In The Supreme Court of Bermuda

CRIMINAL JURISDICTION
Case No. 22 of 2021

BETWEEN:

THE KING

-and-

BAMBI PIMENTAL

Before: **The Hon. Mr. Justice Juan P. Wolffe**

Appearances: Mr. Adley Duncan and Ms. Shaunte Simons-Fox for the Prosecution
Ms. Victoria Greening for the Defendant

Dates of Hearing: 28th November 2024
Date of Sentence: 30th December 2024

SENTENCE

Theft of $706,436.32 – Fraudulent False Accounting by a Clerk or Servant – Using Criminal Property - Breach of Trust

WOLFFE J:

1. On the 6th October 2024 a Jury unanimously found the Defendant guilty of three (3) offences: (i) Theft, contrary to sections 331 and 337(1) of the Criminal Code Act 1907 (the "Criminal Code"); (ii) Fraudulent False Accounting by a Clerk or Servant, contrary to section 397(1)

of the Criminal Code; and (iii) Using Criminal Property, contrary to section 45(1)(b) of the Proceed of Crime Act 1907 (the "POCA").

2. The offences involved the Defendant stealing the sum of $706,436.32 between the 29th June 2016 and the 4th June 2020 while she was employed as a bookkeeper for a company known as J.W. Gray & Company Ltd. (the "Company").

Evidence at Trial

3. In less than a two (2) hour period (which would have included the time designated for lunch) the Jury returned with its verdicts thereby registering a comprehensive acceptance of the Prosecution's case and an absolute rejection of the Defendant's defence.

4. The Prosecution's case was basically that in or around 2015 Mr. Jonathon Gray, the owner of the Company, engaged the Defendant to carry out bookkeeper/accountant services on an *ad hoc* basis. However, in or around January 2016 his wife Mrs. Susan Gray, who had been reconciling the Company's financial books prior to that time, decided to take a step back (she was not a qualified bookkeeper or accountant). As a result, the Defendant took on a more direct role as a subcontractor and she worked out of a home office which was attached to the Grays' residence. Her duties were to pay the bills, do weekly payroll for the employees, and inputting and recording the Company's accounts into the "Quickbooks" accounting software. To enable her to do this Mr. Gray gave the Defendant unfettered security access to the Company's online banking system which was held at Bank of N.T. Butterfield. Therefore, from January 2016 and up to June 2020 no one was supervising the Defendant's access over the Company's accounts because the Defendant, Mr. Gray said, represented herself as a professional and someone who was skilled as accounting. Mr. Gray further said that professional trust was in place.

5. The terms of the Defendant's contract for services, which was set out in email exchanges, was that she was to work Mondays to Fridays, 25 hours per week, and at $40 per hour. In this regard, she would normally report to work at 8.30am/9.00am and leave by

1.00pm/1.30pm. Since the Defendant was in charge of payroll she was allowed to pay herself every Thursday. Mr. Gray gave evidence that during the entire time that the Defendant was providing the services i.e. from January 2016 to June 2020, her hourly rate of $40 per hour never changed. Further, that he did not instruct the Defendant to take any more money that what she was contractually entitled to.

6. Mr. Gray went on further to say that between 2015 and June 2020 the Company had a lot of business and that they were taking measures to be more efficient. His employees were working incredibly hard, but that in June 2020 it seemed like there was not much money in the Company's account. So he and his wife decided to review the Company's accounts and bank statements to see what was going on. To their surprise and shock they discovered that the Defendant was paying herself far more and far more frequently than what was contractually agreed. By their calculation at that time it worked out to be about $180,000 overpayment to the Defendant. He said that he would have expected to have seen an amount of about $1,000 per week being paid to the Defendant, but he saw many instances where the Defendant was paying herself three (3) times that amount and even tens of thousands of dollars more. He could not think of any reason why the Defendant would do this, and at no time did the Defendant come to him or his wife to tell them that she was doing this.

7. Mr. Gray said that he was crushed to find this out and that it was a painful realization that someone who he and his wife trusted would do something like this. So on the 9th June 2020 he decided to confront the Defendant in the home office about what they found and he decided to clandestinely record the conversation with her (the recording was made an exhibit at trial). During the recorded conversation he told the Defendant about what he and his wife had discovered and he asked her why she took the money. The Defendant initially kept saying that what Mr. Gray was saying could not be right, but eventually she confessed to taking the money. She said that she was sorry and that she was having a conversation with herself every week to stop what she was doing.

8. After the 9th June 2020 there was communication between Mr. Gray and the Defendant via emails and WhatsApp messages. In one of the emails the Defendant said that she had

"borrowed" the money and Mr. Gray corrected her as no borrowing had taken place. The Defendant retracted her comment that the money was borrowed.

9. The Prosecution called a Mr. Jordan Gunter and a Mr. Anthony Cupidore, both of whom worked for the Company in different capacities during the material time. They gave evidence that on two separate occasions in June 2020 the Defendant called each of them and in effect told them that she had taken a lot of money from the Company and that she apologized to them for doing so.

10. It was the Prosecution's case, which the Jury must have accepted, that in the recorded conversation on the 9th June 2020, in the subsequent emails to the Grays, and in the Defendant's conversations with Mr. Gunter and Mr. Cupidore, that the Defendant confessed to stealing money from the Company.

11. In subsequent weeks Mr. Gray looked deeper into the Company's accounts and discovered many more treacherous activities of the Defendant. He said that he saw a further $500,000 stolen by different methods. He eventually called the police and handed over all of the Company's financial documents as well as the recorded conversation of the 9th June 2020.

