6 pages

ROYAL COURT
(Samedi Division)

62.

27th March, 1996

Before: The Deputy Bailiff and
Jurats Myles and Herbert

The Attorney General

-v-

Lido Bay Hotel Limited and Barry Shelton

Sentencing, following conviction before the Royal Court *en police correctionnelle* on 29th November, 1995, following a not guilty plea by Lido Bay Hotel Limited to:

1 count of — contravening Article 2(1) of the Lodging Houses (Registration) (Jersey) Law, 1962, by keeping a lodging house which was not registered under the said Law (Count 1); and

1 count of — contravening Article 4 (a) of the Immigration (Hotel Records) (Jersey) Order, 1991, by failing to require persons of the class specified in the said Article 4(a) to comply with their obligations to furnish information as required by Article 3 of the said Order (Count 2); and

following a not guilty plea by Barry Shelton to:

1 count of — contravening Article 17 (2) of the Lodging Houses (Registration) (Jersey) Law, 1962, by knowingly and wilfully aiding, abetting, counselling, procuring or commanding the commission of an offence against the said Law, namely the offence committed by Lido Bay Hotel Limited, as specified in count 1 above, of keeping a lodging house which was not registered under the said Law (Count) 3.

The Court adjourned sentencing on 19th December, 1995. [*See Jersey Unreported Judgment of that date*].

Details of Offence(s):

Barry SHELTON was director and alter ego of Lido Bay Hotel Limited. The company was a keeper of a lodging house and owned the immovable property. The company applied for and held the liquor licences and made applications under the tourism legislation. The company "governed the life of the premises and the use to which those premises were put". Following the not guilty please the Court found that:-

(i) The company had been registered under the Tourism Law, but that registration ended on 31st December, 1994 and had not been renewed;

(ii) In September, 1994 there had been an application by the company to the Tourism Committee for renewal of the registration for the year 1995;

(iii) That application was not pursued by the company;

(iv) The position for 1995 was that the premises were unregistered under the Tourism Law, 1948 and unregistered under the Lodging Houses (Jersey) Law, 1962;

(v) Registration under the 1948 Law had lapsed and registration under the 1962 Law had neither been applied for nor granted.

Despite this absence of registration during February to July, 1995, 86 lodgers were accommodated at the premises for reward. Thus there would have been 57 lodgers at any one time (86 in terms of turnover, i.e. individuals leaving and being replaced by other individuals).

Details of Mitigation:

Technically, none. The defendant SHELTON on his own behalf and as alter ego of the company did not accept that he had done any wrong (defendant represented himself at the hearing upon sentencing).

Previous Convictions:

Nothing considered relevant for these proceedings.

Conclusions:

Lido Bay Hotel Limited:
Count 1: fine of £7,000
Count 2: fine of £1,000

Barry Shelton:
Count 3: fine of £7,000, or 6 months imprisonment in default of payment.

TOTAL FINE: £15,000 with £2,000 costs, jointly & severally.

Sentence & observations of the Court:

Lido Bay Hotel Limited:
Count 1: fine of £6,000
Count 2: fine of £1,000

Barry Shelton:
Count 3: fine of £6,000, or 6 months imprisonment in default of payment.

TOTAL FINE: £13,000 with £2,000 costs, jointly & severally.

S.C.K. Pallot, Esq., Crown Advocate
Mr. B. Shelton on his own behalf and on behalf of Lido Bay Hotel Ltd.

JUDGMENT

THE DEPUTY BAILIFF: This is a continuation of the hearing of 19th December, 1995. At that time we were not satisfied as to the illicit profit that had been made by the defendants. We invited a detailed and proper profit and loss account for the period in question to be prepared which, it was suggested by the Crown, should be examined by Mr. David Keevil, FCA, of Touche Deloitte.

Mr. Shelton, who represents himself this morning, told us that he only received Mr. Keevil's report late yesterday afternoon.

Crown Advocate Pallot has now informed us that Messrs. Michael Voisin & Co., who had previously been acting for Mr. Shelton, received the letter and schedule on 12th February, 1996.

Mr. Shelton attempted to persuade us that certain factors in Mr. Keevil's report were not correct but we accept, for the purposes of this judgment, the Crown's conclusions that the illicit profit was £10,000 and, in our view, it is the best evidence that we have.

