In The Supreme Court of Bermuda
CRIMINAL JURISDICTION
Case No. 16 of 2022

BETWEEN:

THE KING

-and-

MARIA DOS ANJOS BENTO

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

Appearances: Ms. Cindy Clarke (Director of Public Prosecutions) for the Prosecution
Mr. Jerome Lynch for the Defendant

Dates of Hearing: 24th January 2025
Date of Sentence: 7th March 2025

SENTENCE

Evasion of Liability by Deception – Forgery – Obtaining Money Transfer by Deception –The sum of $122,296.18 involved - Suspended Sentences

WOLFFE J:

1. On the 19th August 2024 the Defendant pleaded guilty to the following offences: (i) Evasion of Liability by Deception, contrary to section 349(1)(a) of the Criminal Code Act 1907 (the "Criminal Code"); (ii) Forgery, contrary to section 368 of the Criminal Code; and (iii) Obtaining a Money Transfer by Deception, contrary to section 346 of the Criminal Code. A Social Inquiry Report ("SIR") was ordered and the matter was adjourned for sentencing.

2. On the 24th January 2025 I heard sentencing submissions from Counsel (supported by cited authorities) and set out herein is the sentence which I impose on the Defendant in respect of the each of the said offences.

Summary of the Evidence

3. The Complainant in this matter is Mr. Kent Bascome who at the material time was the Chief Financial Officer of the West End Development Corporation ("WEDCO"). WEDCO is a quango in that it is partially subsidized by government funding. Throughout the time of committing the offences the Defendant was the Residential Property Manager of WEDCO and her role included preparing leases, dealing with delinquent tenants, preparing budgets for residential properties, and attending Court on behalf of WEDCO for residential related matters.

4. Since October 2017 and including the dates of the offences the Defendant was a tenant of premises which was being managed by WEDCO and by extension managed by the Defendant in her role at WEDCO. By a leasehold agreement she was contractually responsible for paying a monthly rent of $3,000 for the premises.

5. On or about the 25th February 2021 the Complainant made a report to the Bermuda Police Service ("BPS") asserting that an internal audit of WEDCO revealed a number of discrepancies related to the Defendant's tenancy. In particular, that between December 2017 and February 2021 the total amount of rent that the Defendant should have paid pursuant to her lease obligations was $117,000. However, the Defendant had only paid the sum of $11,047.28. Hence, the Defendant had not paid WEDCO the amount of $105,952.72 towards her rent.

6. In order to pay less rent than she was obligated to pay the Defendant devised a scheme whereby she submitted fraudulent "Residential Accounts Adjustment Forms" ("residential adjustment form") which indicated that her monthly fees had been reduced to $2,500 per month i.e. $500 less than the contractual amount of $3,000. Only two persons employed with WEDCO, the Complainant and a Ms. Joanne Cranfield (the Business Development Manager), had the authority to adjust a tenant's monthly rent.

They did not provide any such authorization for the Defendant's rent to be reduced although a residential adjustment form dated the 12th February 2018 bore Ms. Cranfield's signature (it was eventually discovered that over the years there were many others). It was later revealed that the Defendant fraudulently superimposed Ms. Cranfield's signature onto the residential adjustment form.

7. The BPS was provided with additional documentation which highlighted the extent of the Defendant's criminal conduct. Specifically:

- Two (2) residential adjustment forms dated 20th and 21st December 2017 with Ms. Cranfield's signatures fraudulently superimposed on them.

- Four (4) WEDCO residential adjustment forms dated July 2018, February 2020, September 2020, November 2020, December 2020, and February 2021 all fraudulently bearing Ms. Cranfield's signature.

- Seventeen (17) residential adjustment forms with a copy of Ms. Cranfield's signature affixed to it. Ms. Cranfield did not sign any of these documents.

- Four (4) WEDCO residential adjustment forms dated February 2020, May 2020, June 2020, and August 2020 all fraudulently bearing the Complainant's signature.

- A handwritten note detailing rental reduction for the Defendant purportedly due to termite infestation and repairs to her rental property. This note bore the signature of the Complainant but he did not write or sign this note. It is the Prosecution's case that this note was written by the Defendant.

- A typed letter on WEDCO's letterhead dated 1st April 2020 setting out supposed termite infestation to the Defendant's rental unit and her personal belongings, and, stating that the Defendant should receive rental reductions until such time that the termite issue is resolved. This letter bore the signature of the Complainant but he did not write or sign this letter.

- A WEDCO business card bearing the Defendant's name but with Ms. Cranfield's signature fraudulently affixed or superimposed to the signature panel of the card.

- A notebook recovered from the office previously occupied by the Defendant and which contained a page which appeared to have been used by the Defendant to practice signing Ms. Cranfield's signature. It is the Prosecution's case that these signatures were written by the Defendant.

8. The Complainant also provided the BPS with several documents submitted to WEDCO by the Defendant purportedly in relation to the Defendant having completed and passed courses of study at the University of West of England, Bristol University and the Chartered Institute of Legal Executives. WEDCO had "reimbursed" the Defendant the sum of $16,344.09 for her supposed expenditure in completing these courses, however further police enquiries revealed that the named institutions had no record of the Defendant having ever participated in any courses of study with them. Moreover, a check of the Defendant's bank accounts showed that no payments were made to any of the named educational institutions. The Defendant's bank accounts did however show transfers of the said amount between her bank accounts in order to satisfy substantial joint account and credit card arrears, as well as a payment for a wedding dress.