12. The Prosecution tendered a Mr. Todd Boyd as an expert who was tasked with looking at the banking records of both the Company and the Defendant. Specifically, to analyze transactions made by the Defendant from the Company's bank account to the Defendant's three (3) separate bank accounts. Mr. Boyd stated that giving the Defendant the benefit of the doubt that if the Defendant worked 5½ hours per day for 5 days a week at $40 per hour (i.e. as contracted) then she may have been entitled to the sum of $225,830 for the 4 year period. He further said that if you subtract this figure from the total sum of $932,266.32 which the Defendant actually transferred from Company's account and into her personal accounts then the excess amount is $706,436.32 i.e. the sum which the Prosecution said and which the Jury found that the Defendant stole. It should be highlighted that there was no dispute that from June 2016 to June 2020 that the Defendant transferred $706,436.32 from the Company's bank account to her bank accounts.

13. Mr. Boyd concluded that in order to steal $706,436.32 from the Company the Defendant employed two (2) primary methods:

    (i) She did unauthorized payroll transfers to herself; and,
    (ii) She did unauthorized direct bank transfers to her individual bank account and to a joint bank account shared by her boyfriend Mr. Christopher Britto.

14. Further, that to conceal her theft the Defendant:

    (i) Falsified the bank payroll computer records.
    (ii) Falsely backdated and post dated transactions in Quickbooks so that expenditures would not be reflected on the Company's financial statements.
    (iii) Mislabeled the nature of the Company's expenditure in the Company's financial statements.

15. The Defendant elected to give evidence in her own defence. A defence which the Jury roundly rejected. She told the Jury that:

    - She initially agreed to do bookkeeping and payroll for the Company at $40 per hour but that around about June 2016 she started to do additional type of work, such as: reconciliations, work permit applications, drawing up employment contracts, interviewing prospective employees, creating business spreadsheets, doing inventory management, arranging for drug testing of employees, bookkeeping at the Gray's other businesses, running personal errands for the Grays, and paying personal bills for the Grays (the "additional work").

      She stated that in respect of this additional work she and Mr. Gray agreed that her salary would increase from $40 per hour to $80 per hour, $145 per hour, and $225 per hour depending on the nature of the work that she carried out. She said that she was working 6 to 8 hour days for the Company.

The Defendant further said that Mr. Gray told her not to tell anyone, including Mrs. Gray, about the increases in her salary. Also, that she inputted her salary in Quickbooks as a "material" expense so that it would not look like the payments were going to her. She said that it was posted this way because Mr. Gray did not want it to show as wages. She accepted that Mr. Gray did not direct her how to post the payments to herself and nor did he instruct her how to do it.

- She would submit invoices for the work that she would have done, and that they would be created on a word template. In this regard, she adduced into evidence invoices dating from February 2016 to June 2020 which she said that she kept in a folder at the office. She explained that her invoices were always behind and that she would often submit them 3 months after they would have been created.

  She also said that Mr. Gray did not look at the invoices and nor did he ask her for them, but that she put them in a side drawer in the office.

  She added that when she left the Company in June 2020 she was owed $30,000 by the Company.

- When she spoke to Mr. Gray on the 9th June 2020 she was under the assumption that she had paid herself too much and owed him money.

- When she went back home on the 9th June 2020 Mr. Gray called her in the afternoon and said that he wanted the deeds to her house and to her condo, and, that he called her a few times thereafter and was pressuring her about the amount that he said she had taken. She said that when she was in the Gray's home office Mr. Gray would ask many questions about her house and how she was able to pay off the mortgage.

  She said that she earned all of the money honestly and that the only reason why Mr. Gray made a complaint to the police about theft was because he wanted the deeds to her house. She accused Mr. Gray of setting her up.

She accepted that none of this was put to Mr. Gray in cross-examination by her Counsel when Mr. Gray was in the witness box and neither was it in her Defence Statement.

- She received five (5) loans from the Company, mostly in the sums of $4,900. She said that Mr. Gray had offered her money on three (3) occasions and that she had an "open and blanket invitation" to just take the money.

  She could not speak to any terms of repayment of any loans and she accepted that she never paid back any of these so-called loans.

16. In subsequent paragraphs I will make reference to other pieces of explanatory evidence which were heard at trial.

Sentencing Guidelines

17. Section 337 of the Criminal Code stipulates that a person convicted on indictment of theft is liable to receive a maximum sentence of 10 years imprisonment and/or a fine of $100,000.

18. Section 397 of the Criminal Code provides that a person convicted on indictment of false accounting while a clerk or servant is liable to receive a maximum sentence of 2 years imprisonment.

19. Section 45 of POCA states that a person convicted on indictment of using criminal property is liable to imprisonment for 20 years or an unlimited fine or both.

20. Mr. Adley Duncan for the Prosecution submits that the Defendant should receive: 10 years imprisonment for the theft of the $706,436.32 (Count 1); 2 years imprisonment for the fraudulent accounting offence (Count 2); and 10 years imprisonment for using criminal property (Count 3). He further submitted that the sentence for Count 2 should run concurrent

with Count 1, but that the sentence for Count 3 should run consecutive to the sentences for Counts 1 and 2. Thereby totaling a sentence of 20 years imprisonment.

21. On behalf of the Defendant Ms. Victoria Greening argued that the Defendant should receive less than 7 years imprisonment for the theft offence; less than 2 years imprisonment for the fraudulent accounting offence; and a maximum of 10 years imprisonment for using criminal property. Further, that all sentences should run concurrent with each other thereby leaving a total sentence of 10 years imprisonment.

