

IN THE SUPREME COURT OF VICTORIA  
 COURT OF APPEAL  
 CRIMINAL DIVISION

BETWEEN

STEVE ILIOPOULOS

Applicant

v

THE QUEEN

Respondent

APPLICANT'S WRITTEN CASE (CONVICTION)

A. CONVICTIONS WHICH ARE THE SUBJECT OF THE APPLICATION FOR LEAVE TO APPEAL

1. The Applicant was tried before His Honour Justice Kaye in the Supreme Court at Melbourne in relation to 14 dishonesty offences. On the 2 May 2016, the jury convicted him of 12 of those charges and acquitted him of two. On 9 August 2016 the applicant was convicted and sentenced as follows:

| Charge | Offence  | Maximum                  | Sentence       | Cumulation                                     |
|--------|--|--------------------------|----------------|--|
| 1.     | Obtain financial advantage by deception                  | 20 years<br>*CCE offence | 4 months       | 1m on charges 8,6, 7 & 14 and 3, 9, 10, & 13   |
| 2.     | Obtain financial advantage by deception                  | Acquitted                |                |  |
| 3.     | Obtain financial advantage by deception                  | 20 years<br>*CCE offence | 6 months       | 1m on charges 8, 6, 7 & 14 and 1, 9, 10 & 13   |
| 4.     | Obtain financial advantage by deception                  | Acquitted                |                |  |
| 5.     | Obtain financial advantage by deception                  | 20 years<br>*CCE offence | 18 months      | 3m on charges 8, 6, 7, 14, 1, 3,10 ,11,12 & 13 |
| 6.     | Obtain financial advantage by deception                  | 20 years<br>*CCE offence | 6 years        | 18 m on charge 8                               |
| 7.     | <i>Attempted</i> obtain financial advantage by deception | 10 years<br>*CCE offence | 5 years        | 15m on charges 8 & 6                           |
| 8.     | Obtain financial advantage by deception                  | 20 years<br>*CCE offence | 7 years (base) | Base sentence                                  |
| 9.     | Obtain financial advantage by deception                  | 20 years<br>*CCE offence | 9 months       | 1m on charges 8, 6, 7 & 14 and 1, 3, 10        |

|                                 |   |                          |           |  |
|---------------------------------|---|--------------------------|-----------|--|
|                                 |   |                          |           | & 13   |
| 10.                             | Obtain financial advantage by deception | 20 years<br>*CCE offence | 6 months  | 1m on charges 8, 6, 7 & 14 and 1, 3, 9 & 13    |
| 11.                             | Obtain financial advantage by deception | 20 years<br>*CCE offence | 15 months | 2m on charges 8, 6, 7,14 ,1, 3, 9, 10, 13 & 12 |
| 12.                             | Obtain financial advantage by deception | 20 years<br>*CCE offence | 18 months | 2m on charges 8, 6, 7,14, 1, 3, 9, 10, 13 & 11 |
| 13.                             | Obtain financial advantage by deception | 20 years<br>*CCE offence | 6 months  | 1m on charges 8, 6, 7 & 14 and 1, 3, 9 & 10    |
| 14.                             | Obtain financial advantage by deception | 20 years<br>*CCE offence | 3 years   | 3m on charges 8, 6 &7                          |
| <b>Total effective sentence</b> |   | 11 years                 |           |  |
| <b>Non-parole period</b>        |   | 7 years                  |           |  |
| <b>Pre-sentence detention</b>   |   | 276 days                 |           |  |
| <b>Other relevant orders</b>    |   |                          |           |  |

## B. SUMMARY OF RELEVANT FACTS<sup>1</sup>

### *Introduction*

- The Applicant, Steve Iliopoulos was the Chief Executive Officer of the Viking group of companies during the offending period. The Prosecution case was conducted on the basis that the accused was party to a joint criminal enterprise to commit dishonesty offences (financial lending facilities and hire purchase finance) against various financial institutions, principally the Commonwealth Bank of Australia (CBA) via the provision of false documents. The other parties to this joint enterprise included the Chief Financial Officer (CFO) Loukia Bariamis and the General Manager (GM) Bill Bariamis. There was no contest that the relevant documents contained falsehoods. The defence was conducted on the basis that the accused lacked knowledge of the falsity of the documents provided in support of the applications for credit.