9. On the 30th September 2021 the Defendant was arrested and when interviewed by police under caution she, as was her legal right to do, gave "no comment" answers to questions put to her.

10. The total sum involved in this matter is $122,296.81 which represents (i) the $105,952.72 which the Defendant should have paid to WEDCO for rent; and (ii) the $16,344.09 paid by WEDCO to her for courses of study which she falsely represented that she had taken (but which was used for other purposes).

Sentencing Guidelines

11. Each of the offences for which the Defendant pleaded guilty (evasion of liability by deception, forgery, and obtaining money transfer by deception) carry the same maximum sentence. That is, ten (10) years imprisonment or a $100,000 fine or both.

12. Director of Public Prosecutions Ms. Cindy Clarke (the "DPP") is correct to say that while there is an abundance of jurisprudential guidance in Bermuda as to what sentence should be imposed generally for dishonesty offences (mostly those of a theft nature) there is a dearth of authorities specific to fraud-type offences (of which all of the counts on the Indictment pertain). To fill this void both the DPP and Mr. Jerome Lynch (for the Defendant) properly referred me to the guidelines formulated by The Sentencing Council for England and Wales ("the Sentencing Council"). Similar to Bermuda, fraud offences in England and Wales carry a maximum sentence of 10 years imprisonment and the Sentencing Council advises that when ascertaining what sentence is warranted that the sentencer should assess the degree of culpability and harm existent in the matter.

13. It is important to highlight that the effective date of the Sentencing Council's guidelines was the 1st October 2014 and so they are over 10 years old. One can therefore argue that this may call for some 2025 inflationary adjustments upwards in the sentencing guidelines (especially since there appears to be a rise in the detection of fraud-type offences).

14. In respect of the level of culpability, the Sentencing Council guides that it can be determined by weighing up the following factors:

A – High culpability

- A leading role where offending is part of a group activity
- Involvement of others through pressure, influence
- Abuse of position of power or trust or responsibility
- Sophisticated nature of offence/significant planning
- Fraudulent activity conducted over sustained period of time
- Large number of victims
- Deliberately targeting victim on basis of vulnerability

B – Medium culpability

- A significant role where offending is part of a group activity
- Other cases that fall between categories A or C because:
  - Factors are present in A and C which balance each other out and/or
  - The offender's culpability falls between the factors as described in A and C

C – Lesser culpability

- Involved through coercion, intimidation or exploitation
- Not motivated by personal gain
- Peripheral role in organized fraud
- Opportunistic 'one-off' offence; very little or no planning
- Limited awareness or understanding of the extent of fraudulent activity

15. In respect of the degree of harm, the Sentencing Council states that is it assessed *"by the actual, intended or risked financial loss and the impact on the victim"* and in this regard harm is categorized as follows:

Category 1	£500,000 or more	Starting point based £1,000,000
Category 2	£100,000 - £500,000 or Risk of Category 1 harm	Starting point based £300,000
Category 3	£20,000 - £100,000 or Risk of Category 2 harm	Starting point based £50,000
Category 4	£5,000 - £20,000 or Risk of Category 3 harm	Starting point based £12,500
Category 5	Less than £5,000 or Risk of Category 4 harm	Starting point based £2,500

16. Melding the culpability and harm elements together into a table the Sentencing Council arrived at the following suggested sentences:

	Culpability		
Harm	A	B	C
Category 1	Starting point 7 years' custody	Starting point 5 years' custody	Starting point 3 years' custody
	Category range 5 – 8 years' custody	Category range 3 – 6 years' custody	Category range 18 months' – 4 years' custody
Category 2	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 18 months' custody
	Category range 3 – 6 years' custody	Category range 18 months' – 4 years' custody	Category range 26 weeks' – 3 years' custody
Category 3	Starting point 3 years' custody	Starting point 18 months' custody	Starting point 26 weeks' custody
	Category range 18 months' – 4 years' custody	Category range 26 weeks' – 3 years' custody	Category range Medium level community order – 1 year's custody
Category 4	Starting point 18 months' custody	Starting point 26 weeks' custody	Starting point Medium level community order
	Category range 26 weeks' – 3 years' custody	Category range Medium level community order – 1 year's custody	Category range Band B fine – High level community order

Category 5	Starting point 36 weeks' custody	Starting point Medium level community order	Starting point Band B fine
	Category range High level community order – 1 year's custody	Category range Band B fine – 26 weeks' custody	Category range Discharge – Medium level community order

17. While there was dispute between the DPP and Mr. Lynch as to what categories of culpability and harm the facts and circumstances of this case fell into there was no dispute in relation to the factors which should be considered or as to the sentencing starting points and ranges suggested by the Sentencing Council. Having reviewed this material I am too of the opinion that the said factors, starting points and ranges are reasonable in the Bermuda context.

18. A large part of my acceptance of the Sentencing Council's guidelines is due to the fact that there is little or no distance between the Sentencing Council's guidance, particularly as it relates to the culpability factors, and the sentencing principles set out in several local and overseas cases which involve theft and/or fraud by a person who occupied a position of trust within their employment. The obvious case that readily springs to mind is the seminal United Kingdom authority of *R v. Barrick (1985) 7 Cr.App.R.(S) 142*. I cited *Barrick* in the Bermuda case of *R v. Tyrone Quinn, Case No. 27 of 2021, The Supreme Court of Bermuda (7th June 2024)* in this way:

> *"32. ……*
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> *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."