22. I shall now therefore take each of the offences in turn.

Theft

23. Unfortunately, over the past 3 to 5 years there has been a deluge of offences committed by persons who have stolen significant amounts of money whilst they were in a position of trust. Therefore, and again unfortunately, there has been an accumulation of sentencing precedents as a result. Authorities such as *R v. Diedre Woolgar, Case No. 25 of 2018, The Supreme Court of Bermuda (10th September 2020)*, *R v. Nancy Vieira [2023] SC (Bda) 53 Cri. 21 June 2023*, and more recently *R v. Tyrone Quinn, Case No. 27 of 2021, The Supreme Court of Bermuda (7th June 2024)*. The jurisprudential root of all of these authorities is the seminal case of *R v. Barrick (1985) 7 Cr.App.R.(S) 142*. In paragraphs 32 and 33 of *Quinn* I quoted and stated the following in respect of *Barrick*:

> *"32. ……*
>
> *The forty-one (41) year old appellant in Barrick was employed to manage a finance company so that the owner could concentrate his attention on other business ventures. The attractive credentials of the appellant was that he was a former police officer and a security guard employed by a Government Department. Once employed the appellant had a clear run of the company as to how the finance company should be managed, and, the owner allowed the appellant to have money as the appellant so required. The owners implicitly trusted the appellant. However, after some time it became clear that the appellant was misappropriating funds from the company's accounts, and, upon closer scrutiny it was revealed that a great*

number of the accounts were bogus. An accountant examined the books and discovered that the company lost about £9,000 (and possibly more). The money was stolen from private individuals who could not afford to take the loss…..

The appellant was charged with false accounting, theft, and obtaining property by deception offences and after a trial before a jury he was convicted of the offences. At his sentencing hearing his lawyer, in mitigation, pointed to: his good character; his age at the time of the offence; no previous convictions; and, that he served as a police officer and that any term of imprisonment would be extremely deleterious and unpleasant for him. The appellant was sentenced to two (2) years' imprisonment on each count to run concurrently and he subsequently appealed this sentence to the Court of Appeal."

33. *Describing the offences committed by the appellant as "mean", Lord Lane CJ said:*

"The type of case with which we are concerned is where a person in a position of trust, for example, an accountant, solicitor, bank employee or postman has used that privileged and trusted position to defraud his partners or clients or employers or the general public of sizeable sums of money. He will usually, as is in this case, be a person of hitherto impeccable character. It is practically certain, again in this case, that he will never offend again and, in the nature of things, he will never in his life be able to secure employment with all that that means in the shape of disgrace for himself and hardship for himself and also his family."

and,

"In general a term of immediate imprisonment is inevitable, save in very exceptional circumstances or where the amount of money obtained is small. Despite the great punishment that offenders of this sort bring upon themselves, the court should nevertheless pass a sufficiently substantial term of imprisonment to mark publicly the gravity of the offence. The sum involved is obviously not the only factor to be considered, but it may in many cases provide a useful guide. Where the amounts involved cannot be described as small but are less than £10,000 or thereabouts, terms of imprisonment ranging from very short up to about 18 months are appropriate…….Cases involving sums of between £10,000 and £50,000 will merit a term of about two to three years' imprisonment. Where greater sums are involved, for example those over £100,000, then a term of three and a half years to four and a half years would be justified."

34. *Instructively, Lord Lane CJ also set out the factors which should be taken into consideration when sentencing for this species of cases. He said that:*

"The following are some of the matters to which the Court will no doubt wish to pay regard in determining what the proper level of sentence should be: (i) the quality and degree of trust reposed in the offender including his rank; (ii) the period over which the money or property dishonestly taken was put; (iii) the use to which the money or property dishonesty taken was put; (iv) the effect upon the victim; (v) the impact of the offence on the public and the public confidence; (vi) the effect on fellow-employees or partners; (vii) the effect on the offender himself; (viii) his own history; (ix) those matters of mitigation special to himself such as illness; being placed under great strain by excessive responsibility or the like; where, as sometimes happens, there has been a long delay, say over two years, between his being confronted with his dishonesty by his professional body or the police and the start of his trial; finally, any help given by him to the police."

24. In *Vieira* (paragraph 29) I cited the authority of *R v. Clark [1998] 2 Cr.App.R. (S.) 95* in the following way:

"29. ……..Clark was a case in which the appellant was a bursar of a charitable body and a treasurer of a local church and he stole £400,000 from his employer and £29,000 from the church over a period of 4 years. In reducing his initial sentence of 5 years imprisonment to one of 4 years imprisonment Rose LJ said that:

"The offences were aggravated by the degree of trust reposed in the appellant, by both his employers and the church, by the period of four years over which the offense were committed, and by the fact that the proceeds were spent on personal expenditure, partly of an extravagant kind. The appellant's good character, to which three written references before the Court speak, and his frankness, co-operation and pleas of guilty at the first available opportunity, all mitigate sentence in this case. It is also significant that he has repaid some £120,000 to those who have suffered from his depredations. We bear in mind that the appellant's family are now living in much reduced circumstances, and that there have been other reasons for distress in the family."

30. Clark also represented an inflationary increase in the guidelines enunciated by Lord Lane CJ in Barrick and to this Rose LJ in Clark, noting the increased scale and complexity of white-collar theft and fraud, commented that:

"In light of all these circumstances, we make the following suggestions. We stress that they are by way of guidelines only and that many factors other than the amount involved may affect

> *sentence. Where the amount is not small, but is less than £17,500, terms of imprisonment from the very short up to a 21 months will be appropriate; cases involving sums between £17,500 and £100,000 will merit two to three years; cases involving sums between £100,000 and £250,000, will merit three to four years; cases involving between £250,000 and £1 million or more will merit between five and nine years; cases involving £1 million or more, will merit 10 years or more. These terms are appropriate for contested cases. Pleas of guilt will attract an appropriate discount. Where the sums are exceptionally large, and not stolen on a single occasion, or the dishonesty is directed at more than one victim or group of victims, consecutive sentences may be called for."*

25. Taking all of this into consideration, in ***Vieira*** I landed at the following guidelines sentences for persons who have been convicted of like offences and when in a position of trust:

Less than $20,000	6 months to 2 years' imprisonment
$20,000 to $50,000	2 to 4 years' imprisonment
$50,000 to $100,000	4 to 6 years' imprisonment
$100,000 and over	6 to 10 years' imprisonment

26. I will not depart from these ranges for the purpose of sentencing the Defendant. However, and I will say more about this later, the particularly disturbing circumstances in this case loudly calls out for the maximum sentencing tariffs for the offence of theft to be adjusted upwards by the legislature.

