrangement as they don't do exclusive arrangements. Aaron Jolliffe, who produced a list of invoices being **exhibit EO**, gave evidence that the percentage of Aldi maintenance work performed by Viking Fleet Service never got over 10%;<sup>64</sup>
  - This representation about Aldi was a lie. It was in a paper produced by BB and delivered to a meeting with the CBA on 22 July 2010 in the presence of the Applicant and LB. This lie would not have been told, or committed to writing, unless the Applicant had prior knowledge of it and approved of its telling;<sup>65</sup>
- Carly Hartley confirmed that all emails she sent to LB and the CBA, concerning the fraudulent manipulation of the receivable finance facility and documents to this end, were copied to the Applicant. If the Applicant truly did not know about the fraudulent scheme, he could have easily discovered it by being provided with the 'before and

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<sup>61</sup> Trial Transcript, Prosecution Closing Address, p.2533.

<sup>62</sup> Trial Transcript, Prosecution Closing Address, p.2533-34.

<sup>63</sup> Trial Transcript, Prosecution Closing Address, p.2534-35.

<sup>64</sup> Trial Transcript, Prosecution Closing Address, p.2536.

<sup>65</sup> Trial Transcript, Prosecution Closing Address, p.2537.

after' versions of documents provided to the CBA. LB gave evidence that the Applicant read his emails and Heib gave evidence that the Applicant told him he read his emails.<sup>66</sup> The fact there was no attempt to hide the fraudulent documents from the Applicant points strongly to him being involved in the fraudulent behaviour;<sup>67</sup>

- The fraud benefited the Applicant and his group of companies financially.<sup>68</sup>

Charge 14 - analysis:

3.19. The prosecution case, and argument to the jury concerning charge 14, was as follows:

- The Applicant, BB and LB attended a meeting with the CBA on 17 November 2010 representing the Viking Group. Knauth, Bull and Barry Murphy attended on behalf of the CBA. The notes of this meeting are **exhibit BJ**;<sup>69</sup>
- The Viking Group were seeking an increase to their facilities. The CBA was told that the Viking Group was again experiencing cash flow problems and the bank agreed to provide credit facilities as a temporary measure;<sup>70</sup>
- Ticknell-Best and Knauth gave evidence they relied on the same financial information to assess the application as they did when approving the credit facilities about 6 weeks earlier in October 2010 – the information provided in connection with charge 8;<sup>71</sup>
- The particulars for charge 8 and charge 14 are identical in so far as the respective particulars sets out in a) to c) are concerned;<sup>72</sup>
- It must have been apparent to the Applicant and BB, that at the meeting the bank was relying on the same financial information, such that those previous false representations made to the bank induced them to approve the facilities sought.<sup>73</sup>

Charge 7 – the attempt charge - analysis:

3.20. The prosecution case, and argument to the jury concerning charge 7, was as follows:

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<sup>66</sup> Trial Transcript, Prosecution Closing Address, p.2540-41.

<sup>67</sup> Trial Transcript, Prosecution Closing Address, p.2541.

<sup>68</sup> Trial Transcript, Prosecution Closing Address, p.2543.

<sup>69</sup> Trial Transcript, Prosecution Closing Address, p.2546.

<sup>70</sup> Trial Transcript, Prosecution Closing Address, p.2546.

<sup>71</sup> Trial Transcript, Prosecution Closing Address, p.2546.

<sup>72</sup> Trial Transcript, Prosecution Closing Address, p.2546.

<sup>73</sup> Trial Transcript, Prosecution Closing Address, p.2547.

- The Applicant, BB and LB attempted to obtain a financial advantage from the Westpac Bank by attempting to re-finance the Viking Group's debt;<sup>74</sup>
- Jonathan Shakes ('Shakes') and Anton Camilleri ('Camilleri') from the Westpac Bank were the main witnesses supporting this charge;<sup>75</sup>
- The Viking Group had a pre-existing relationship with Westpac, having commercial hire-purchase agreements with Westpac totalling approximately \$10 million;<sup>76</sup>
- The Viking Group's property finance and receivable finance facilities were with the CBA and it was these facilities they were seeking to re-finance;<sup>77</sup>
- There were two meetings between the Viking Group and Westpac. The Applicant, BB and LB were part of these meetings either in person or being linked in by telephone;<sup>78</sup>
- There were two main issues in dispute for this charge:
  - Were the Applicant and BB party to any deception on the Westpac bank? Connected to this issue was the question of:
    - whether BB knowingly provided false documents to Westpac and whether the Applicant was a knowing party to the provision of these documents; and
    - whether the Applicant and BB knew and were party to the false documents provided by LB;
  - Did the combined actions of the Applicant, BB and LB go beyond mere preparation to commit the offence?<sup>79</sup>
- Shakes and Camilleri gave evidence that at the first meeting, on 6 July 2010, the Applicant, BB and LB were all present. Shakes recalled BB led the discussions on behalf of the Viking Group. Camilleri described BB as dominating the whole meeting. BB was the person who explained to Westpac why the Viking Group had such strong profit margins. Camilleri recalled that BB told Westpac that the Viking Group was seeking to refinance its debt to the CBA which was about \$53 million.
- The prosecutor acknowledged in his address, that if the discussions had stopped there, the Viking Group's effort would not have progressed past the preparation stage;<sup>80</sup>