19. In *Quinn* I also referenced the equally instructive authority of *R v. Clark [1998] 2 Cr.App.R. (S.) 95* when I stated:

> *"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:*
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> > *"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."*

20. Using the authorities of *Barrick* and *Clarke* as a foundation, the case which is more factually aligned with the case-at-bar is that of *R v. Diedre Woolgar, Case No. 25 of 2018, The Supreme Court of Bermuda (10th September 2020)*. Particularly in relation to: the similarity of the managerial and trusted positions held by the Defendant and the defendant in *Woolgar* – the Defendant was a Residential Property Manager and the defendant in *Woolgar* was an Office Manager); the amount of money involved – the sum of $122,296.18 in the case-at-bar and the sum of $110,759.93 in *Woolgar*; and, as is the issue in the case-at-bar, whether a suspended sentence should be imposed also

arose in *Woolgar* (the sentence was ultimately partially suspended). In paragraphs 24 and 25 of *R v. Nancy Vieira [2023] SC (Bda) 53 Cri. 21 June 2023* (the defendant was a lawyer who pilfered close to $80,000 from one of her clients) I set out in more detail the facts and sentence of *Woolgar* as follows:

> *"24. The Defendant in Woolgar pleaded guilty to one count of false accounting and one count of theft. The case involved circumstances where the defendant was employed as an office manager for a company that sold electrical materials. As office manager the defendant was the person solely responsible for handling and reconciling cash receipts and depositing cash into the company's bank account. She carried out her duties without any direct supervision from anyone. The defendant exploited this lack of checks and balances on her daily duties, and presumably the trust which the owners of the company had in her, by stealing cash which came into the company on multiple occasions over a period of about a year. To conceal this theft of cash the defendant (a) falsely inputted into the accounting software of the company that cash amounts had been deposited into the company's bank account when they had not been; and (b) then deposited the exact amount of the sums that she stole from the company's other bank account into the bank account where the cash she stole should have been deposited. In total the defendant was able to steal the sum of $110,759.93 from the company over time.*
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> *25. In sentencing the defendant in Woolgar to 12 months imprisonment with 6 months of the imprisonment suspended for 2 years (for both offences) I took into consideration the mitigating features of a guilty plea, no previous convictions, genuine expression of regret and remorse, restitution made by the defendant, the defendant's low risk of reoffending, and the defendant's mental health condition at the time of the commission of the offences and at the time of sentencing (the defendant had been diagnosed with a bipolar disorder). I also had regard to the aggravating circumstances of the nature and seriousness of the offences, the quality and degree of trust reposed in the defendant, the damage or loss caused by the defendant, and the use to which the money stolen by the defendant was put."*

21. The crystallization of the Sentencing Guidelines, and the authorities of *Barrick*, *Clarke*, *Woolgar*, and *Quinn* is that dishonesty offences committed over a long period of time by persons in a position of trust should be met with a considerable amount of intolerance and that such offenders, after taking into consideration mitigating and aggravating factors, should expect to receive a period of incarceration (especially if the amount involved is significant). It is with this in mind that I will now turn to my sentencing decision.

Sentencing Decision

22. I shall first commence with what I deem to be the mitigating circumstances of this matter and after which I will then move onto the aggravating ones. In doing so, I shall endeavor to canvas the factors detailed in the Sentencing Council's guidelines as well as those in *Barrick*, *Clarke*, *Woolgar*, and *Quinn*.

Mitigating Circumstances

23. There are a couple of mitigating circumstances which the Defendant is entitled to have taken into consideration. However, the extent to which they should be considered varies in weight.

The Defendant's plea of guilty: It is usual that a defendant who has pleaded guilty to an offence, thereby avoiding the time and expense of having a trial, can be granted up to a 30% discount in their eventual sentence (it is "major" as Mr. Lynch puts it). A full 30% discount is routinely reserved for defendants who pleaded guilty at the earliest opportunity. The Defendant however did not plead guilty at the earliest opportunity and in fact a lot of water flowed under the bridge between the time the Defendant first appeared in the Supreme Court to answer to the counts on the Indictment dated 31st August 2022 and when she eventually pleaded guilty in or around January 2024.

In particular, the Defendant first appeared in the Supreme Court on the 1st September 2022. It is unclear from the Court file as to why she was not arraigned on that first appearance but one can extrapolate that it was most likely because disclosure was not completed by the Prosecution. It would appear that at some point in time disclosure was completed (it is unclear when) because the Court Record shows that on the 1st June 2023 an indication was given by the Defendant's then attorney Mr. Charles Richardson that a dismissal application pursuant to section 31 of the Criminal Code (the "section 31 application") would be made. Therefore, the Defendant should not in any way whatsoever be faulted for what transpired, or did not transpire, between the 1st September 2022 and the 1st June 2023, and indeed, the delay in the Prosecution completing disclosure is a factor which I will take into consideration in the sentence which I give to the Defendant.