### *Loukia Bariamis*

- This summary of relevant background to the offending and pertinent facts is paraphrased from the sentencing remarks of his Honour Justice Kaye in *DPP v Iliopoulos & Bariamis* [2016] VSC 447, which provided an accurate summary of the evidence led at trial.

3. In 2013, Ms. Bariamis pleaded guilty before Justice Bell, to three charges of obtaining a financial advantage by deception from the CBA, those charges being the equivalent of charges 6, 8 and 14 in the indictment in this case. On her plea, Ms. Bariamis gave an undertaking to cooperate with the prosecution in this matter, and to give evidence in accordance with statements made by her to the police.<sup>2</sup> Ms. Bariamis had also pleaded guilty in the County Court before Judge Lacava in 2013, to charges arising from a fraud on the ATO to the sum of \$1.8 million.
4. Ms. Bariamis was a certified public accountant, a registered auditor, and a tax agent. From the early 1990s, she was a member of the accounting firm Greenfield Fox. During that time, the Applicant became a client of Ms. Bariamis. In 2004 and 2005, Ms. Bariamis defrauded the Australian Taxation Office (ATO) by entering the tax portals of a number of clients of Greenfield Fox, and altering the Business Activity Statements that had been entered on those portals. The applicant was one of the clients whose tax portals she manipulated. Her criminal activities were entirely unknown to all of her clients and family. The fraud was detected by the Australian Tax Office in June 2005 after which she was charged, pleaded guilty and ultimately sentenced by Judge Lacava in 2013.
5. The Applicant remained trusting of Ms. Bariamis. After her offending was discovered, she led him to believe that her wrongdoing a mere transgression. The Applicant declined to assist the ATO in investigating her.

*Steve Iliopoulos and the purchase of Viking Fleet Service*

6. The Applicant was a mechanic by trade. He had little financial expertise, with limited business experience or know how. His expertise lay in the management of a fleet of trucks, and in heavy vehicle maintenance and servicing. He had commenced to work with a company called Viking Fleet Service (VFS) in 1999. VFS was then a relatively small business, involved in the repair of trucks and prime movers. Later (and over a period of years until 2007), the applicant purchased VFS. The VFS lending facilities were originally with the Australian and New Zealand Banking Corporation (ANZ). Ms. Bariamis had assisted the Applicant to refinance with the CBA.

*The purchase of Perth Freightlines*

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<sup>2</sup> *DPP v Bariamis* [2013] VSC 457.

7. VFS expanded rapidly and Ms. Bariamis came to work as an accountant for the group. By 2007, the Applicant entered into negotiations to purchase Perth Freightlines Pty Ltd (PFL). That business was involved in long haul and interstate freight services. PFL was substantially larger than the business of VFS. The negotiations to purchase that business were protracted. Ultimately, the purchase was settled on 8 August 2008.
8. In order to finance the purchase of PFL, VFS borrowed \$5,000,000 from the CBA. Ms. Bariamis prepared accounting and tax documents prepared for a number of entities associated with VFS in support of the finance application, but did so in such a way as to represent that Alex Vovos of Meridian Financial Services had been responsible for their creation. Ms. Bariamis claimed that the Applicant was a party to the production of these very false accounting documents to the CBA. The jury acquitted the applicant of the charges arising out of this conduct – being **charge 2**.
9. At this time, the Applicant held the title of CEO of the Viking Group of Companies. Ms. Bariamis assumed the role of CFO of the business. In that capacity, she assumed responsibility for the production of all financial and accounting documents relating to the business. The evidence demonstrated that she regarded the accounting and financial side of the business as very much her own exclusive domain.<sup>3</sup> She took particular care to ensure that other persons, associated with the Viking Group, only had limited access to, and familiarity with, the details of the financial documents that she was producing.

*Bill Bariamis*

10. In August 2008 Bill Bariamis, joined the Viking Group as its executive general manager (GM), focusing on the operational and strategic side of the business.