27. One aspect of the sentencing regime which I did not canvas in ***Vieira*** is the imposition of fines. Section 337 of the Criminal Code provides that a theft offender can be sentenced to a period of incarceration and also be ordered to pay a fine. Moreover, section 70F of the Criminal Code states that the Court which convicts a person of an offence may fine the offender *"in addition to any other sanction that the Court is authorized to impose"*. In the vast majority of theft matters there is wisdom and efficacy in not imprisoning an offender (if that is the sentence) and also fining them. This is mainly because it would often be impossible for the offender to pay the fine whilst they are behind bars and at the least be difficult for them to pay the fine soon after being released from custody (the lengthier the

imprisonment the more difficult payment of a fine will likely be). In many instances it therefore makes no sense for a Court to make an order which can never be met by an offender.

28. There are also cases where the period of incarceration appropriately reflects the gravity of the offence and there is therefore no need or justification for sentencing the offender further to a fine.

29. However, there are cases where imposing imprisonment and a fine would not only be reasonable but would also meet the Court's overarching objective of ensuring that offenders are fully held to account for their criminal conduct. The following are factors which the Court may have regard to when deciding whether to sentence a theft offender to imprisonment and to a fine (whether or not the offender is in a position of trust):

(i) Whether the offender was found guilty after a trial.
(ii) Whether the circumstances of the offence are at the higher end of the seriousness scale.
(iii) The value of the property stolen.
(iv) The means or assets of the offender at the time of committing the offence, at the time of conviction, and at the time of sentence.
(v) Whether the offender took steps to dissipate or conceal their means or assets after the commission of the offence (including after being charged), at the time of conviction, or at the time of sentence.
(vi) The ability of the offender to pay the fine whilst incarcerated and/or upon release from custody (which can be reviewed periodically).

30. In respect of what amount the offender may be fined after taking the above into consideration I suggest the following guidelines (which are consistent with the dim view which the legislature took when setting the sentencing tariffs for theft offences):

Amount/Value Stolen	Amount of Fine

Up to $20,000	$500 to $5,000
$20,001 to $100,000	$5,001 to $25,000
$100,001 to $500,000	$25,001 to $50,000
$500,001 and over	$50,001 to $100,000

31. The above suggested fines can also be applied where the sentencing judge decides not to impose an immediate custodial sentence (including a suspended sentence) and only decides to order that the offender pay a fine. Although it is more likely than not that an offender who has stolen significant amounts will inevitably receive an immediate sentence of imprisonment.

32. To be clear, the imposition of a fine in addition to a period of incarceration is purely one of discretion for the sentencing judge. Therefore, even if all of the above-mentioned factors are present in a particular case it will still ultimately be for the sentencing judge to determine whether, in the circumstances of the case before them, a fine and a period of incarceration should be served by the offender. In arriving at such a determination, the Court will of course have regard to the totality principle so as to ensure that the total sentence (a term of imprisonment and a fine) is not unfair to the offender.

Fraudulent False Accounting

33. Neither Counsel put before me sentencing precedents for the offence of false accounting, however some guidance can be gleaned from the aforementioned authority of ***Barrick***. The defendant in ***Barrick*** was convicted of false accounting and received a sentence of two (2) years imprisonment (he also received two (2) years imprisonment each for theft and obtaining property by deception offences). It should be noted that the defendant was convicted of stealing £9,000 by the creation of numerous bogus accounts.

34. It is unclear as to what was the maximum sentence in the UK in 1985 (when ***Barrick*** was decided) for the offence of false accounting. But considering that the amount of $706,436.32

stolen in the case at bar is significantly more than the amount stolen in ***Barrick*** I see no reason why the sentence of two (2) years in ***Barrick***, as well as the factors to which the Court should have regard when sentencing a theft offender, cannot be used as guidance in the case at bar.

Using Criminal Property

35. As with the false accounting offence neither Counsel handed up any sentencing authorities for those convicted of using stolen property. However, with the maximum sentencing for such offences being one of 20 years imprisonment and an unlimited fine one can comfortably conclude that the legislature was of the view that such offenders should be treated extremely harsh.

36. Possible factors which can be taken into consideration when sentencing an offender for using stolen property are (i) the value of the property used, and (ii) the use to which the property was put. Obviously, the higher the value of the property used and the more materialistic use to which the property was put should generate sentences at the higher end of the spectrum.

37. Taking the above sentencing guidelines into consideration I shall now direct my attention to what should be the appropriate sentence for the Defendant for each offence.

Decision

38. Having presided over countless criminal matters involving offenders who were convicted of rather heinous violent crimes I can say without fear of contradiction that I have not seen more despicable crimes than those committed by the Defendant. Nor have I dealt with a more remorseless and heartless defendant. Not only did the Defendant not take unequivocal responsibility for habitually pilfering an enormous sum of money from two people who showered her with unconditional kindness and trust, but she also entered the witness box doggedly determined to shamelessly lie and fabricate evidence against them in order to escape her dastardly deeds.