However, the way in which the matter did not progress after June 2023 can be partly placed at the feet of the Defendant. When the Defendant appeared on the 1st June 2023 a Court order was made by The Hon. Mrs. Justice Shade Subair Williams in respect of (a) October 2023 dates being submitted by Counsel so that the section 31 application could be heard, and (ii) a tentative trial date being fixed to commence on the 12th August 2024 (of course this was subject to the outcome of the section 31 application). The section 31 application was not heard in October 2023 (for unknown reasons) and on the 1st December 2023 Subair Williams J. stated that the section 31 application would be fixed administratively. On the 19th January 2024 the section 31 application was fixed for the 24th January 2024, however on the 20th January 2024 Mr. Richardson wrote to the Court indicating that he did not "believe" that a section 31 application was necessary but that he would need to receive instructions from the Defendant. One can only assume that the Defendant did give him instructions that the section 31 application was unnecessary because on the 1st February 2024 the trial date of the 12th August 2024 was confirmed.

So effectively, it took between the 1st June 2023 and the 20th January 2024, when the Defence would have presumably been in receipt of completed disclosure, for the Defendant to reach the realization that a section 31 was unnecessary. It is also curious that it was virtually on the eve of the section 31 application being heard that the section 31 application was withdrawn. Had the Defendant not requested for a section 31 application to be heard, or came to a decision that the section 31 application was not required, then it is safe to assume that the trial date would have been fixed for a much earlier date.

But the Defendant's dilatory conduct did not stop there. On the 27th February 2024 the Defendant was ordered to file and serve a Defence Statement within 28 days. However, when the matter came before the Court on the 15th July 2024 for case management ahead of the trial, which was scheduled to commence on the 19th August 2024, the Defence Statement had not been filed. I was the presiding judge at the time and I noted my concerns about the Defendant's apparent lack of readiness for trial and about that the possibility that the trial would be protracted. As a result, I ordered that the Defence Statement should be filed by close of business that day. It should be noted that Mr.

Richardson was not in Court on this return day but he did write to the Court later that day stating that he was in discussions with the Prosecution about a possible plea of guilty and that if those discussions were not fruitful then a Defence Statement would be filed as ordered. Seven (7) days later on the 22nd July 2024 Mr. Richardson wrote to the Court indicating that guilty pleas were expected to be made at the next return date. On the trial date of 19th August 2024 the Defendant did enter guilty pleas to the counts on the Indictment.

Therefore, from the 20th January 2024 to the 19th August 2024 the Defendant could have pleaded guilty to the offences charged and by extension she could have pleaded guilty anytime between the 1st June 2023 (after disclosure was virtually completed) and the 19th August 2024, i.e. over a period of approximately 14 months. She did not and on top of that she put the Court through the inconvenience of setting down a section 31 application and a trial only for them to be abandoned close to the dates that they were scheduled to be heard. While I am reluctant to draw the conclusion that the Defendant deliberately wasted the Court's time I do find that because of some delay and costs caused by her in the resolution of this matter that she cannot now enjoy a full 30% discount for her guilty pleas. I will deal with what percentage discount she should receive later in this decision.

The Defendant's previous good character: Lord Lane LJ in ***Barrick*** said that offenders who commit offences like those committed by the Defendant are usually of *"hitherto impeccable character"*. In ***Woolgar*** I commented that it is because of this perceived erstwhile good character that such offenders are allowed to commit offences right under the nose of their employers. It is with ***Barrick*** and ***Woolgar*** in mind that I find that while the Defendant not having any previous convictions is a factor to be taken to consideration, I only give it minimal weight.

I also have regard to the character reference letters penned by her husband Jeshimon Bento dated 5th November 2024, Elder Randolph Simons dated the 4th November 2024 and by the Defendant's niece Natasha Medeiros dated 6th November 2024, as well as the words of Ms. Suzie Smith and Ms. Catherine Fubler as reported in the SIR. However, the Defendant clearly was showing them only one side of herself because as she was portraying kindness and politeness towards them, she was showing nothing but

cruel criminality towards WEDCO. Therefore, the character references submitted by the Defendant do not alter my assessment that her previous good character should be given only minimal attention.

24. In most sentencing matters which come before the Court, even those involving the most violent of offences, there is at least some semblance of regret and remorse expressed by the offender for the effect which their criminal conduct had on their victim (whether or not the expression is genuine is another thing of course). However, the Defendant has bucked this trend by showing no or little contrition for what she did. In his written and oral submissions to the Court Mr. Lynch, no doubt as a result of the Defendant's instructions, stated that the Defendant was regretful for what occurred. However, what the Defendant was reported to have said in the SIR and what she said, or did not say in her vacuous *allocutus* belies Mr. Lynch's submissions.

25. I am not fully convinced that the Defendant accepts that what she did was diabolically wrong. To the contrary, in the SIR she deliberately justified her criminal actions and in doing so repeated things which were patently not in accordance with the factual truth. To the extent that I was of the view that the words of the Defendant in the SIR bore the hallmarks of an unequivocal plea and I questioned whether she wished to vacate her plea. My view was somewhat allayed by Mr. Lynch who advised the Court that the Defendant wished to maintain her guilty pleas but he, nor the Defendant, persuaded me that the Defendant wanted to resile from the comments which are attributed to her in the SIR.

26. Comments such as[1]:

- She believed that her former employer (i.e. WEDCO) was not being honest about what happened and asserting that she has never stolen from anybody because she does not believe in dishonesty.

- WEDCO agreeing to adjust her rent until the termite issue had been resolved.

[1] Seen on page 3 of the SIR.

