

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL DIVISION

3 CAUSE NO. IND 62 OF 2013



12 REGINA

13 V.

14 INGRID WILHELMINA SCOTT

15
16 **Appearances:** Ms. Toyin Salako for the Department of Public Prosecutions
17 Ms. Prathna Boddan of Samson & McGrath for the Defendant

18
19 **Before:** Hon. Justice Williams

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21 **Trial:** 10, 11 & 13 May 2016

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23 **Submissions heard:** 13 May 2016

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25 **Decision given on:** 17 May 2016
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29 **RULING ON NO CASE TO ANSWER SUBMISSIONS**

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32 1. On this indictment, the Defendant is charged with 29 counts of Obtaining
33 Property by Deception contrary to s.247 of the Penal Code (2007 Revision). All
34 of the counts are similarly worded, namely that the Defendant dishonestly
35 obtained from each individual a specified sum in cash by falsely representing that
36 the documents in exchange for the cash represented a valid ticket for travel. The
37 difference between each count is mostly the identity of the alleged victim, the date
38 and the amount of money paid.
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1 2. At the close of the Crown's case on 13 May 2016 Ms. Bodden, Defence counsel,
2 made no case submissions on behalf of the Defendant in respect of Counts 1, 2,
3 3, 15, 16, 18, 19, 24, 25, 26 and 27. The Crown conceded there is no case to
4 answer in relation to Count 24, but contend that there is in relation to all of the
5 other counts. Accordingly, I withdraw Count 24 from the jury.

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7 **Submission from the Defence**

8 3. Ms. Bodden relies upon the oft rehearsed test that derives from the Court of
9 Appeal decision in *R v Gailbraith* [1981] 2 All ER 1060. In *Gailbraith* the Court
10 held that a Judge should approach a no case submission in this way:

- 11 i) If there is no evidence that the crime alleged has been committed then
12 there is no difficulty.
- 13 ii) If there is some evidence, but it is of a tenuous character, either because of
14 inherent weakness or vagueness or because it is inconsistent with other
15 evidence.

16 (a) Where the judge comes to the conclusion that the Crown's
evidence, taken at its highest, is such that any jury properly
directed could not properly convict on it, it is his duty, upon a
submission being made to stop the case.

20 (b) Where, however, the prosecution evidence is such that its strength
21 or weakness depends on the view to be taken of a witness's
22 reliability, or other matters which are generally speaking within the
23 province of the jury and where on one view of the facts, there is





evidence upon which the jury could properly come to the conclusion that the defendant is guilty, then the Judge should allow the matter to be tried by the jury.

4. Ms. Bodden submits that, pursuant to the first limb of *Gailbraith*, there is no evidence that the offence alleged in Counts 15, 16, 18, 19, 25, 26 and 27 had been committed. In relation to Count 15 it is agreed that on 10 July 2012 Manjula Dhanasinghe attended at Sea 2 Sky Travel Agency (“the Agency”) where the Defendant informed her that a return flight ticket to Sri Lanka departing on 16 August 2012 and returning on 14 September 2012 would cost US\$2,680. Those tickets were paid by cash installments and when the payments were completed the Defendant provided her with a flight itinerary showing the details of the reservation that had been made. It is also agreed that Cayman Airways has confirmed that no tickets were issued Cayman Airways via the Agency in the name of Manjula Dhanasinghe.

5. In relation to Count 15 Ms. Bodden highlights that the outward flight was reserved for the 16 August 2012. It is submitted by Ms. Bodden that there is no evidence that Ms. Dhanasinghe attended at the Airport only for her to be turned away. It is contended by Ms. Bodden that there is no evidence that this reservation for return flights to Sri Lanka is one that would have generated a Cayman Airlines ticket and therefore the confirmation by Cayman Airlines that no tickets were issued for Ms. Dhanasinghe by them is not evidence that the ticket was not

1 purchased with an airline or that a ticket was not available for her to travel on 16
2 August 2016.