39. To make matters worse (if they could even be made worse), the Defendant had the unmitigated temerity to malign the very Jury which was tasked with the monumentally difficult task of assessing the depths of her deceit during the trial and no doubt when they were in the deliberation room considering their verdicts. This would have involved the Jury wading through reams of documentation which clearly revealed beyond a reasonable doubt the manner in which the Defendant effectuated her crimes and the extent to which she was prepared to go to conceal them. Yet, in her Social Inquiry Report ("SIR") dated 12th November 2024 the Defendant not only repeated the fragile web of lies that she spewed at trial but she brazenly went on to say the following about the Jury:

> *"I had jurors who were not smart enough or understanding. I'm mad at the jury that I had."*

40. In actuality, the Jury were indeed more than smart enough to dissect and see through the obfuscation and errant lies which the Defendant attempted to serve them. The fact that the Jury were able to do this is what really rankles the Defendant.

41. But it was the Defendant's deplorable conduct at trial which was entirely intolerable. There was no doubt that the Defendant possessed an unrelenting intention to employ every dishonest means necessary to extract a not guilty verdict from the Jury. This is even though at the time of being found out in June 2020 the Defendant confessed to stealing the money on about five occasions to Mr. Gray, Mr. Gunter, and to Mr. Cupidore (as set out in earlier paragraphs where I cover the evidence heard at trial).

42. I primarily speak of the grossly unfair extent to which the Defendant attempted to publicly impugn the good characters of the Grays. What she did was far outside the bounds of acceptable behavior for any individual. Accusing Mr. Gray of making the allegations in order to get her house and stating that the Grays' marriage was shaky and that is why Mr. Gray did not want to tell Mrs. Gray about her pay increases, were all bull-faced lies which were soundly rejected by the Jury.

43. I also speak of the Defendant audaciously adducing into evidence fabricated invoices which she continuously lied that she submitted them to the Grays at various times while she was doing bookkeeping work for them. It must have been cringing for the Jury to have been handed invoices which obviously were devoid of any authenticity and/or provenance. I have presided over many trials in which witnesses, for both the Prosecution and the Defence, have incessantly lied. However, the Defendant took her lying to a whole new unprecedented lower level by not only orally telling falsehoods but by also taking the time and energy to create false documents which she then put before the Jury claiming them to be genuine.

44. As the Jury exited the Courtroom after delivering its verdicts it was immediately evident that the entire trial was an uneconomical use of the Court's time and resources. For the overwhelming majority of matters which proceed to and through trial there are cogent and justifiable reasons for a defendant to advance a particular defence. However, if there ever was an example of an offender abusing the sacrosanct tenets and principles of the criminal justice system then the Defendant would be the poster child.

45. All of this will not go unnoticed by me and it will be factored into the sentences which I impose on her.

Mitigating features

46. There is only one mitigating feature to consider and that is that the Defendant has no previous convictions (the Defendant made no mention of being placed under any great strain or illness). However, given the reprehensible circumstances of this case (including the manner in which the Defendant conducted her defence) the extent to which I do so is minimal at best.

47. Moreover, I give absolutely no credence to what individuals said about the Defendant's character in the SIR as they were and still are being hoodwinked by her despite her convictions by a unanimous jury. One such person, Mr. Christopher Britto (the "common law husband" of the Defendant and whose name featured during the trial as being the joint

account holder of one of the bank accounts to which the Defendant illegally transferred the Company's money into), not only vehemently asserted that the Defendant was innocent but he too went on to disparage the Jury when he said:

> *"It's like the jury seemed to have it out for her in the beginning. Their minds seemed made up for them to come back with the verdict so quickly!"*

48. Clearly, with people like Mr. Britto in her orbit the Defendant will likely never express any regret or remorse for what she did to the Grays and she will therefore only be bolstered in her wrongdoing. The contents of the SIR illustrate this. The entirety of the nine (9) pages of the SIR are replete with the Defendant expressing that she is the victim of the Grays and of the criminal justice system. This is simply unbelievable, and it leads me to outright reject the SIR's author's opinion that the Defendant appears to be of a low risk of reoffending and of low need for rehabilitative services. There is no doubt in mind that with the Defendant refusing to accept responsibility for her actions, and the fact that her criminal conduct has not been recognized by those who are close to her, that there is a much higher likelihood that she will pounce on future unsuspecting and trusting victims and steal their hard earned money.

Other factors to be considered

49. Lord Lane CJ must have had in mind cases such as the case at bar when he rendered his prophetic decision in ***Barrick***. Most, if not all, of the factors enunciated by Lord Lane CJ are present in this matter. Particularly:

Prevalence of the offence: I repeat the following words which I wrote in ***Vieira*** in which I referred to the ***Woolgar*** matter:

> *"I commented in Woolgar that "white collar" crimes should be seen as more serious than the garden variety thefts that come before the Courts. I have also stated in another place and at another time that while white collar crimes do not capture the headlines of the print and electronic they can be as serious or even more serious than violent offences which are often splashed on the front pages of the media…….With*

the prevalence of white collar crime on the rise, and with the devastating emotional and financial effects which such offences will undoubtedly have on the victims, the offences committed by the Defendant, who was in a position of trust, should occupy a spot at the most severest end of the seriousness spectrum."

As I stated earlier, the Courts have been inundated with theft offences being committed by persons who have been placed in position of trust. It may be that the message that the Court must and will deal with such offenders to the fullest extent of the law has fallen on deaf ears, and if it has, then it is imperative that any sentence meted out to the Defendant reinforces the message.