*The growth of the Viking Group*

11. The business of the Viking Group grew and diversified very rapidly. Its business was divided among a number of different corporate entities.
12. The Viking Group experienced chronic cash flow shortfalls as a result of its rapid expansion. For that purpose, the CBA granted to it a series of temporary excesses over the limit it had formally agreed in the Group's lending facilities. In July 2009, Viking applied to the CBA for the provision of further financial lending facilities to the Group. The bank acceded to that application, and increased the formalised lending facilities by a sum of

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<sup>3</sup> Reasons for sentence at [11].

\$2.55 million. The application for those increased facilities was based on the same documents as the previous application for the financial lending facilities for the purchase of Perth Freightlines. That application was the subject of **charge 4**, which alleged that the Applicant and Ms. Bariamis were parties to a joint criminal enterprise to obtain the additional financial lending facilities from the CBA by deception. The Applicant was acquitted of this charge.

*Receivable Fund Facility*

13. One of the facilities, provided by the CBA to the Viking Group, was referred to as a receivable finance facility (RFF). Under that facility, the bank provided finance to three members of the Viking Group, namely Perth Freightlines, Viking Transport and Logistics (VTL), and Viking Fleet Service (VFS), for 80 percent of those companies' current debtors, up to a prescribed limit. It was a condition of the facility that the bank would not provide finance in respect of debts owed to those companies by related entities in the Viking Group. In order to access finance under that facility, the Viking company was required to provide a statement to the bank, setting out the invoices in respect of which it sought funding. At the end of each month, the bank reconciled that document with the debtors' ledgers of the three companies concerned. Those ledgers were referred to as the aged debtor trial balances of the companies.
14. In order to deal with the increasing cash flow problems of the Viking Companies, Ms. Bariamis conceived, and implemented, a system by which debts, owed to the three Viking companies by related entities in the Group, were, in the documentation provided to the bank, replaced by fictitious debts owed by other unrelated third persons. In addition, when funding was available under the facility limit, Ms. Bariamis significantly exaggerated the amounts that were owed to the Viking companies by their debtors. On some occasions, false or fictitious debtors were inserted into the aged debtor trial balances and other documentation provided to the bank.
15. It was the evidence of Ms. Bariamis that this manipulation of the RFF occurred as a result of a conversation she had with a junior accounts employee by the name of Carley Hartley. The Applicant was said to have been informed at that time by both Ms. Barimais and Ms. Hartley as to the need to manipulate the RFF in this fashion. Ms. Hartley categorically

denied any such involvement in the plan of this offending or the meeting with the applicant to discuss same.<sup>4</sup>

*The banking finance charges (charges 6, 8 and 14)*

16. In October 2009, the CBA approved a further application by the Viking Group for additional financial facilities, totalling \$12.15 million. The application, for those facilities, was based on falsified aged debtor trial balances for PFL, VFS and VTL. Those documents fraudulently inflated the amounts owed by debtors to each of those three companies by \$5.5 million. In addition, the application for the financial facilities was based on falsified accounting documents for entities in the Viking Group, that purported to have been prepared by Alex Vovos of Meridian Financial Services. Again, those documents had been prepared by Loukia Bariamis herself, without the authority or permission of Alex Vovos or Meridian Financial Services. **Charge 6** alleged that the Applicant, Bill Bariamis, and Loukia Bariamis, obtained a financial advantage by deception for the Viking companies arising out of that increase in the credit limits of Viking. The Applicant was convicted of that charge. Bill Bariamis was acquitted.
17. Notwithstanding the substantial increase in credit facilities provided by the CBA in late 2009, the Viking companies continued to suffer cash flow shortfalls. As a result, the bank allowed a number of temporary excesses over the agreed limits from April 2010. The ongoing cash flow problems of the Viking Group were the subject of three meetings between officers of the CBA, and both the Applicant, Bill Bariamis and Loukia Bariamis, in June and July of 2010. As a result of the continuing liquidity problems of the Viking Group, the bank, in October 2010, approved a further application on behalf of the Group for additional financial facilities in the sum of \$13.9 million. That amount included a \$9 million increase in the receivable finance facilities provided to the three Viking entities referred to above. That application, and the meetings which preceded it, were the basis of **charge 8**.
18. **Charge 8** was based on the provision to the bank of falsified aged debtor trial balances for PFL, VFS and VTL. Those balances were falsely inflated by a sum of \$7.2 million. In addition, that charge alleged that the increase in financial facilities was based on a false