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4 6. In relation to Count 16 it is agreed that on 11 July 2012 Romeo Manalo attended
5 at the Agency where the Defendant informed him that a one way flight ticket to
6 the Philippines departing on 10 November 2012 would cost CI\$1,713. He paid the
7 Defendant for that ticket in cash. The Defendant provided him with a flight
8 itinerary and told him to give the itinerary to the airline staff and they would in
9 return provide him with his ticket. It is submitted by Ms. Bodden that there is no
10 evidence before the Court that that ticket had not been purchased by the Agency
11 or whether or not he was able to take the flight.

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13 7. In relation to Count 18 it is agreed that on 16 July 2012 Leilanie Mendoza
14 attended at the Agency to purchase a ticket for her sister to travel from Singapore
15 to Grand Cayman. The Defendant informed her that the flight ticket would cost
16 CI\$1,322 and she then paid the Defendant that full amount in cash. The
17 Defendant provided Ms. Mendoza with a flight itinerary and informed her that it
18 was an electronic ticket so all her sister needed to do was to attend at the airport
19 with her passport on 31 July 2012. It is agreed that Ms. Mendoza attended at the
20 Agency on 23 and 24 July 2012 and spoke to the Defendant. It is submitted by
21 Ms. Bodden that there is no evidence that a ticket was not purchased by the
22 Agency or that Ms. Mendoza's sister was unable to take the flight mentioned in
23 the itinerary.





1 8. In relation to Count 19 it is agreed that on 16 July 2012 that Dadallage
2 Weerakkodi attended at the Agency to purchase a return flight ticket to Sri Lanka.
The Defendant informed him that the ticket would cost US\$1,318 and then Mr.
3 Weerakkodi paid the Defendant that full amount in cash. The Defendant provided
4 Mr. Weerakkodi with a flight itinerary for a flight departing on 18 September
5 2012. It is submitted by Ms. Bodden that there is no evidence that a valid ticket
6 was not purchased by the Agency or that Mr. Weerakkodi did not take the flight
7 or was unable to take the flight mentioned in the itinerary.
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10 9. In relation to Count 25 it is agreed that in July 2012 Sebert Ellis attended at the
11 Agency in order to purchase a return flight ticket to Jamaica departing on 29 July
12 2012 and returning on 12 August 2012. The Defendant informed him that the cost
13 of the ticket would be CI\$372 and he paid for the ticket in instalments. Cayman
14 Airlines confirmed that no tickets were issued to the Agency in the name of
15 Sebert Ellis.
16

17 10. Similarly, in relation to Count 26 it is agreed that in July 2012 Sylvia Hopkins
18 attended at the Agency to purchase a return flight ticket to Jamaica, outward on 4
19 August 2012 and returning on 29 August 2012. It is agreed that Ms. Hopkins had
20 in the past purchased tickets from the Defendant, paying in cash instalments, and
21 she had on those occasions travelled without any issues. The Defendant informed
22 her that the cost of the flight tickets would be CI\$372 and Ms. Hopkins paid her
23 in cash for the full cost of the flight. The Defendant provided Ms. Hopkins with a

1 flight itinerary and informed her that a boarding pass would be available at the
2 Airport. Cayman Airlines confirmed that no tickets were issued to the Agency in
3 the name of Sylvia Hopkins.

4
5 11. In relation to Count 27 it is agreed that in July 2012 Horace Sinclair attended at
6 the Agency to purchase four return tickets to Miami with the departure date of 3
7 August 2012. He had dealt with the Defendant on many occasions in the past. The
8 Defendant informed him that the tickets would cost CI\$1,196 and Mr. Sinclair
9 paid her for the full amount of the cost of the tickets in cash. Cayman Airlines
10 confirmed that no tickets were issued to the Agency in the name of Horace
11 Sinclair.

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13 12. Ms. Bodden highlights the similarity in the evidence in relation to Count 25,
14 Count 26 and Count 27. She contends that there is no evidence that valid tickets
15 were not purchased by the Agency or that any of the three customers did not take
16 their flight or were unable to take their scheduled flight. It is contended by Ms.
17 Bodden that there is no evidence that the two reservations for the flights to
18 Jamaica or for the one flight to Miami would have generated a Cayman Airlines
19 ticket and therefore the confirmation by Cayman Airlines that no tickets were
20 issued in the name of any of the virtual complainants named in the three counts is
21 not evidence that a ticket was not purchased with an airline by the Agency or that
22 a ticket was not available for the customers to travel on the scheduled flights on
23 the due dates in August 2012.