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<sup>74</sup> Trial Transcript, Prosecution Closing Address, p.2547.

<sup>75</sup> Trial Transcript, Prosecution Closing Address, p.2547.

<sup>76</sup> Trial Transcript, Prosecution Closing Address, p.2547.

<sup>77</sup> Trial Transcript, Prosecution Closing Address, p.2547.

<sup>78</sup> Trial Transcript, Prosecution Closing Address, p.2548.

<sup>79</sup> Trial Transcript, Prosecution Closing Address, p.2548-49.

- At the first meeting all three members of the Viking Management team were present and participated in the meeting. This suggests all three were involved in the joint effort to obtain finance and the efforts then continued for several months;<sup>81</sup>
- A series of emails was tendered as **exhibit DF1 – DF30** which detailed the evolving efforts by the Viking Group, over a period of time, to secure finance from Westpac.
  - **Exhibit DF1** was an email from Camilleri to LB and BB, among others, the day after the first meeting. This email set out the detailed financial information sought by Westpac to assess the application;
  - **Exhibit DF2** was a response from BB within an hour of receiving **exhibit DF1**. LB was copied into this email. BB made it clear the Viking Group would not be providing audited accounts and if this was necessary there was no point proceeding further. A subsequent call between Camilleri and BB occurred wherein the bank indicated it needed audited accounts and BB said if that was so any deal was off;<sup>82</sup>
  - **Exhibit DF** contains a number of emails between Shakes and BB in which the need for audited accounts was overcome;<sup>83</sup>
  - **Exhibit DF14-16** were three emails sent by BB to Shakes and Camilleri which copied in the Applicant and LB. These emails each attached a data pack containing financial information sought by Westpac. All three of the Viking Group’s management team were a part of these ongoing discussions and provision of information to the bank.<sup>84</sup> Amongst the information provided to the bank in these emails, were the compilation reports purportedly prepared by Alex Vovos.<sup>85</sup> These reports related to Jacross Pty Ltd (**exhibit DL**), Viking Group Holdings (**exhibit DK**) and Viking Towing and Salvage (**exhibit DJ**). The fact these documents were attached to this email was admitted by the Applicant and BB (**exhibit ES & ET**). This was significant as the Applicant was aware that Alex Vovos was not the Viking Group’s accountant in 2009. While he had previously been used, he had

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<sup>80</sup> Trial Transcript, Prosecution Closing Address, p.2553-54.

<sup>81</sup> Trial Transcript, Prosecution Closing Address, p.2555.

<sup>82</sup> Trial Transcript, Prosecution Closing Address, p.2559.

<sup>83</sup> Trial Transcript, Prosecution Closing Address, p.2559-60.

<sup>84</sup> Trial Transcript, Prosecution Closing Address, p.2560.

<sup>85</sup> Trial Transcript, Prosecution Closing Address, p.2560-61.

not been the Viking Group's accountant since 2007. Another document attached was the Strategic Overview Document presented to the CBA and dated 22 July 2010. (this document was considered above under 'charge 8 – analysis.) The only change was the date, which was changed to 27 July 2010.<sup>86</sup> As discussed above, this document made false representations about business purportedly being done with Aldi and Linfox.<sup>87</sup> There was also a representation made of significant work being done by Viking Fleet Services for Boral. David Cowie, from Boral, indicated that in the 2010-2011 year Viking Fleet Service did \$28, 843 of work for Boral. It was not a large external contract.<sup>88</sup> BB emailed this document to Westpac knowing it contained false representations, because he had presented that same paper to the CBA five days earlier in the presence of the Applicant and LB;<sup>89</sup>