- She did not forge any signatures on the residential adjustment forms.

- She received the $16,334.09 (Count 3) as a bonus for that fiscal year.

- She believed that management of WEDCO were attempting to get her removed from her job.

- Stating that she was "set-up to take the fall" by WEDCO.

27. I am mindful of Mr. Lynch's words in his written submissions that the Defendant wished to maintain her pleas, but her pleas are watered down when qualified by the comments that (i) she did not want to implicate others who worked at WEDCO, and (ii) that she only forged the documents to reflect supposed termite work that needed to be done on her premises. I am not so sure that the Defendant has "wrestled with her own conscience" or "finally come to recognize her culpability" as Mr. Lynch says. She is still attempting to deflect or minimize blame which should be fully placed on her own wrongdoing or she is attempting to provide justification for her criminal behavior. It matters not what others may or may not have done at WEDCO, and, any termite work which may have had to be done on premises surely would not have cost over $120,000 (at least there was no evidence to suggest such).

28. It was not lost on me that in her *allocutus* the Defendant apologized to her family and friends for the "drama that this has caused" in <u>their</u> lives, but there was nary an apology to WEDCO or to her colleagues at WEDCO for what she did. Nor did she express any regret, remorse or explanation for what she did. She also played the victim when she said that because of this her trust in people has gone and that those who she thought she could trust she cannot, and, that is why she is in the "situation" that she is in. I find that the Defendant's *allocutus* was consistent with the tone and tenor of what she said in the SIR and was inconsistent with Mr. Lynch's submission that she recognizes what she did was dishonest.

29. It is only known to the Defendant why she lacks any regret or remorse for what she did, or why she felt it necessary to victim-blame, but these are issues which I am compelled

to take into consideration in determining to what extent the Defendant's sentence should depart from the starting point suggested for the offences committed by the Defendant.

30. Flowing from this I cannot accept the SIR writer's conclusion that the Defendant *"appears to be of low risk of reoffending and of low need for rehabilitative services"*[2]. It is obvious to me that if the Defendant has not fully accepted that she committed the offences charged or that what she did was wrong (and pleading guilty is not enough to illustrate this) then there must be a higher likelihood of her committing like offences again. In fact, the Defendant went further in the SIR to not only justify her criminal conduct but to also vilify her victim. I therefore give no weight whatsoever to the SIR's conclusion that the Defendant is of low risk of re-offending.

31. In respect of the Defendant's offer of restitution in the sum of $40,000 (as stated by Mr. Lynch), it was just that, an offer. It is unclear whether this offer was a genuine one or whether it was a tool used by the Defendant to achieve a lower sentence, but what is certain is that she does not have any restitution in hand. In her letter, Ms. Medeiros (the Defendant's niece) stated that she was "prepared" to "loan" the Defendant $22,000 but this gave me no comfort that it was actually going to be paid. Even Mr. Lynch could not speak to any certainty that restitution would in fact be paid and he could only say that it was "possible" that it could be paid and that it was contingent upon the Defendant being employed (i.e. not incarcerated). The Defendant has had since September 2022 to put together any restitution which she intended to pay, especially since through her criminal conduct she got out of paying WEDCO $105,952.72 for rent. It begs the searing questions: "Where did all of this money go?" and "Why wasn't at least some of it available to pay to WEDCO?" It would not appear that any of the money went towards remedying any termite problem that may have existed at her premises.

32. Moreover, even if the Defendant was able to pay the $40,000 it would make only a small dent in the total sum that WEDCO lost. In effect, it would amount to no restitution being made at all (as there would be no certainty whatsoever that WEDCO would retrieve the far more substantial balance of approximately $82,000). In

[2] Seen on page 4 of the SIR.

Woolgar, the defendant paid back the entirety of the $110,759.53 that she stole from her employer and this was a factor taken into consideration by the Court. The Defendant in the case-at-bar has not only made no payments whatsoever but the most amount that she may be able to pay is only about 33% of the total sum lost by WEDCO.

33. I therefore place no weight whatsoever on the Defendant's offer to pay restitution.

34. In respect of the Defendant's health challenges and those of her son, I find that it is appropriate to take them into consideration in the sentence. I am satisfied that the Defendant's son suffers from a debilitating condition which requires constant medical attention (as set out in the presented medical reports from Boston Children's Hospital). I was satisfied of this when I granted the Defendant's several bail variation applications which allowed her to travel with her son overseas for medical assessment and treatment.

35. To a lesser degree I take into consideration the health issues confronting the Defendant as detailed in the letters from Dr. Mandisa K. Robinson. However, I do not view those medical issues as being more serious than others which have come before the Courts. Of course, the prospect of the Defendant being diagnosed with ovarian cancer is very serious but at this time she is only facing a risk of being diagnosed (because it runs in her family). I might have given this far more weight had she actually been diagnosed with cancer and even then it would still not be certain that she would have escaped an immediate custodial sentence. The defendant in *Woolgar* was actually diagnosed with a bipolar disorder which was operating at the time of her committing the offences and she still received an immediate custodial sentence.