1 13. Ms. Bodden contends that in relation to Counts 1, 2 and 3 there is no case to
2 answer pursuant to the second limb of Lord Lane's dicta in *Galbraith*. It is
3 submitted that although there may be some evidence, it is of a tenuous character
4 and that any jury properly directed could not properly convict on it.

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6 14. In relation to Count 1, unlike the evidence of all of the other virtual complainants,
7 save for Toby Mitchell, Nelson Maun gave oral evidence rather than it being dealt
8 with by formal admissions. He informed the Court that he attended at the Agency
9 to purchase a ticket to fly on 21 September 2012 to the Philippines. Mr. Maun
10 stated that he spoke with the Defendant who informed him that the cost for that
11 flight ticket would be CI\$1,980 and as a result he commenced making payments
12 for the ticket by instalments from 13 February 2012 to 23 April 2012. He said that
13 every time he made a payment he was provided with a receipt. These payments
14 are evidenced by the receipts contained in the exhibit bundle which illustrate that
15 four of the instalment payments made by him were to the Defendant, one payment
16 to another person working in the Agency and the final payment to Mrs. Sully, the
17 Defendant's business partner in the Agency. He confirmed that, although
18 payments were made by him to different persons within the Agency, his travel
19 consultant was the Defendant and he believed that he purchased the ticket from
20 her. Mr. Maun indicated that when he made his first payment he received a flight
21 itinerary from the Defendant and that she highlighted the flight information on the
22 itinerary when she was explaining the itinerary to him.

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1 15. Mr. Maun told the Court that on 19 August 2012 he found out that his father, who
2 was in the Philippines, had passed away and he decided to use his ticket on an
3 earlier flight. He contacted British Airways and, after doing that, he understood
that he did not have a ticket to travel. He had to purchase a new ticket for
CI\$2,200 to enable him to fly to the Philippines to be with his family. He says
that he has not received anything back from the \$1,980 that he paid to the Agency
for the flight ticket to the Philippines which he believed the Defendant had
processed for him. He indicated he believes that the Defendant has his money.

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10 16. In relation to Count 1 Ms. Bodden initially submitted that there was no evidence
11 that 123 Travel who had been the entity who had previously printed tickets had
12 processed the ticket. However, it was accepted that at the time of the final
13 payment that the agency had acquired an IATA licence to enable it to print out
14 tickets for its customers rather than being reliant upon these other agencies. It is
15 submitted that there is no evidence that if he had remained on the September
16 flight, rather than flying in August, that his ticket would not have been properly
17 processed and issued. It is also suggested that as the payments were made to 3
18 persons at the Agency that there is no evidence of dishonesty on the Defendant's
19 part and there is only an inference.

20
21 17. In relation to Count 2 it is agreed that on 25 April 2012 Donna Wight attended at
22 the Agency to purchase a return flight ticket to Jamaica. She had previous
23 dealings with the Agency with no issues arising. The Defendant informed her that



1 the flight ticket would cost \$372. Ms. Wright then made an immediate payment of
2 \$200 and she paid the balance on 28 May 2012. She received a receipt from the
Defendant for each payment. The Defendant also provided Ms. Wright with a
flight itinerary and highlighted to her that the flight was departing on 28 July 2012
and returning on 11 August 2012. The Defendant instructed Ms. Wright to take
the itinerary with her to the Airport where she would receive a ticket. However,
when she attended at the Airport on 28 July 2012 she could not travel as there was
no ticket. Cayman Airways has confirmed that no tickets were issued by the
agency in the name of Donna Wright.

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11 18. In relation to Count 3 it is agreed that between April and May 2012 Sandra
12 Sergeant attended at the agency to purchase a return flight ticket to Canada. The
13 Defendant informed her that the ticket cost CI\$597 and Ms. Sergeant paid a cash
14 deposit and later returned to pay the balance by a further cash payment to the
15 Defendant. Upon the balance being paid the Defendant provided her with an
16 itinerary showing the outward flight to Canada as being on 29 July 2012. On 29
17 July 2012 Ms. Sergeant attended at the Airport to catch a flight only to find that
18 there was no ticket there for her to travel.