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<sup>4</sup> See below at [38](i).

representation made to the bank that Viking Fleet Service was the exclusive supplier of heavy vehicle maintenance services to Aldi stores in Victoria. That representation was contained in a document entitled 'Viking Group – Divisional Strategic Overview 2010-2011', which Mr. Bariamis had sent to an officer of the bank in July 2010. Mr. Bariamis, spoke to that document in the course of one of the meetings with bank officers on 22 July 2010. However, the evidence as to what Mr. Bariamis said at that meeting was unclear, and did not support the representation alleged in the charge. One witness (Gerrit Knauth) stated that Mr. Bariamis had said that Viking Fleet Services was establishing a connection with Aldi in Dandenong and was starting to service Aldi trucks at a Dandenong facility for the Group, which, in fact, was true. Based on that evidence, and consistent with the jury verdict, the learned trial judge was not satisfied that either the applicant or Bill Barimais were convicted on the basis of the representation about Aldi alleged in charge 8.<sup>5</sup>

19. After the provision of the credit facilities that constituted the basis of charge 8, the Viking Group still continued to experience liquidity problems. Further temporary excesses were granted to the Group by the bank. At a meeting on 17 November 2010, the bank approved a further \$4 million increase in the credit facilities. That approval was based on the same documentation and information provided to the bank, that formed the subject of charge 8. Both the Applicant and Mr. Bariamis were convicted, on **charge 14**, of obtaining a financial advantage by deception from the bank as a result of that increase in the credit facilities.

*The attempt charge (charge 7)*

20. **Charge 7** alleged that the Applicant and Mr. Bariamis, along with Ms. Bariamis, attempted to obtain a financial advantage by deception from Westpac Banking Corporation between 6 July 2010 and 30 March 2011. That charge arose out of an attempt to re-finance with Westpac the lending facilities provided by CBA to the Viking Group. One of the reasons, for the attempt to re-finance the facilities, was that Westpac provided a more flexible, and accessible, receivables finance facility than CBA, which was important to the alleviation of the chronic cash flow difficulties experienced by the Viking Group.

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<sup>5</sup> Reasons for sentence [19].

21. The application to Westpac commenced with a preliminary meeting between the Applicant, Mr. Bariamis and Ms. Bariamis, and officers of the Westpac Bank, on 6 July 2010. Following that meeting, and a further meeting in August 2010, a number of financial and accounting documents were provided to Westpac, principally by Mr. Bariamis. Those documents included financial accounts of a number of entities in the Viking Group prepared by Ms. Bariamis, which falsely purported to have been prepared by Alex Vovos of Meridian Financial Services. In addition a copy of the Divisional Strategic Overview document of the Viking Group was provided to Westpac. That document contained statements that Viking Fleet Services was the exclusive supplier of heavy vehicle maintenance services to Aldi stores in Victoria, and that it had substantial business generated by a contract with Boral Resources (Vic) Pty Ltd and by a contract with Linfox. Each of those statements were false. Those false statements, and the falsified accounting documents purporting to have been prepared by Alex Vovos, constituted the deceptions alleged in charge 7.
22. After the provision of the financial documents to it, an officer of Westpac noted that there was an inconsistency between the closing balances for one year, and the opening balances for the succeeding year, in the accounts that had been prepared by Ms. Bariamis. That inconsistency could not be resolved by her without disclosing the fact that the documents were fraudulent. Accordingly, and notwithstanding that Westpac appeared to be interested in proceeding with the application for finance, Ms. Bariamis persisted in stalling the provision of further financial documentation to Westpac. In early 2011, steps were taken to revive the application, but they did not proceed further, before a receiver was appointed to the Viking Group in early April 2011.