In his conclusions to us on 19th December, Crown Advocate Pallot said this:

> *"And I submit that there is no distinction in this principle between offences under the Housing Law and offences under the Lodging Houses Law which Mr. Shelton patently knew that he was committing through the vehicle of his limited company. In fact this court appears to have proceeded on the assumption that the 'Pennymoor' principle applies to the lodging houses legislation in the recent case of A.G. -v- Evans (3rd November, 1995) Jersey Unreported. Applying the 'Pennymoor' principle to this case the Court heard in the course of the evidence of Mr. Carl Mavity that some £40,101 had been paid to Mr. Shelton's company in rents. That there were certain areas where the record keeping was not complete. However the Crown takes the figure of £40,000 as the starting point in this case of applying the 'Pennymoor' principle."*

We now, today, have a quite different scenario where, on Mr. Keevil's calculations, which we accept, the illicit profit is £10,000 and on that basis the Crown moves for fines on counts 1

and 3 of £7,000 each. We must recall that Crown Advocate Pallot, when he last appeared in this Court, had asked that on counts 1 and 3 (that is the infractions of the Lodging Houses Law) the company be fined £22,000 and Mr. Shelton be fined £22,000.

Crown Advocate Pallot now submits to us today that Evans was probably wrongly decided. He goes further; he showed us, by reference to passages from the work of Sir Rupert Cross, "The English Sentencing System" (2nd Ed'n) and from Thomas "Principles of Sentencing" (2nd Ed'n) that the Courts in England are not only entitled to take into account the level of illicit profits, they are, to all intents, bound to do so. He applied those principles to Jersey and went on to say before us: *"These considerations apply in my submission with especial force in the case of the Lodging Houses (Jersey) Law, 1962. If the Court were to disregard the amount of illicit profit and impose a fine which left an offender free to pocket the balance of his spoils what possible deterrent effect would the fining power of this Court have."*

The Crown now says that it does not have a confiscatory power and the amount of the fine that it is imposing is a somewhat arbitrary one. We agreed with H.M. Solicitor General when she introduced the principle of 'Pennymoor' for our consideration in the case of Evans. But we will go a little further and say that we accept that a confiscatory element is not the sole element to be taken into account; it is just one element. In a case such as this which we regarded on 29th November as a blatant breach, although we did not say so in so many words, and which, despite Mr. Shelton's argument before us today, we still see as having four aggravating features, we would not be prepared to reduce the fine to below the amount of the profit. The four aggravating features (which were cited to us by Mr. Pallot today) are:

1) the business was conducted in full knowledge that it was unlawful;

2) the persistence with a plea of not guilty resulted in a full blown trial of the facts;

3) there was clear evidence that the premises were unfit for use as a lodging house and therefore this was more than a technical breach of a regulatory statute. It went to the substance of the vice that the legislature clearly intended to abate, namely the provision of unsanitary, possibly dangerous, accommodation with all the attendant risks to the occupants; and

4) Mr. Shelton's position as *'alter ago'* and the guiding hand of the defendant company.

All that we take into account but we have looked this morning at certain other factors. These are: the period over which the

offences were committed which ran for a relatively short time from February to July, 1995; the profit element; the knowledge and the experience of Mr. Shelton; the fact that this was, in our view, a blatant offence which Mr. Shelton still does not admit to; and, of course, the means of the defendant.

In the circumstances we are minded to reduce the fines in this way:

In respect of count 1, there will be a fine of £6,000. In respect of count 3, there will be a fine of £6,000, or 6 months' imprisonment in default of payment. On count 2, we have spent a little while considering the fact that the charge is not concerned, apparently, with how the forms were filled up, but with the fact that the register was not kept. This may, as far as we can see, be a first offence, but against that we have to weigh in the balance the fact that the abuse of the Immigration Law can have serious consequences for Jersey and therefore, with some hesitation, I have to say we are going to maintain that fine at £1,000 against the company. This makes a total fine of £13,000 and as for the costs of £2,000 jointly and severally against the company and Mr. Shelton, we allow those to stand.

Authorities

Sir Rupert Cross: "The English Sentencing System" (2nd Ed'n): PP.22-.

Thomas: "Principles of Sentencing" (2nd Ed'n): p.319.