19
20 19. In relation to Counts 1, 2 and 3, it is submitted by Ms. Bodden that there is no
21 evidence of dishonesty. It is contended that there is no evidence that the
22 Defendant misapplied the funds paid or used them to pay for somebody else's
23 ticket. It is submitted that there is no evidence that when the itineraries were given

1 to the customers that the Defendant was misrepresenting that they would lead to a
2 ticket.

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4 **The Crown's Submissions and the Court's Conclusions**

5 20. The Crown contends that all counts should be left to the jury. Ms. Salako referred
6 the Court to *Shippey* [1988] Crim LR 767, which is especially relevant to the
7 second limb of *Gailbraith* and therefore Counts 1, 2 and 3 before me. Crown
8 Counsel submitted that the case means that when considering a submission of no
9 case to answer the Court must assess the evidence as a whole and not just parts of
10 the Crown's evidence. In *Shippey* although it was recognised that on a literal view
11 of *Gailbraith* it would have been left for the jury to review the significant
12 inconsistencies in the Crown's evidence which were clear when reviewing the
13 case as a whole. The Court determined that the review exercise of the evidence
14 was not one of "*taking out the plums and leaving the duff behind.*" The Court
15 found that the judge must assess the evidence and if it was "*self-contradictory*
16 *and out of reason and all commons sense*", that would enable him to find that it
17 was "*inherently weak and tenuous.*" As the authors of Blackstone point out at
18 para. D16.58 a series of cases after *Shippey* make clear that the decision in that
19 case should not be regarded as establishing a legal principle, but rather as being a
20 decision made on specific facts. The test remains that in *Galbraith*, but the Court
21 still has a requirement to consider the evidence as a whole, balancing its
22 weaknesses and strengths.



1 21. Ms. Salako reminded the Court of the wider evidence, in particular that given by
2 Ms. Sully which sets out the historical background and the events leading up to
3 July 2012. This included a review of the financial difficulties that the business had
4 endured over the years and the Crown's case that this was caused by the
5 Defendant's practice of issuing tickets to customers who had been offered credit
6 and who had not fully paid for their tickets. Reference was also made to the
7 contents of the interview in which the Defendant recognised her practice and the
8 consequences of it, namely that there would be difficulty in some customers
9 getting tickets unless she could "*sort it out.*" There is no issue that she was the
10 partner in the business who was responsible for the travel agent duties with
11 customers, which included ensuring that there tickets were properly processed.
12 She accepted in interview that the arrangement she had put in place meant that she
13 was "*robbing Peter to pay Paul*" and that she had been "*misappropriating funds.*"

14
15 22. Ms. Salako highlights that the evidence shows that Mr. Maun had fully paid up
16 for his ticket in April 2015 and by August 2015 a ticket had still not been issued
17 by the airline. Ms. Salako rightly submits that it is a matter for the jury to consider
18 whether at the time when Mr. Maun finished paying for his ticket, four months
19 earlier, whether the Defendant acted dishonestly by accepting his money leaving
20 him with the impression that she had purchased the ticket on his behalf knowing
21 that the money he paid was not going towards the purchase of his ticket, but for
22 some other purpose.

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1 23. Similarly, Ms. Salako is right to highlight the agreed fact that both Ms. Wright
2 and Ms. Sergeant, who had been advised by the Defendant that the Agency and to
3 whom they paid cash for the flights detailed by the Defendant and set out in the
4 itinerary provided by the Defendant, attended at the Airport and found they were
5 unable to travel as no ticket had been issued for each of them to travel. This is
6 evidence which is relevant to the respective count.

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8 24. For all of the counts the Crown must prove all of the following for each count,
9 namely that the Defendant:

- 10 • dishonestly obtained the cash
- 11 • belonging to the customers
- 12 • with the intention of permanently depriving them of it; and
- 13 • she did so by deception.



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15 25. In relation to Counts 1, 2 and 3, on the evidence before me I reject the submission
16 by Ms. Bodden on the second limb of *Galbraith* that the evidence is so tenuous
17 that a jury properly directed could not properly convict on it. The jury will have to
18 consider carefully the evidence of Mr. Maun and Mrs. Sully, the formal
19 Admissions and importantly the evidence of the Defendant in her interview to DC
20 Gary Dale Scott and also contained in her written prepared statement.