36. As far as the Defendant losing her job in January 2021 and the possibility of her losing her home I am somewhat sympathetic to the effect which this may have on her family. However, I am attune to the fact that the Defendant (i) lost the job through which she abused her position of trust in order to fraudulently avoid paying $105,000 in rent, (ii) she may lose a home which she, again, fraudulently avoided paying over $105,000 rent for, and (iii) by deception she received over $16,000 from her job for educational courses which she did not take. Using these as mitigating circumstances would be tantamount to giving the Defendant credit for losing the opportunity and means by which she was able to facilitate her criminality and I am not prepared to do such.

Aggravating Circumstances

37. The aggravating circumstance of this matter far exceed the mitigating features.

38. There should be no doubt that by virtue of the maximum sentence of 10 years imprisonment for each count on the Indictment that Parliament viewed such offences as serious and that they should be treated with the utmost harshness, particularly when they are committed by a person in a position of trust (which the Defendant was). What the Defendant did was particularly aggravating in relation to: the grave seriousness of what she did; the quality and degree of trust reposed in her by WEDCO; the damage caused by her; the sophisticated means by which she committed the offences; and, the period of time over which she committed the offences.

39. From December 2017 to February 2021 (a period of approximately 4 years) the Defendant, for her own personal gain, exploited an organization and system which was designed to assist some of Bermuda's most vulnerable citizens i.e. families which may not have had the financial wherewithal to secure a roof over their heads but for the affordable housing granted to them by WEDCO. It was not enough for the Defendant to be a recipient of affordable housing herself from WEDCO (her employer) but she harboured the criminal desire "to bite the hands that fed her". She was the one who was put in charge of and entrusted with ensuring that WEDCO received its rent from its tenants (some of who may have been delinquent) but instead she was the one from whom WEDCO's coffers needed protection.

40. In order to carry out her nefarious conduct the Defendant developed and tactfully deployed a highly sophisticated scheme which was concocted and honed for over 4 years and which involved: the fabrication of numerous residential adjustment forms with the forged signatures of the Chief Financial Officer (Mr. Bascome) and the Business Development Manager (Ms. Cranfield) of WEDCO; the drafting of a fictitious handwritten note purporting to be signed by Mr. Bascome in respect of supposed termite infestation at her premises; the fraudulently obtaining of a business card in her name by forging the signature of Ms. Cranfield; and, the drafting a fictitious letter purporting to be signed by Mr. Bascome and falsely stating that she should receive

rental deductions. I therefore do not agree with Mr. Lynch when he says that what the Defendant did was not sophisticated in nature. It clearly was and although she could have at any time stepped back, reflected and stopped her deception, it would seem that she became even more brazen and emboldened as the months and years went on.

41. To compound matters, the Defendant coldly exploited a noble initiative of WEDCO to reimburse employees who had a desire to attain educational qualifications which may improve their lot in life. To augment her deception the Defendant, via a high degree of sophistication, fabricated documents (such as grade sheets and degree qualifications) and she lied about working assiduously in order to achieve those fictitious qualifications. It would not be surprising that as a result of being duped by the Defendant that WEDCO is far more cautious in reimbursing other employees for educational courses which they may take or to even allow any reimbursement at all.

42. Something which makes the Defendant's behavior even more disturbing is that the over $105,000 in rent which she fraudulently avoided paying, and the over $16,000 which she fraudulently obtained, was money which most likely could have been earmarked for families who desperately needed housing or who needed their premises repaired. Having been the Residential Property Manager at WEDCO she, more than anyone else, would have known about the good use to which the over $122,000 could have been put. But evidently, she did not care.

43. An additional factor to be considered is the use to which the Defendant put the $122,296.81. There was no evidence put before me as to what the Defendant did with the $105,953.72 that she should have paid for rent. More specifically, there was nothing to suggest that she used any of it to resolve any termite problems or to address her or her son's health expenses. Mindful that the Defendant was probably still receiving a wage from WEDCO which likely would have been used to meet her daily expenses one can easily assume that the money she did not pay for rent to WEDCO went towards extravagances (it is unclear whether the Defendant's husband was employed).

44. In respect of the $16,344.09 given to her for the educational courses she did not take the evidence seems to suggest that it traversed across the Defendant's joint and credit card accounts to satisfy arrears, and also to pay for her niece's wedding dress. One

would have thought that the $105,953.72 which should have gone to pay her rent would have been more than sufficient to satisfy all of these payments. It clearly did not and this is yet another piece of evidence which leads to the inference that the over $122,000 was not used for necessities or emergencies but that it was used for the Defendant's material and non-material indulgences.

45. Taking all of the above mitigating and aggravating factors into consideration I will now move onto what should be the warranted sentence for the Defendant.

Sentence

46. In determining the appropriate sentence for the Defendant I shall of course be guided by the purpose and principles of sentencing set out in sections 53 to 55 of the Criminal Code. There is no need for me to fully enunciate them as they are trite but it is suffice to say that the sentence which I do mete out to the Defendant, after taking into consideration the mitigating and aggravating pertinent to this matter, must have one or more of the following objectives[3]:

(a) to protect the community;
(b) to reinforce community-held values by denouncing unlawful conduct;
(c) to deter the offender and other persons from committing offences;
(d) to separate offenders from society, where necessary;
(e) to assist in rehabilitating offenders;
(f) to provide reparation for harm done to victims;
(g) to promote a sense of responsibility in offenders by acknowledgement of the harm done to victims and to the community.