- A second meeting occurred on 9 August 2010. LB and the Applicant attended via teleconference. Shakes and Sebastian Cirocco attended on behalf of Westpac. BB led the discussion, but the Applicant and LB agreed with his position that an uncontrolled debtor facility was the preferred option. In this meeting the Viking Group agreed to provide further financial information;<sup>90</sup>
- Further financial information was provided to the bank via emails (**exhibit DF20-27**). BB was part of each of these emails and the Applicant was part of all but two of these emails. **Exhibit DF26** was an email from Carly Hartley to LB, which copied in Westpac, BB and the Applicant, attaching the current creditor debtor aged trial balances;<sup>91</sup>
- All three members of the Viking Group management team, namely the Applicant, BB and LB, were jointly participating in efforts to re-finance with Westpac. All three attended the meetings and adopted a common view as to what they wanted. They were all part of email traffic by which financial information, which contained significant untruths, were passed onto to Westpac;<sup>92</sup>

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<sup>86</sup> Trial Transcript, Prosecution Closing Address, p.2564.

<sup>87</sup> See charge 8 analysis above.

<sup>88</sup> Trial Transcript, Prosecution Closing Address, p.2564-65.

<sup>89</sup> Trial Transcript, Prosecution Closing Address, p.2565.

<sup>90</sup> Trial Transcript, Prosecution Closing Address, p.2566.

<sup>91</sup> Trial Transcript, Prosecution Closing Address, p.2567.

<sup>92</sup> Trial Transcript, Prosecution Closing Address, p.2567.



- There was an agreement between these three people to provide false information to Westpac, they were all party to it and participated in it by being involved in the meetings and the provision of false information. The combined actions, even at this stage, had gone well beyond preparation. They were well on the way to committing the completed offence;<sup>93</sup>
- The only thing that prevented the application from going further was that the figures provided did not ‘hang together’ as Shakes put it. The Viking Group had provided the financial information and put the ball in Westpac’s court as to whether or not the information stacked up such that they would approve the facilities;<sup>94</sup>
- In late October 2010 the application process seemed to stall after Shakes raised concerns about the figures provided – see **exhibit DF27**;
- LB gave evidence that in early February 2011 the Applicant told her he wanted to pursue their efforts to re-finance with Westpac.<sup>95</sup> LB said that the Applicant was concerned about the CBA finding out what they had been doing with their debtors;<sup>96</sup>
- BB recommenced communications with Westpac on 7 February 2011 (**exhibit DF28**). Both the Applicant and LB were copied into this email. If the Applicant had not been consulted about this action, he would not have been copied into this email;<sup>97</sup>
- On 25 March 2011 BB met with Shakes to discuss matter. The meeting concluded with BB informing Shakes the Viking Group would continue to discuss their financial needs with both the CBA and Westpac.<sup>98</sup>

**g) *The equipment charges – charges 1, 3, 5 & 9 - 13:***

3.21. LB did not give evidence which assisted the prosecution in relation to the equipment charges. The case against the Applicant relied on a large volume of circumstantial evidence and the inferences that a jury could draw from that evidence concerning these charges.

*Charges 1, 3, 5 & 9 – 13 - An overview:*

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<sup>93</sup> Trial Transcript, Prosecution Closing Address, p.2568.

<sup>94</sup> Trial Transcript, Prosecution Closing Address, p.2569-70.

<sup>95</sup> Trial Transcript, Prosecution Closing Address, p.2571.

<sup>96</sup> Trial Transcript, Prosecution Closing Address, p.2572.

<sup>97</sup> Trial Transcript, Prosecution Closing Address, p.2572.

<sup>98</sup> Trial Transcript, Prosecution Closing Address, p.2572.

- 3.22. These are the charges which rely on the Knights Motors invoices. The invoices relied on, purportedly from Knights Motors, were false documents which induced the banks to enter into commercial hire-purchase agreements with the Viking Group.
- 3.23. There is a difference between charges 1, 3 and 5 when compared to charges 9 to 13. With charges 1, 3 & 5 the Applicant was a director of Viking Asset Management. When charge 9 to 13 were allegedly committed, the Applicant had resigned as a director of Viking Asset Management and his son, Peter Iliopoulos, was a director. The prosecution case was that the difference mattered little, as emails exchanged at the time of charges 9 to 13 demonstrate the Applicant was aware of the applications, knew they were being supported by false documents and knew it was done to get funds for the Viking Group.<sup>99</sup>

Charge 1 – analysis:

- 3.24. The prosecution case, and argument to the jury concerning charge 1, was as follows:
- The Applicant purchased two Maxicube trailers for \$51,233 on 14 November 2007 from Pickles Auctions;<sup>100</sup>
    - **Exhibit EF** was the Pickles Auctions Buyer’s Registration confirming the sales occurred on 14 November 2007. The document had the Applicant’s signature, drivers licence number and mobile number. The Applicant admitted it was his signature;<sup>101</sup>
    - **Exhibit EF** also contained the auction sales sheets demonstrating the total sale price for the two trailers was \$51,233;<sup>102</sup>
  - On 15 November 2007 the Applicant signed a cheque made out to Pickles Auctions for \$51,233 (**exhibit DE**). This demonstrates that the Applicant was aware that the items had been purchased, from where and what price was paid. The Applicant admitted it was his signature;<sup>103</sup>

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<sup>99</sup> Trial Transcript, Prosecution Closing Address, p.2576.

<sup>100</sup> Trial Transcript, Prosecution Closing Address, p.2430.

<sup>101</sup> Trial Transcript, Prosecution Closing Address, p.2435.

<sup>102</sup> Trial Transcript, Prosecution Closing Address, p.2436.

<sup>103</sup> Trial Transcript, Prosecution Closing Address, p.2436-37.

- The Applicant had an active involvement in the purchase of the trailers;<sup>104</sup>
- The purchase of two Maxicube trailers was the type of decision you would expect the effective owner of a business to make;<sup>105</sup>
- Six weeks later, the Applicant executed a commercial hire-purchase agreement with the Westpac Bank, to finance the same trailers for \$135,300;<sup>106</sup>
  - The bank purchased the two trailers, back from the Viking Group and then hired the same assets back to the Viking Group;
  - **Exhibit EP** is the agreement with Westpac setting out the financed amount as \$135,300. This document is dated 12 December 2007;<sup>107</sup>
- The Applicant was an experienced businessman and would have known the bank would not advance him \$135,300 for trailers worth just over \$51,000;<sup>108</sup>
- The Applicant would also have known that the bank would require proof of purchase – i.e. that the trailers did cost \$135,300. An invoice from Knights Motors, **exhibit DY**, was provided to the Westpac Bank substantiating this amount. The invoice was a ‘completely bogus document’;<sup>109</sup>
- Kon Iliopoulos, the brother of the Applicant and owner of Knights Motors, stated that his business did not sell any equipment or trucks to the Applicant’s business;<sup>110</sup>
- **Exhibit DD** was purportedly a Netbank transfer from the CBA confirming the Viking Group had paid \$135,300 to Knights Motors. This was a false document. Further, Kon Iliopoulos confirmed his business did not receive this amount;<sup>111</sup>
- If the Applicant did not create the documents then whoever did create them did so with the Applicant’s knowledge and at his direction;<sup>112</sup>
- The beneficiary of the fraud was the Viking Group which was owned by the Applicant;
- If the scheme had been implemented without the Applicant’s knowledge, those people would not have falsely used the Applicant’s brother’s business, as the purported seller

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<sup>104</sup> Trial Transcript, Prosecution Closing Address, p.2437.

<sup>105</sup> Trial Transcript, Prosecution Closing Address, p.2436.

<sup>106</sup> Trial Transcript, Prosecution Closing Address, p.2430.

<sup>107</sup> Trial Transcript, Prosecution Closing Address, p.2442.

<sup>108</sup> Trial Transcript, Prosecution Closing Address, p.2443.

<sup>109</sup> Trial Transcript, Prosecution Closing Address, p.2443.

<sup>110</sup> Trial Transcript, Prosecution Closing Address, p.2443.

<sup>111</sup> Trial Transcript, Prosecution Closing Address, p.2444.

<sup>112</sup> Trial Transcript, Prosecution Closing Address, p.2434.

of equipment to the Viking Group. They would have chosen a different company or made up a fictitious company. This was a compelling piece of evidence pointing to the Applicant's knowledge and involvement in the fraudulent scheme;<sup>113</sup>

- It was also unlikely that the Applicant would have signed such documents without being aware of their contents – for example purchasing two trailers for over \$51,000 and applying for hire purchase finance for \$135,000.<sup>114</sup>

Charge 3 – analysis:

3.25. The prosecution case, and argument to the jury concerning charge 3, was as follows:

- The Viking Group sold 4 trucks to the Adelaide bank and then immediately leased them back from the bank. They did this at significantly inflated figures;<sup>115</sup>
- **Exhibit EJ** was the finance lease and asset purchase terms dated 8 August 2008 between the Adelaide Bank and the Viking Group. The document was signed by the Applicant in multiple places and was for the amount of \$271,664. For some inexplicable reason the Adelaide Bank paid \$282,131.90;<sup>116</sup>
- The Applicant had been heavily involved in the Perth Freightlines negotiations, including obtaining a valuation of that business' assets (**Exhibit AE**);<sup>117</sup>
- Four false invoices, purportedly from Knights Motors, indicated that the Viking Group had purchased these vehicles from Knights Motors. These invoices were fraudulent as the Viking Group had actually acquired the vehicles when it purchased Perth Freightlines. The amounts set out in those invoices was inflated when compared to the true value of those vehicles – see **exhibit AE & DZ**;
- **Exhibit EH** indicated, falsely, that Perth Freightlines had sold the 4 vehicles to Knights Motors. **Exhibit DZ** indicated the Viking Group had purchased those same 4 vehicles from Knights Motors, once again these were false documents and inflated the value of the trucks;<sup>118</sup>

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<sup>113</sup> Trial Transcript, Prosecution Closing Address, p.2445.

<sup>114</sup> Trial Transcript, Prosecution Closing Address, p.2445-46.

<sup>115</sup> Trial Transcript, Prosecution Closing Address, p.2476-78.

<sup>116</sup> Trial Transcript, Prosecution Closing Address, p.2469.

<sup>117</sup> Trial Transcript, Prosecution Closing Address, p.2474-75.

<sup>118</sup> Trial Transcript, Prosecution Closing Address, p.2476-78.

- LB gave evidence that she created the false Knights Motors invoices;<sup>119</sup>
- LB said she only told the Applicant about what she had done once the transaction was completed. The prosecutor asked the jury to carefully scrutinize this evidence.<sup>120</sup> He submitted the jury could conclude, due to the value of money being provided by the Adelaide Bank, the Applicant was aware of the false invoices being used to inflate the value of the trucks in the agreement when he signed it;<sup>121</sup>
- This transaction coincided with the Viking Group needing to settle on the purchase of Perth Freightlines. Maurice MacKenzie ('MacKenzie'), the previous owner of Perth Freightlines, gave evidence that at the time of the settlement the Applicant discussed with him concerns over cash flow. MacKenzie agreed to leave the cash flow in the business and two subsequent payments would be made by the Viking Group to cover this amount after the date of settlement. This was a very significant conversation:
  - The Applicant was aware of the cash flow problems afflicting the Viking Group;
  - He sought to do something about the lack of cash flow;
  - This is contrast to submissions made on behalf of the Applicant that he was essentially oblivious to the financial position of the Viking Group;<sup>122</sup>
- The settlement of the Perth Freightlines purchase was a significant matter for the Applicant, given its superior size to the Viking Group at the time. There was an expectation, and evidence to show, he was across the financial position of the Viking Group and its cash flow problems in meeting its settlement obligations. This confirmed his knowledge of what was occurring to facilitate the settlement proceeding;<sup>123</sup>

Charge 5 – analysis:

3.26. The prosecution case, and argument to the jury concerning charge 5, was as follows:

- This was a commercial hire-purchase agreement which related to seven trucks purchased by the CBA from the Viking Group for \$795,000;<sup>124</sup>

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<sup>119</sup> Trial Transcript, Prosecution Closing Address, p.2469.

<sup>120</sup> Trial Transcript, Prosecution Closing Address, p.2470.

<sup>121</sup> Trial Transcript, Prosecution Closing Address, p.2470.

<sup>122</sup> Trial Transcript, Prosecution Closing Address, p.2470.

<sup>123</sup> Trial Transcript, Prosecution Closing Address, p.2478.

<sup>124</sup> Trial Transcript, Prosecution Closing Address, p.2483.

- **Exhibit W** contains the 7 invoices falsely purporting to confirm that the 7 trucks were sold from Knights Motors to the Viking Group;<sup>125</sup>
- **Exhibit R** is the commercial hire purchase agreement which is undated;
- The CBA on receiving the 7 invoices did not accept the sale price. The CBA had the trucks valued (**Exhibit SI4**) and valued them at \$795,000;<sup>126</sup>
- The invoices provided to the bank to support the application indicated the trucks had been purchased in the last 6 months from Knights Motors. The Applicant knew this was false and provided a statutory declaration signed 17 July 2009 (**Exhibit S**) knowing these false documents must have been used to support the application;<sup>127</sup>
- Within the statutory declaration, **Exhibit S**, the Applicant declares that he had never previously been bankrupt. This was false he had previously been declared bankrupt;<sup>128</sup>
- If the scheme had been implemented without the Applicant's knowledge, those people would not have falsely used the Applicant's brother's business, Knights Motors;<sup>129</sup>
- Finally the financial benefit was for the Applicant's business.<sup>130</sup>