*The equipment charges (1, 3, 5 and 9 to 13 inclusive )*

23. Charges 1, 3, 5 and 9 to 13 on the indictment involved the procurement of the provision of hire purchase finance to a member of the Viking Group in respect of equipment purchased or owned by it, by providing to the finance company fake invoices that purported to demonstrate that the Viking Company had acquired the particular piece of equipment at a price that was well in excess of the actual amount paid for it.
24. In each case, the false invoices were created in the name of Knights Motors. That company was a business owned by the Applicant's brother Konstantinos Iliopoulos. The main

function of that business was to carry out mechanical work, specialising in vehicle air conditioning repairs.

25. Each charge alleged that the Applicant made the misrepresentation to the finance company that constituted the deception alleged in the charge. There was no evidence that the Applicant created or produced the false invoices. Rather, the prosecution case was that that he directed an employee or officer of Viking to create and produce the false invoices to the finance companies.
26. Despite disavowing any involvement or knowledge in this form of offending in statement form or at the committal, in her evidence at the trial, Ms. Bariamis admitted that she, of her own volition, produced and created the false invoice, that was used for the purpose of obtaining the finance that was the subject of **charge 3**. It was common ground, in final address, that, notwithstanding her denials, she was also was responsible for the production of the false Knights Motors invoices that were the subject of the other equipment charges. Based on the evidence, His Honour was satisfied during sentencing that those false invoices were created and produced by Ms. Bariamis herself, or by a Viking employee at her specific direction.
27. In addition, it was a condition of each hire purchase agreement that the equipment, that was financed under that arrangement, was not subject to any other finance arrangement. On each occasion, either the Applicant or his son Peter Iliopoulos, made a statutory declaration in support of the proposed hire purchase facility, which contained a clause to the effect that the equipment was not the subject of any other such finance arrangement. Contrary to that representation, some of the items of equipment, that were the subject of charges 5, 9, 10 and 12, were each the subject of existing finance arrangements with other financial institutions.<sup>6</sup>
28. **Charge 1** concerned the hire purchase by Viking Asset Management from Westpac Banking Corporation Limited of two Maxi cube trailers for the sum of \$135,300. The arrangement was entered into with Westpac on 21 December 2007. It was based on a false Knights Motors invoice dated 14 November 2007 specifying that amount as the price paid for the two pieces of equipment. In fact, the equipment had been purchased by Viking Asset Management from Pickles Auctions on 14 November 2007 for \$51,223.

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<sup>6</sup> Reasons for sentence at [26].

29. **Charge 3** concerned a hire purchase finance agreement entered into by Viking Asset Management with Adelaide Bank on 8 August 2008 in respect of four items of equipment in the sum of \$282,131.90. Again, the finance arrangement was based on fake Knights Motors invoices evidencing the price purportedly paid by Viking Asset Management for that equipment. In fact, the vehicles had been purchased by Viking Asset Management directly from Perth Freightlines as part of the arrangement by which Viking acquired the business of that company. Before the purchase of the business, the Applicant had obtained a valuation stating that the proper market value of the equipment was \$187,000.
30. **Charge 5** concerned a hire purchase agreement entered into by Viking Asset Management with the CBA dated 22 July 2009 in respect of seven pieces of equipment. The amount financed was \$795,000. The application for the finance was based on false Knights Motors invoices. In fact, two of the vehicles had been purchased by Viking as part of the acquisition by it of the business of M 1 Logistics in 2008. In addition, another of the vehicles had been purchased from an organisation called Paccar Trucks, and it was already the subject of a finance arrangement with Westpac.
31. In October 2010, as part of the facility agreement that was the subject of **charge 8**, the CBA agreed to re-finance equipment that Viking had already purchased out of its own funds. That agreement was directed to alleviating the chronic liquidity problems then experienced by Viking, part of which had resulted from the fact that Viking had used working capital to purchase its assets. Under the arrangement, Viking was entitled to sell equipment to the CBA, and to then lease it back from the bank.
32. **Charges 9 and 10** each related to hire purchase agreements entered into by Viking Asset Management with the CBA on 29 October 2010 pursuant to that arrangement. Charge 9 concerned the sale and lease back of two Volvo loaders in the sum of \$353,265. Charge 10 concerned a sale and lease back arrangement in respect of a 2008 Volvo loader in the sum of \$218,350. On each occasion, the transactions were supported by false Knights Motors invoices which significantly inflated the purchase prices of the vehicles concerned.
33. **Charges 11, 12 and 13** concerned hire purchase arrangements entered into by Viking Asset Management with the CBA on 5 November, 9 November and 18 November 2010 respectively, based on Knights Motors invoices sent by Ms. Bariamis to the CBA on 28 October 2010. Charge 11 concerned two loaders that were financed by the bank in the sum of \$652,850. Charge 12 concerned four items of equipment financed in the sum of \$740,850. Charge 13 related to the finance of two items of equipment in the sum of