47. Over the past 5 to 10 years the Courts have seen a concerning prevalence of dishonesty offences being committed by persons who at the time of their offending behavior were in positions of trust. There is no way of knowing if the detection of such crimes is because of the fact that more offences of this nature are being committed or whether it is because more complainants are coming forward to report theft and/or fraud by their

[3] Section 53 of the Criminal Code

employees. A safe answer would be that it is probably a mixture of the two. What is crystal clear to me however is that the persons who commit such offences all do so with creative sophistication and ingenuity, deeply ingrained selfishness, and impervious thoughts of impunity. The Defendant, by her criminal actions, firmly falls within this category of persons. I deliberately use the succinct words of Lord Lane in ***Barrick*** when I say that the offences committed by the Defendant *"were, in short, mean offences"*. It is for these reasons that an unequivocal message must be sent to the Defendant, other such offenders, and would-be offenders that it is inevitable that they will be treated harshly by Courts.

48. There is no dispute between the parties that the offences committed by the Defendant attract a custodial sentence. Referencing the Sentencing Council's guidelines, the "DPP" submitted that the Defendant should receive the following sentences: 4 years imprisonment for the evasion of liability by deception (Count 1); 12 month's imprisonment for forgery (Count 2); and 5 years imprisonment for obtaining a money transfer by deception (Count 3). Further, that the sentences should run concurrently thereby totaling a sentence of 5 years imprisonment.

49. By submitting that the Defendant should receive a considerably less sentence for the forgery offence than for the evasion of liability by deception and obtaining a money transfer by deception offences the DPP is essentially saying that the forgery offence is less serious. I disagree. The nature and number of the forgeries were such that the Defendant would not have been able to commit the evasion of liability by deception and obtaining a money transfer by deception offences without the forgeries, and therefore the forgery offences should be treated with the same degree of seriousness. Surely this is what Parliament intended when it made the maximum sentences for each offence the same i.e. 10 years imprisonment and/or $100,000 fine. Therefore, my below reasoning applies to each of the counts on the Indictment.

50. Also referencing the Sentencing Council's guidelines Mr. Lynch submitted that the Defendant should receive no more than 2 years imprisonment and that the entirety of that sentence should be suspended.

51. Utilizing the Sentencing Council's Culpability/Harm Chart (recreated above) the DPP submits that the circumstances of this case (including the mitigating and aggravating features) should place it into the Category A of "High Culpability" and Category 2 of Harm. Therefore, she submits, the starting point for sentencing the Defendant (particularly for the evasion of liability by deception and the obtaining a money transfer by deception offences) should be one of 5 years imprisonment and that the range should be between 3 to 6 years imprisonment.

52. While Mr. Lynch somewhat accepts that the Defendant's conduct attracts the high culpability band it is his submission that the matter should be placed within Category 3 of harm. Therefore, he further submits that: (a) the starting point should be one of 3 years imprisonment and that if the aggravating factors adjust the starting point upwards to 4 years imprisonment then mitigating features should reduce it back to 3 years imprisonment; and (b) the Defendant's guilty plea should attract a 30% discount thereby reducing the 3 years imprisonment to 2 years imprisonment.

53. Taking all of the preceding paragraphs into consideration I agree with the assessment of the DPP. That is, that the Defendant's conduct is one of high culpability and that the harm falls within Category 2. The Defendant abused her position of power or trust or responsibility; the manner in which she committed the offences was highly sophisticated; she conducted her criminal over a sustained period of time (i.e. 4 years); and she caused substantial financial loss to WEDCO ($122,296.81). With this, I find that the starting point for her sentence is one of 5 years imprisonment and that the category range is between 3 to 6 years imprisonment. The issue for me to now determine is whether the starting points should be adjusted upwards or downwards.

54. In this regard, I find that when factoring in the aggravating circumstances that the starting point should remain at 5 years imprisonment as this would in any event be at the higher end of the category range of 3 to 6 years imprisonment.

55. So what discount should the Defendant receive by virtue of her guilty plea? In earlier paragraphs I concluded that the Defendant was not entitled to the usual 30% discount because she did not plead guilty at the earliest opportunity and as a result she caused some time and expense in this matter being resolved (she called for a section 31

application to be heard and for a trial to be scheduled). Consequently, and because ultimately the time and costs of a trial was not expended, I find that the Defendant is entitled to a 20% discount in her sentence. Effectively, this reduces the 5 years imprisonment starting point to one of 4 years imprisonment.

56. The Defendant is also entitled to a further albeit minimal discount (the reasons for which are stated in earlier paragraphs) for having no previous convictions. To this, I further reduce the Defendant's sentence by an additional 6 months.

57. In the circumstances, I sentence the Defendant as follows:

Evasion of liability by deception (Count 1)	**3½ years imprisonment**
Forgery (Count 2)	**3½ years imprisonment**
Obtaining a money transfer by deception (Count 3)	**3½ years imprisonment**

58. All sentences are to run concurrently.

59. I am now obliged to address whether these sentences or any parts of them should be suspended.

Whether the sentences should be suspended

60. Section 70K of the Criminal Code provides that:

> *"Suspended sentence of imprisonment*
>
> *70K (1) If a court sentences an offender to imprisonment for 5 years or less it may order that the term of imprisonment be suspended in whole or in part during the period specified in the order ("the operational period"), which period shall not exceed 5 years, if the court is satisfied that it is appropriate to do so in the circumstances."*

61. In this regard, in ***Woolgar*** I commented as follows:

> "*31. The words "if the court is satisfied that it is appropriate to do so in the circumstances"connote that (i) there is scope for a suspended sentence to be imposed in any case where an offender has been sentenced to*

imprisonment for five (5) years or less, no matter the severity of the offence; and that (ii) the Court should consider all the circumstances of the case when deciding whether to impose a suspended sentence. Factored into the circumstances of the case would of course include the objectives of sentencing set out in section 53 of the Criminal Code and the presence of any mitigating and aggravating features as highlighted in section 55 of the Criminal Code.