Charges 9 to 13 – overview:

- 3.27. The five commercial hire purchase agreements, the subject of charges 9 to 13, were entered into over a three week period as a consequence of the CBA agreeing to increase the asset finance limit for Viking Asset Management by \$3.5 million.<sup>131</sup>
- 3.28. The CBA agreed to increase the equipment finance limit from \$5 million to \$8.5 million. This allowed the Viking Group to sell some of their equipment which they had recently purchased to the CBA and hire it back.<sup>132</sup>
- 3.29. The clear inference was the Applicant and LB looked at what equipment they could offer the CBA under a sale lease back arrangement. Further false invoices from Knight Motors were created so the Viking Group could access the \$3.5 million.<sup>133</sup>

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<sup>125</sup> Trial Transcript, Prosecution Closing Address, p.2484.

<sup>126</sup> Trial Transcript, Prosecution Closing Address, p.2484-85.

<sup>127</sup> Trial Transcript, Prosecution Closing Address, p.2486.

<sup>128</sup> Trial Transcript, Prosecution Closing Address, p.2490.

<sup>129</sup> Trial Transcript, Prosecution Closing Address, p.2493.

<sup>130</sup> Trial Transcript, Prosecution Closing Address, p.2493.

<sup>131</sup> Trial Transcript, Prosecution Closing Address, p.2577.

<sup>132</sup> Trial Transcript, Prosecution Closing Address, p.2577.

Charge 9 – analysis:

3.30. The prosecution case, and argument to the jury concerning charge 9, was as follows:

- Two Volvo loaders were subject to a commercial hire-purchase agreement with the CBA for \$353,265 (**exhibit BL**). This document was signed on 27 October 2010;
- The application was supported by a false Knights Motors invoice. The invoice indicated that Viking Asset Management had purchased the two loaders from Knights Motors on 15 July 2010 for \$353,265 (**exhibit BQ**);
- Viking Asset Management issued an invoice to the CBA confirming the sale of the two loaders to the bank for \$353,265 (**exhibit BP**);<sup>134</sup>
- One of two loaders was actually purchased by the Viking Group on 20 October 2009 for \$232,897 (**exhibit BT**). The Knights Motors invoice suggested the Viking Group had paid \$261,965 (**exhibit BQ**). Further this loader was financed under a commercial hire purchase agreement with Westpac which was still current in 2010 (**exhibit BU**). So this loader was still encumbered when ‘sold’ to the CBA;<sup>135</sup>
- The evidence is silent as to how much the Viking Group paid for the other loader. Kon Iliopoulos made it clear his business did not sell this vehicle to the Viking Group;<sup>136</sup>
- A statutory declaration was signed by Peter Iliopoulos, the Applicant’s son, indicating the vehicles were unencumbered. The Applicant had previous experience (charges 1, 3 & 5) that such a declaration was required. He knew that such a representation was going to be made as CEO of the Viking Group, he knew the property was encumbered;<sup>137</sup>
- The complicity of the Applicant is put beyond any doubt, when regard is had to **exhibit BR**. This is an email from Carly Hartley to Heib (from the CBA) which copies in LB and the Applicant. The email mentions attaching two Knights Motors invoices totalling \$571,615 and indicates a message has been left for Knights Motors to chase up additional invoices. The email then attaches a copy of **exhibit BQ**. The Applicant, if he

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<sup>133</sup> Trial Transcript, Prosecution Closing Address, p.2577.

<sup>134</sup> Trial Transcript, Prosecution Closing Address, p.2578-9.

<sup>135</sup> Trial Transcript, Prosecution Closing Address, p.2579-80.

<sup>136</sup> Trial Transcript, Prosecution Closing Address, p.2580.

<sup>137</sup> Trial Transcript, Prosecution Closing Address, p.2581.

had truly not been involved in the fraudulent scheme, would have been sure to see the reference to his brother's company in two parts within the body of this email. The clear inference being that Carly Hartley would not have copied the Applicant into such an email if he had not been part of the fraudulent enterprise. Further, the Applicant would have known that no vehicles were purchased from his brother's business.<sup>138</sup>

Charge 10 – analysis:

3.31. The prosecution case, and argument to the jury concerning charge 10, was as follows:

- One Volvo loader was subject to a commercial hire-purchase agreement with the CBA for \$218,350. The hire purchase schedule was **exhibit BW**;<sup>139</sup>
- The application was supported by a false Knights Motors invoice. The invoice indicated that Viking Asset Management had purchased the loader from Knights Motors on 20 August 2010 for \$218,350 (**exhibit CB**);<sup>140</sup>
- Viking Asset Management issued an invoice to the CBA confirming the sale of the loader to the bank for \$218,350 (**exhibit CA**);<sup>141</sup>
- The loader was actually purchased by the Viking Group on 14 September 2009 for \$169,096 from a different seller (**exhibit CC**). This loader was financed under a commercial hire purchase agreement with Westpac which was still current in 2010 (**exhibit CD**). So this loader was still encumbered when 'sold' to the CBA;<sup>142</sup>
- A statutory declaration was signed by Peter Iliopoulos, the Applicant's son, which made a number of false representations to the CBA. The Applicant had previous experience (charges 1, 3 & 5) that such a declaration was required;
- The complicity of the Applicant is put beyond any doubt, it is submitted, when regard is had to **exhibit BR**. This is an email from Carly Hartley to Heib (from the CBA) which copies in LB and the Applicant and is dated 20 October 2010. The body of the email mentions attaching two Knights Motors invoices totalling \$571,615 and indicates

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<sup>138</sup> Trial Transcript, Prosecution Closing Address, p.2584.

<sup>139</sup> Trial Transcript, Prosecution Closing Address, p.2581

<sup>140</sup> Trial Transcript, Prosecution Closing Address, p.2581

<sup>141</sup> Trial Transcript, Prosecution Closing Address, p.2581-2.

<sup>142</sup> Trial Transcript, Prosecution Closing Address, p.2582.



a message has been left for Knights Motors to chase up additional invoices. The email then attaches a copy of **exhibit CB** – the invoice purportedly from Knights Motors selling the loader to the Viking Group for \$218,350. The Applicant, if he had truly not been involved in the fraudulent scheme, would have been sure to see the reference to his brother's company in the body of this email. The Applicant would have known that no vehicles were purchased from his brother's business.<sup>143</sup>

Charge 11 – analysis:

3.32. The prosecution case, and argument to the jury concerning charge 11, was as follows:

- Two pieces of equipment were subject to a commercial hire-purchase agreement with the CBA for \$652,850. The hire purchase schedule was **exhibit CF**;<sup>144</sup>
- The application was supported by a false Knights Motors invoice. The invoices indicated that Viking Asset Management had purchased the loader from Knights Motors on 20 July and 15 September 2010 for \$652,850 (**exhibit CK**);<sup>145</sup>
- Viking Asset Management issued an invoice to the CBA confirming the sale of the equipment to the bank for \$652,850 (**exhibit CJ**);<sup>146</sup>
- The container loader was actually purchased by the Viking Group on 20 May 2010 for \$20,000 (**exhibit CL**). The Knights Motors invoice suggested the Viking Group had paid \$203,500 for this piece of equipment (**exhibit CK**);<sup>147</sup>
- The Knights Motors invoices (**exhibit CK**) were sent to the CBA with a covering email from LB dated 28 October 2010 (**exhibit CK**). This email was copied to the Applicant. The email states, in part, 'I attach for your attention, letter sent from Knights Motors confirming payment of all invoices, including the additional ones that we would like to fund against the new \$3.5 million in facilities that has now been put in place by the CBA.' The complicity of the Applicant is put beyond any doubt, it is submitted, when regard is had to **exhibit CK**. This exhibit also contained a false letter

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<sup>143</sup> Trial Transcript, Prosecution Closing Address, p.2584.

<sup>144</sup> Trial Transcript, Prosecution Closing Address, p.2587.

<sup>145</sup> Trial Transcript, Prosecution Closing Address, p.2587.

<sup>146</sup> Trial Transcript, Prosecution Closing Address, p.2587.

<sup>147</sup> Trial Transcript, Prosecution Closing Address, p.2588.

purporting to be from a George Stathakis from Knights Motors; in this letter the author purports to confirm the sales from Knights Motors to the Viking Group;<sup>148</sup>

- The Applicant, if he had truly not been involved in the fraudulent scheme, would have been sure to see the reference to his brother's company within the body of this email. The Applicant would have known that no vehicles were purchased from his brother's business.<sup>149</sup>

Charge 12 – analysis:

3.33. The prosecution case, and argument to the jury concerning charge 12, was as follows:

- Four pieces of equipment were subject to a commercial hire-purchase agreement with the CBA for \$740,850. The hire purchase schedule was **exhibit CN**;<sup>150</sup>
- The application was supported by a false Knights Motors invoice. The invoices indicated that Viking Asset Management had purchased the equipment from Knights Motors on 31 August and 15 September 2010 for \$740,850 (**exhibit CK**);
- Viking Asset Management issued an invoice to the CBA confirming the sale of the equipment to the bank for \$740,850 (**exhibit CR**). This document set out at the bottom of the page that Viking Asset Management had originally purchased this equipment from Knight Motors – a representation that was false;<sup>151</sup>
- The Knights Motors invoices (**exhibit CK**) were sent to the CBA with a covering email from LB dated 28 October 2010 (**exhibit CK**). This email was copied to the Applicant. The email states, in part, 'I attach for your attention, letter sent from Knights Motors confirming payment of all invoices, including the additional ones that we would like to fund against the new \$3.5 million in facilities that has now been put in place by the CBA.'<sup>152</sup>
- The complicity of the Applicant is put beyond any doubt, it is submitted, when regard is had to **exhibit CK**. This exhibit also contained a false letter purporting to be from a

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<sup>148</sup> Trial Transcript, Prosecution Closing Address, p.2595

<sup>149</sup> Trial Transcript, Prosecution Closing Address, p.2596.

<sup>150</sup> Trial Transcript, Prosecution Closing Address, p.2593.

<sup>151</sup> Trial Transcript, Prosecution Closing Address, p.2593.

<sup>152</sup> Trial Transcript, Prosecution Closing Address, p.2595.

George Stathakis from Knights Motors; in this letter the author purports to confirm the sales from Knights Motors to the Viking Group;<sup>153</sup>

- The Applicant, if he had truly not been involved in the fraudulent scheme, would have been sure to see the reference to his brother's company within the body of this email. The Applicant would have known that no vehicles were purchased from his brother's business.<sup>154</sup>

Charge 13 – analysis:

3.34. The prosecution case, and argument to the jury concerning charge 13, was as follows:

- Two pieces of equipment, an excavator and forklift, were subject to a commercial hire-purchase agreement with the CBA for \$279,200. The hire purchase schedule was **exhibit CV**;<sup>155</sup>
- The application was supported by a false Knights Motors invoice. The invoices indicated that Viking Asset Management had purchased the equipment from Knights Motors for \$279,200 (**exhibit CK**);
- Viking Asset Management issued an invoice to the CBA confirming the sale of the equipment to the bank for \$279,200;
- The Knights Motors invoices (**exhibit CK**) were sent to the CBA with a covering email from LB dated 28 October 2010 (**exhibit CK**). This email was copied to the Applicant. The email states, in part, 'I attach for your attention, letter sent from Knights Motors confirming payment of all invoices, including the additional ones that we would like to fund against the new \$3.5 million in facilities that has now been put in place by the CBA.'<sup>156</sup>
- The complicity of the Applicant is put beyond any doubt, it is submitted, when regard is had to **exhibit CK**. This exhibit also contained a false letter purporting to be from a George Stathakis from Knights Motors; in this letter the author purports to confirm the sales from Knights Motors to the Viking Group;

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<sup>153</sup> Trial Transcript, Prosecution Closing Address, p.2595

<sup>154</sup> Trial Transcript, Prosecution Closing Address, p.2596.

<sup>155</sup> Trial Transcript, Prosecution Closing Address, p.2594.

<sup>156</sup> Trial Transcript, Prosecution Closing Address, p.2595.

- The Applicant, if he had truly not been involved in the fraudulent scheme, would have been sure to see the reference to his brother's company within the body of this email. The Applicant would have known that no vehicles were purchased from his brother's business.<sup>157</sup>

***h) No assertion the verdicts were inconsistent:***

3.35. No complaint has been made that the verdicts were inconsistent. This supports the Respondent's contention that the verdicts were reasonable and supported by the evidence, such that differing verdicts could legitimately be returned where LB's evidence was central to the prosecution case.

***i) Tendency reasoning:***

3.36. The prosecution relied on tendency reasoning in relation to the Applicant. The prosecutor told the jury it was open to the jury to find that the Applicant engaged in a pattern of conduct or employed the same or similar modus operandi to commit the charges.<sup>158</sup>

***j) Motive:***

3.37. The prosecutor argued the Applicant and BB had a strong personal motive to commit the offending as it was funding their lifestyle during the offending period.<sup>159</sup>

**DATED: 20 January 2017**



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**Jason Gullaci**  
**Counsel for the Respondent**

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<sup>157</sup> Trial Transcript, Prosecution Closing Address, p.2596.

<sup>158</sup> Trial Transcript, Prosecution Closing Address, p.2458 & 2599 - 2600.

<sup>159</sup> Trial Transcript, Prosecution Closing Address, p.2601 - 2620.