\$279,200. Again, each of the transactions were supported by fake Knights Motors invoices, which grossly inflated the purchase price of the equipment concerned. For example, in charge 11, the invoice represented that a Clark Handler loader had been purchased by Viking from Knights Motors for \$203,500. In fact, that item had been purchased by Viking from another company, in May 2010, for \$20,000.

**C. GROUND OF APPEAL**

**GROUND 1: The verdicts of guilty on charges 1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 are unreasonable or cannot be supported having regard to the evidence led at the Applicant's trial:**

**Particulars**

**Upon the whole of the evidence it was not open for the jury to find beyond reasonable doubt that the applicant:**

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

**D. SUMMARY OF ARGUMENT**

34. The central issue for the jury's determination was the knowledge of the Applicant as to the falsity of documentation being provided in support of applications for credit.
35. As to the finance charges (charges 6, 7, 8 and 14) the prosecution contended that the jury could find the requisite degree of knowledge by way of direct evidence from Ms. Bariamis, in conjunction with drawing the necessary inferences from other circumstantial evidence including tendency reasoning.<sup>7</sup>
36. As to the equipment charges (charges 1, 2, 3, 4 5, 9, 10, 11, 12 and 13), the Prosecution relied entirely on inferences that the applicant gave directions to Loukia Bariamis to compile and provide false information to the financial institutions.<sup>8</sup>

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<sup>7</sup> Tp2864.9.

<sup>8</sup> Tp3174.

37. The approach the Court must take in assessing a ground of appeal of this kind was recently summarised in *Badem (a Pseudonym) v The Queen*,<sup>9</sup> which includes Maxwell P's summary of the necessary approach in *R v Klamo*,<sup>10</sup>

The approach required of appellate courts in considering the "unsafe and unsatisfactory" ground involves the following steps:

1. The court of criminal appeal must ask itself whether, upon the whole of the evidence, it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty.
2. In considering that question, the appeal court must bear in mind that the jury has the primary responsibility of determining guilt or innocence and has had the benefit of seeing and hearing the witnesses.
3. In most cases a doubt experienced by an appellate court will be a doubt which a jury ought also to have experienced.
4. It is only where a jury's advantage in seeing and hearing the evidence is capable of resolving a doubt experienced by a court of criminal appeal that the court may conclude that no miscarriage of justice occurred.

A guilty verdict can only be said to have been "reasonably open" to the jury if there was no aspect of the evidence which obliged – as distinct from entitled – the jury to come to a different conclusion.

38. It is submitted that the evidence led in the Applicant's trial 'obliged' the jury to come to a different conclusion for the following reasons:
- i. The only purported direct evidence of the applicant's state of knowledge on the *finance charges* came from Ms Bariamis, a witness who was entirely lacking in honesty, credibility and reliability:
    - By the time of her employment with Viking, she had already committed a substantial fraud on the ATO in the amount of \$1.8 million over a period of 9 months, clearly demonstrating that she was a dishonest person with the capability of constructing and carrying out a complex fraud on her own;
    - A feature of that ATO fraud was her initially blaming another employee for inciting her to offend;<sup>11</sup>
    - She had laid a false paper trail in that earlier offending to incriminate a junior member of staff;<sup>12</sup>
    - She claimed to not have received a wage, or any financial benefit from her offending or time at Viking;

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<sup>9</sup> [2016] VSCA 200 at [40] – [47].