The nature and seriousness of the offence: While theft offences are common in the Courts the amount of money stolen by the Defendant and the means by which she employed to steal and conceal the money firmly places this case into a very small class of circumstances which reside at the extremity of the highest end of the seriousness scale.

It goes without saying that the sum of $706,436.32 is a whopping figure which when stolen would cause even the most financially privileged victim unimaginable grief. Surely this does not require any further elucidation.

Equally serious though is the orchestrated, complex and covert way the Defendant went about taking the money from the Company's account and funneling it to three (3) of her personal bank accounts. Forensic accountant Mr. Boyd stated that in order to conceal the stealing of the $706,436.32 the Defendant did the following:

(i) Falsified the bank payroll computer records by printing and submitting to the Company, for its office records, a hardcopy of an unprocessed or unfinalized list of employees, and the amounts which they were paid. This would misrepresent to the Grays the full list of employees who were paid that month. But the Defendant would then go back into the bank computer system about an hour later and then add her name to the list and input unauthorized payments to herself.

The Defendant would then process/finalize the list of employees with her name on it and the amounts that she paid to herself (typically $3,600 per week). But, she would then conceal this falsified list of payroll payments from the Company and Mr. Gray by not printing and putting the process/finalized payroll transaction and confirmed employee list in the Company file. Therefore, the Grays would not have known that she paid herself exorbitant amounts of money or that their payroll was 20% higher than normal. Mr. Boyd said that the Defendant was not an employee and therefore she should not have placed her name on the list of employees.

(ii) Falsely backdated and postdated transactions in Quickbooks so that the expenditures would not be reflected in the financial statements which she reported to Mr. Gray. In doing this, the Defendant did not generate an invoice and she would then pay herself. On many occasions she would date the payment into the future but still pay herself (that is, she was paying herself in advance). Mr. Boyd explained that by pre- and post-dating the payments to herself months in the past and into the future that it would not be reflected in the current profit and loss calculations. So the Grays would not see the payments if they were looking at the current financial reports. On one occasion the Defendant backdated a payment to 4th May 2014 which was at a time that she did not even work for the Company (she started working for the Company in 2015).

(iii) Misrepresented the nature of the expenses in the financial reporting which she produced, such as labelling direct payments to herself in the Quickbooks computer software as direct "materials" costs.

Mr. Boyd said that the Defendant would put legitimate employees' pay under "payroll" costs in Quickbooks but put her own pay as "materials". In other words, she would not label the payments to herself as "Professional Fees" or "Salary Costs", but she would label them as "Material Costs". In some instances, the entries did not reference what invoice they referred to and/or they did not have any descriptions.

> By doing this it was not obvious to the Grays that the Defendant was paying herself because the money she transferred to herself would be blended in with other material costs which given the nature of the business would not have seemed abnormal to the Grays. So, when the Grays looked at the Profit/Loss statement of the Company the amount which the Defendant paid to herself would not be reflected.

Essentially, this was not a one and done "hit-over-the-head-in-a-back-alley" type of theft. This was a theft by an offender who used her specialized knowledge of the Quickbooks accounting software and of the banking system, which included her knowledge of their weaknesses, to carry out her nefarious objectives. In many ways what the Defendant did was far worse than most offences involving theft with violence because of the detailed and long-term sophistication of what she did.

The quality and degree of trust reposed in the Defendant: The Grays unreservedly put the financial health of the Company into the Defendant's hands. The Grays brought the Defendant on board because Mrs. Gray no longer had the accounting acumen to carry out the Company's burgeoning financial matters and they needed someone like the Defendant to take over. They placed so much trust in the Defendant to do right by them that over the relevant four year period they did not even check the Company's bank statements on a regular basis.

They trusted the Defendant so much that they altruistically did unconditional favours for the Defendant. For example, there was a time when the Defendant's roof needed to be fixed and Mr. Gray did so without any cost to her; and another time they, again at no cost to the Defendant, Mr. Gray gave the Defendant a generator so that her mother could continue to receive oxygen.

This is exasperated by the fact that the Defendant carried out the fraudulent transactions in the Grays' home office (out of which she worked). The Defendant quite literally stole $706,436.32 right from under the Gray's noses.

The period over which the money was taken: It appears that the Defendant concocted her plan to steal from the Grays rather early on into her time of working for them. It was in January 2016 that the Defendant started to work for the Grays on a more permanent albeit part-time basis. But she wasted no time whatsoever because a mere five (5) months later, presumably after assessing the weaknesses in the Gray's accounting and the strength of their trust in her, she commenced putting her hands into the proverbial cookie jar. She enjoyed the fruits of her thievery over a four (4) year period which only stopped because of concerns which the Grays had about the financial state of the Company.

Of note is the extraordinary number of wrongful transactions which the Defendant carried out over the four years in order to steal over $700,000 from the Grays. Mr. Boyd gave evidence that:

(i) The Defendant did 177 transactions and transferred $530,512.87 from the Company account to her personal bank accounts by falsifying bank payroll records.

(ii) The Defendant did 275 transactions and stole $175,923.45 by falsely backdating and postdating transactions in Quickbooks.

In total the Defendant carried out 452 fraudulent transactions in order to steal the $706,436.32. Considering Mr. Boyd's evidence that the Defendant started out with small transactions which ballooned into larger amounts as time progressed it is plain to see that after each fraudulent transaction the Defendant became increasingly emboldened to steal more and more from the Grays.