21

22 26. The Prosecution evidence in relation to Counts 1, 2 and 3 is such that its strength
23 or weakness depends on the view to be taken about the reliability of the

witnesses' evidence and other matters which are within the province of the jury. On one possible view of the facts, there is evidence on which the jury could properly come to the conclusion that the Defendant is guilty in relation to the three counts. Accordingly, I dismiss the Defendant's application in relation to Counts 1, 2 and 3 and leave them before the jury for their consideration.

27. In relation to Counts 15, 16, 18, 19, 25, 26 and 27 Ms. Salako highlights the late June and July 2012 dates, shortly before the business ceased trading, a time she submits that the evidence shows that the problems had reached the extent where tickets could not have been issued even under the scheme highlighted in the interview. Ms. Salako contends that the dishonesty was the Defendant receiving cash from the customers knowing the immediate dire financial state of the business. It is submitted by Ms. Salako that, although Ms. Bodden had highlighted that there is no evidence from the respective virtual complainant that their ticket was not issued, in relation to Counts 25 to 27 where the flights were to Jamaica there is evidence from Cayman Airways that tickets were not issued by the Agency in the name of the relevant virtual complainant. Ms. Salako contends that the jury can take notice that only Cayman Airways flies directly to Jamaica and therefore the jury may infer that tickets were not issued. Ms. Bodden rightly indicates that there is no evidence about the flight route to Jamaica being taken by complainants, and she added to the mix in her submissions that it could have been via Miami.



1 28. The Court recognises the predicament of Crown Counsel that some of the agreed
2 facts for certain of the abovementioned counts may be less detailed than others
3 because the Defendant was aware that the relevant Crown witness was unable to
4 attend the trial. However, it does not detract from the fact that although a jury
5 must consider the whole of evidence laid before it, it may only reach its verdict on
6 such evidence and not fill in the clear gaps in the evidence with what they feel
7 might be missing.

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9 29. Accordingly, having reviewed the evidence for the Prosecution in relation to
10 Counts 15, 16, 18, 19, 25, 26 and 27, I find there is no evidence that the tickets
11 were not processed and that the relevant virtual complainant was unable to fly on
12 the scheduled flight using tickets under the itinerary. Consequently there is an
13 essential element missing in relation to those counts. I find that on the evidence
14 before me, as a result of this missing essential element for Counts 15, 16, 18, 19,
15 25, 26 and 27 that I must uphold the submission of no case to answer and
16 withdraw these counts from jury's consideration.

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18 30. Ms. Bodden's no case submissions were made towards the end of the morning
19 session and at the commencement of the afternoon session on Friday. Upon
20 reviewing the transcripts from Friday it is clear that in the morning session she did
21 make detailed submissions in relation to Count 4. However, when the afternoon
22 session commenced Ms. Bodden was uncertain whether she had made any



1 submissions in relation to that count and indicated that she was not making any
2 submissions in relation to Count

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4 31. The arguments raised by her in relation to the counts set out in paragraph 29
5 above equally applied to Count 4. The agreed facts are that Ms. Aliaga attended at
6 the Agency and spoke to the Defendant who provided her with the details about
7 the price of a return ticket to Peru departing on 16 August 2012 returning on 10
8 August 2012. Ms. Aliaga paid for the ticket in full in cash and she was provided
9 with a flight itinerary by the Defendant. It is agreed that no tickets were issued by
10 Cayman Airways to the Agency in Ms. Aliaga's name, but there is no evidence
11 that this Peru flight would have been one handled by that airline and there is no
12 evidence that Ms. Aliaga was in fact unable to take the flights set out on the
13 itinerary. The Court has a duty to review the evidence at this stage. Even if a no
14 case submission is not made in relation to a specific count. Having regard to the
15 confusion about submissions made in relation Count 4 on Friday I have afforded
16 Counsel an opportunity to make further submissions on that count this morning.
17 Having received those additional submissions, for the same reasons outlined in
18 paragraph 29 above, I find there is no case to answer in relation to Count 4 and I
19 also withdraw that count from the jury's consideration.

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HON. RICHARD N. WILLIAMS
JUDGE OF THE GRAND COURT