<sup>10</sup> (2008) 18 VR 644.

<sup>11</sup> Tp1438.

<sup>12</sup> Tp1975.

- She had a motive (or number of motives) to commit the frauds;<sup>13</sup>
  - She lied on oath about gambling at the committal, before admitting at trial that during the offending period she had in fact been gambling<sup>14</sup>; and
  - She made utterly unfounded allegations of serious criminality against her former business partner, Kathryn Matheson;<sup>15</sup>
  - Critically, as to what Ms Bariamis says was the genesis of the agreement with the Applicant to use fraudulent documents (manipulated RFF's) - it was purportedly a meeting between herself and Carly Hartley where the plan was discussed and taken to the Applicant who then approved. <sup>16</sup> Not only was Ms. Hartley utterly incapable of participating in such a discussion with Ms. Bariamis in the terms alleged, the witness categorically denied such a meeting ever taking place.<sup>17</sup>
- ii. The evidence led through Ms. Bariamis on the *equipment charges* was even less satisfactory:
- She initially denied any involvement with equipment charge over the course of making her own statements and at the committal;
  - Before the jury at trial that admitted that she did in fact create and use false documents, but only to a limited extent;<sup>18</sup> and
  - The learned trial judge noted, correctly, in sentencing that there was no doubt she created all of them or directed another employee to do so. <sup>19</sup>
- iii. The applicant did not have the requisite skills to perform the actions himself:
- The applicant came to the business with experience in management of fleet trucks and in heavy vehicle maintenance;
  - He had limited business experience and no financial expertise; and
  - It was common ground that Ms. Bariamis controlled all aspects of finances.
- iv. There is no cogent evidence that the Applicant read emails and none at all he ever

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<sup>13</sup> Tp2844.

<sup>14</sup> Tp1613.

<sup>15</sup> Tp 1443, Tp 1977 - allegations which the Prosecution rightly conceded before the jury in their final address were highly probably lies Tp2425.

<sup>16</sup> Tp1577-8.

<sup>17</sup> Tp785-786.

<sup>18</sup> Tp 1302-1304, see also Tp1314-1316, where Ms. Bariamis claims Ms. Hartley created those invoices. The witness Ms. Hartley again disavows any such activity at Tp781-784.

<sup>19</sup> Reasons for sentence at [26].

sent them:

- This point assumed a prominence in the trial as it was relied on by the prosecution as the means by which the applicant was informed of the offending;
  - One witness<sup>20</sup> stated that the Applicant told him that he did read all of his emails; and
  - Not one witness claimed to have ever received an email from the Applicant.
- v. Consistent with her position as the CFO and her tight rein on the financial data of the Viking group, Ms. Bariamis agreed that the Applicant would ask her if they could afford items such as luxury cars. The applicant was always informed that such items were affordable.<sup>21</sup> It is inconceivable that the Applicant, if actually aware of the true dire financial position of the group and complicit in the offending being committed to address that financial position would ask at all. That Ms. Bariamis would tell the Applicant that items could be afforded is further evidence that she alone controlled the financial dealings of the company and only gave the Applicant limited, selective information.
- vi. Other matters
- Ms. Bariamis was the subject of both a criminally concerned witness warning at the time of her evidenced and again in the charge;<sup>22</sup>
  - The prosecution was permitted to cross-examine Ms Bariamis as an unfavourable witness as a result of the inconsistencies in her evidence;<sup>23</sup>

#### **D. NECESSARY TRANSCRIPT**

39. The transcript of the trial has been provided, as have the transcript of addresses and charge.

#### **E. OTHER**

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<sup>20</sup> CBA employee Barry Heib at Tp527, with the caveat that the emails contained complex financial documents as attachments that the Applicant would not have understood without assistance.

<sup>21</sup> Tp 1617-18.

<sup>22</sup> Tp 1813 and again at Tp2839.

<sup>23</sup> Tp 1334 and following.

40. The applicant seeks an oral hearing.

41. Leave is sought to file this written case at its present length of 14 pages.



T.E Wright QC  
Senior Counsel for the Applicant



M.E Dempsey  
Counsel for the Applicant

Date: 6 September 2016