The use to which the money was put: From the evidence of Mr. Boyd it is evident that the Defendant used the money that she stole from the Company for flagrancies of luxury and

leisure. He adduced into evidence a graph highlighting the payments which the Defendant made to herself over the 4 year period, and it showed that on one occasion in January 2020 the Defendant paid herself an amount which was in excess of $40,000. On another occasion in November and December 2019 the Defendant made payments to the Disney Resorts (aka Disneyworld) totaling $27,512.79, and, there was also a payment to an overseas marine company in the sum of $11,828.74. Most glaringly, was Mr. Boyd's evidence that 25% of the Company's money which the Defendant transferred into her accounts went to service her $1,399,446.55 mortgage.

The upshot of Mr. Boyd's evidence was that the Defendant used the Company's money to finance personal expenditures and was living the life of Riley off the Company's dime.

The effect upon the Grays: It is apparent now as it was during the trial that the Grays have been immensely shaken up by what the Defendant did to them and to the Company. Through tear filled eyes whilst in the witness box Mrs. Gray expressed that she experienced deep distress and shock when she discovered the magnitude of what the Defendant did to her and her husband. The Defendant was someone who was their neighbour who she treated as a friend and who she would often exchange gifts with. In her Victim Impact Statement ("VIS") dated 31st October 2024 Mrs. Gray stated that the Defendant has brought *"an unimaginable level of mistrust, hurt, and public humiliation"* to her entire family, and that the sordid experience has drained her self-confidence and left her feeling exposed and vulnerable. She went on to say in her VIS that:

> *"Emotionally, the process was especially painful. Being cross-examined in court and having my integrity and relationship with my husband questioned was agonizing. Sitting in the courtroom, watching Jonathon endure these attacks, and feeling his anger and frustration was absolutely heart-wrenching"*.

In his VIS dated the 27th October 2024 Mr. Gray stated that the defrauding behavior of the Defendant has had lasting emotional and financial consequences for him, and that the feeling of betrayal has been overwhelming and painful. As to the unfair personal attacks beset upon him at trial by the Defendant he said the following:

"During the trial, I was subjected to false defense statements that questioned my integrity and personal relationships. These unfounded claims were not only deeply hurtful but also humiliating……Her lack of remorse and the lies she presented only confirm the depths of her betrayal and the unwillingness to acknowledge the harm she has inflicted."

No doubt the Grays woes will continue well into the future. They may never restore the trust that they may have had in professionals prior to being victimized by the Defendant, and there is a very real possibility that they and their Company will be forced to adjust financially because of losing over $700,000.

The impact of the offences on the public and public confidence: Mr. Gray aptly underscores this factor in his VIS when he says:

"This experience has eroded my confidence in others, particularly those who hold positions of trust. As Bermudians, we have a deep belief in the strength of community values – trust, understanding and mutual respect. Now, I struggle to feel the same security and comfort within my community, as this crime has shaken the very foundation of those principles."

Whether one is a bookkeeper or a fully credentialed accountant, members of the public place a lot of confidence in them to help them navigate through a specialized financial process which the ordinary layperson has little or no working knowledge of. In most instances bookkeepers are employed by their clients to either relieve them of a financial morass which they may have found themselves in or to assist them with taking the next step in growing their business. To do this a bookkeeper is given full access to their client's financial history and in many instances to their client's business vulnerabilities. One can therefore understand that when that confidence is broken by a criminal act of the professional it can have a devastating impact on the client. What the Defendant did to the Grays not only has shaken the Grays' confidence in such professionals but any member of the public knowing what the Grays have been through are more likely than not to look at bookkeepers with caution and maybe even suspicion.

Moreover, the multitude of bookkeepers and accountants who carry out their duties in accordance with their professional principles and with honesty have every right to be aggrieved by what the Defendant did. In one fell swoop the Defendant may have singlehandedly brought their honourable professions into disrepute, and they are probably now compelled to take definitive steps to restore whatever public confidence which may have been lost in them by the conduct of the Defendant.

Sentence in respect of the Theft Offence (Count 1)

50. In sentencing the Defendant I take into account the above-mentioned sentencing guidelines, the mitigating feature and the other sentencing factors. I am also however moved to factor in the manner in which the Defendant conducted herself at trial and upon conviction. Particularly: the continuous and unrelenting telling of lies; the fabrication of evidence; the unwarranted disparagement of the Grays; her stubborn refusal to express any degree or remorse or regret; and her abject disrespect for the Jury and for the criminal justice system.

51. I therefore sentence the Defendant to the maximum sentence of 10 years imprisonment for the theft of $706,436.32.

52. I should say that I do so with the clear-eyed acknowledgement that the Defendant deserves to be imprisoned for a far longer period of time. I accept that no amount of imprisonment may assuage the Grays who have suffered both emotionally and financially because of their victimization at the hands of the Defendant, but I will understand it if they feel that a 10 year sentence of imprisonment for what the Defendant did to them is woefully inadequate.

53. It is therefore imperative that the legislature consider increasing the maximum sentence of imprisonment and fines for theft offences. This may not give the Grays any relief, but it will provide some semblance of justice for victims in the future who may suffer the same fate as the Grays.

Sentence in respect of the Fraudulent False Accounting Offence (Count 2)

54. I take into consideration all that I did in sentencing the Defendant for the theft offence.

55. I further find that the extent, sophistication, complexity, and orchestration employed by the Defendant to steal and conceal over $700,000 from the Company places the seriousness of this offence at the highest extreme. The 452 fraudulent transactions made over a four year period with each growing in amounts and in frequency, as well as the accounting sleight-of-hand used the Defendant, underscores the extreme seriousness of the Defendant's actions.

56. I therefore sentence the Defendant to the maximum of 2 years imprisonment for fraudulent false accounting ("false accounting").

57. Additionally, it is because of how and the extent to which the Defendant carried out the false accounting that the sentence of 2 years imprisonment should run consecutive to the 10 year sentence imposed for Count 1.