32. Now Lord Lane CJ in Barrick did comment that it is not usual in cases of serious breach of trust, such as in the case at bar, for a sentence to be suspended. However, this should not be taken to mean that under absolutely no circumstances should a suspended sentence be imposed. There is, depending on the circumstances of the case, still open to the sentencer to impose a suspended sentence. It's just that Lord Lane CJ felt that no such circumstances in Barrick merited a suspended sentence.

33. The same can be said of Ward JA's decision in Busby. It is indeed correct that the suspended sentence imposed by the sentencing judge was quashed and substituted with an immediate term of twelve (12) months imprisonment. The possibility of a suspended sentence did not appear to have been ruled out though as the criticism of the sentencing judge was primarily that too much weight was placed on the appellant's interests and not enough weight was applied to the needs of society.

34. Moreover, it should be noted that the modern test for imposing a suspended sentence is having a "good reason" to do so. No longer does the Court need to be satisfied of the arguably higher and more onerous test of "exceptional circumstances" which were considered in the cited earlier authorities of Kirby v Patrick Durham, Criminal Appeal No. 16 of 1988 (Court of Appeal of Bermuda), Peter Duffy v Dawnie Louise Smith, Appellate Jurisdiction – No. 50 of 1995 (Supreme Court of Bermuda), and Sanford Sampersad v. R, Appellate Jurisdiction No. 15 of 2001 (Supreme Court of Bermuda). I should point out that factually these cited authorities can be distinguished from the case at bar as the amount of money taken in those cases was considerably less than the amount stolen by the Defendant."[4]

62. I went on to sentence the defendant in *Woolgar* to 12 months imprisonment with 6 months of it suspended for a period of two years. I found that there was "good reason" to do so because of the defendant's mental health challenges, the substantial restitution that she made, and the length of time that it took for the matter to progress.

[4] The citation for *Busby* is *R v. Clayton Albert Busby [2004] Bda L.R. 29*.

63. Mr. Lynch brought to my attention the authorities of *The Queen v. Garth Bell, Criminal Appeal No. 8 of 2016* and *Mandaya Thomas v. The Queen, Appellate Jurisdiction 2019, No. 21*. *Bell* (citing the cases of *Miller v. Crockwell [2012] Bda. LR* and *R v. Carneiro [2007] EWCA Crim 2170* and *Thomas* (citing *Carneiro* and *Bell*) settled that the test to be applied when considering whether a suspended sentence should be granted is whether there is "good reason" to do so.

64. However, the passage in *Bell* which is often overlooked is the one that appears in paragraph 29 of page 10 of the decision. That is, where the Baker P. states that *"the more serious the offence, the less suspending the sentence is likely to be"*. This reasoning is eminently logical. Entirely or even partially suspending a sentence for a serious offence has the effect of eroding the seriousness of the offence and may even run counter to achieving the objectives listed in section 53 of the Criminal Code. It must be explicitly conveyed to those who commit serious offences that they cannot avail themselves of a reduction in the period of incarceration which they rightly deserve to serve by way of a suspended sentence. Further, such offenders must fully understand that the more serious the offence then the less likely any portion of their incarceration would be suspended.

65. It is against this backdrop that Mr. Lynch's submission that the entirety of the Defendant's period of imprisonment should be suspended is a non-starter. As I stated earlier, the offences committed by the Defendant are very serious (for the reasons that I enunciated). Awarding the Defendant with a full suspension of her sentence would effectively amount to no sentence at all. Moreover, it would give license to current and would-be offenders to evade liability for large sums of money by deception, obtain large sums of money by deception, and engage in forgeries to facilitate their deception, and to do so with the warm and fuzzy comfort that if that they are caught they could avoid actual incarceration. This is not a message which I am prepared to convey.

66. Having said that, I do find, just barely, that there are good reasons for the Defendant's term of imprisonment to be partially suspended. Specifically: the delay in the matter progressing from the 1st September 2022 and the 1st June 2023 which appears to have been caused by the Prosecution not completing disclosure; the delay in the Defendant's section 31 application and trial being scheduled (which was likely due to the Court

having insufficient judges and courts available to hear matters); and, the health challenges of her son which appears to require ongoing medical attention (I accept that the Defendant was the primary caregiver for her son but I do not accept that she was the only one).

67. In this regard, I conclude that six (6) months of the overall 3½ years imprisonment which I earlier imposed should be suspended.

Conclusion

68. To reiterate, I hereby sentence the Defendant as follows:

Evasion of liability by deception (Count 1)	**3½ years imprisonment**
Forgery (Count 2)	**3½ years imprisonment**
Obtaining a money transfer by deception (Count 3)	**3½ years imprisonment**

All sentences are to run concurrently

69. **Six (6) months of the overall sentence of 3½ years imprisonment shall be suspended for 2 years.**

Dated the 7th day of March 2025

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