58. I am also compelled to comment as I did for the theft offence. This case illustrates the need for the legislature to consider raising the maximum period of imprisonment to which an offender is liable for committing such an offence, and to also include the imposition of a maximum fine. Had the maximum period of imprisonment been higher I would have unhesitatingly given a higher sentence in light of the circumstances of this case.

Sentence in respect of the Using Criminal Property Offence (Count 3)

59. Again, I take into consideration all that I did with the theft and false accounting offences.

60. The Defendant used the $706,436.32 to pay her mortgage, for frivolous jaunts to a children's amusement park, for marine equipment and/or services, and presumably for household expenses. Collectively, this use of the stolen money is indeed serious, but it is not so serious that it would land any sentence of imprisonment near the maximum sentence of 20 years

imprisonment. There are other uses which are more serious such as the criminal property being used in furtherance of committing other criminal offences.

61. I therefore sentence the Defendant to a sentence of 10 years imprisonment for using criminal property.

62. The Prosecution urged upon me to run this sentence consecutive to the sentence which I gave for Count 1. I decline to do so. At the commencement of the trial I questioned the Prosecution as to the reasons why the using criminal property offence was added to the Indictment as a stand-alone count given that the use of the criminal property is part and parcel of the elements of the theft offence. That is, that any evidence of how the Defendant used the money would go towards also establishing the theft element of "with the intention to permanently deprive" (section 336 of the Criminal Code).

63. After hearing Counsel in this regard I accepted the Prosecution's position that the using criminal property offence was appropriately joined as a separate and distinct offence from the theft offence. However, the factual matrices of each offence have such a wide overlap as they relate to the elements of using the money and of permanently depriving the Company of the money that it would be unfair to the Defendant to run any sentences for the two offences consecutively.

64. Having made the decision to run the sentences for the theft offence and the using criminal property offence concurrently there is no need for me to consider the totality principle or the authority of ***Pompey v. DPP [2020] CCJ (AJ) GY*** which was cited by the Prosecution. ***Pompey*** certainly is instructive, particularly in respect of the application of the totality principle, but just not in the context of the case at bar.

Conclusion

65. In consideration of the above paragraphs, I reiterate the following sentences:

(i)	Theft (Count 1)	10 years imprisonment
(ii)	False Accounting (Count 2)	2 years imprisonment To run consecutive to sentence for Count 1
(iii)	Using Criminal Property (Count 3)	10 years imprisonment To run concurrent with Count 1

66. **The total sentence for the Defendant is therefore one of 12 years imprisonment with time in custody to be taken into consideration.**

67. When reaching the above sentences for the Defendant I also considered whether I should (a) fine the Defendant in addition to the custodial sentences (pursuant to sections 70F and 337 of the Criminal Code), and/or (b) make a Restitution or Reparation Order against the Defendant (pursuant to sections 70H or 70I of the Criminal Code). What piqued my attention in this regard was the Defendant's and/or her lawyer's comment during the sentencing hearing that her house (that which she falsely accused Mr. Gray of wanting to take from her and the mortgage of which she directed 25% of the stolen money towards) had been sold. It is unclear as to when the sale of the Defendant's house would have occurred, how much profit was derived from the sale, or what the Defendant did with the proceeds of the sale. What is clear however is that the sale of the house most certainly brings into the picture a possibility that the Grays may be able to recoup some, if not all, of the $706,436.32 which the Defendant stole from them.

68. However, during the sentencing hearing I did not invite Counsel to address me on whether the Defendant should be additionally fined or whether a Restitution/Reparation Order should be made and therefore it would be unfair to the Defendant for me to make such orders without hearing from Counsel first. I will accordingly adjourn this matter to a later date so that I may hear submissions from Counsel on the limited issues of:

(i) Whether the Defendant should be fined in addition to the period of imprisonments which have been imposed, and if so, in what amounts; and,
(ii) Whether the Court should make a Restitution/Reparation Order, and if so, in what amount.

69. In preparing to address the Court as to whether a fine should be imposed on the Defendant in addition to the terms of imprisonment Counsel should be cognizant of the content of section 70F of the Criminal Code which stipulates that:

(i) The Court shall take into consideration the means and responsibilities of the Defendant;
(ii) If the Court is of the opinion that the Defendant is unable to pay a fine then it may consider whether the Defendant is a suitable candidate for community service;
(iii) The Court may order that the fine be paid in instalments and on application of the Defendant may extend the time for payment of the fine; and,
(iv) The Court may secure payment of the fine by imposing such terms as the Court thinks appropriate;
(v) If a fine is not paid as ordered the fine may be enforced as a civil debt to the Crown; and,
(vi) The Court may provide for payment of the fine by garnishment or attachment of the Defendant's wages (which presumably may occur once the Defendant is released from custody).

70. Likewise, in preparing to address the Court in respect of the Restitution/Reparation Order Counsel should be mindful that pursuant to section 70I(3) of the Criminal Code that the Court has power to order a probation officer or any other person designated by the Court to prepare a report to determine:

(i) the loss or damage to the Grays;
(ii) the means of the Defendant;
(iii) the nature and extent of the Defendant's existing financial obligations;

(iv) the maximum amount the Defendant is likely to be able to pay under a sentence to make reparation; and,

(v) where payment by instalments is considered appropriate, the frequency and magnitude of any payments that would be required to make reparation;

71. Given this, a date shall be scheduled so that the Court may hear Counsel as to whether a fine should be imposed on the Defendant and whether a Restitution/Reparation Order should be made.

Dated the 30th day of December, 2024

THE SEAL OF THE SUPREME COURT OF BERMUDA

SIGNED

The Hon. Mr. Justice Juan P. Wolffe
Judge of the Supreme Court of Bermuda