

JERSEY / JUDGMENT

AG -v- Lewis and Others [2012]

JRC 065 (26 March 2012)

[2012] JRC 065

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JUDGMENT

THE commissioner: 1. I deal with submissions made by Mr Preston, on behalf of several defendants, now, I have already indicated that so far as submissions made by Mr Tremociero are concerned I shall defer a ruling on that until other defendants, who may find that a count on the Indictment against them is particularised in a way which means they want to argue the same point, have had the opportunity to submit arguments in writing. 2. Turning then to the submissions of Mr Preston. These relate to the counts on the Indictment, which is the bulk of the Indictment, which are alleged contrary to Article 2 of the Investors Prevention of Fraud (Jersey) Law 1967 which reads so far as it is relevant to these submissions as follows:- " i Any person who, by any statement, promise or forecast which the person knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making (dishonestly or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person -" (There are various things which may be induced which cover the forms of allegation in this Indictment which is in basically investing in property). 3. As I say most of the counts on the Indictment are in one shape or form allegations contrary to that section. The argument advanced by Mr Preston is in two parts; first he says that a statement of future intention cannot be a statement for the purposes of Article 2, and secondly, he says that a statement of opinion does not fall within this Article. As to the second part of his argument none of the counts on the Indictment contain allegations of statements of opinion so the argument stands or falls by reason of the first argument. 4. In my judgement this argument is not well founded for a number of reasons. First of all the wording of the Law in this particular Article are clear. There is nothing to suggest that a statement of future intention, if the maker of the statement has at that moment the future intention to do something is not covered by the Law. The preamble to the Law is this; "A law to prevent fraudulent inducement to invest money". Although one can think of misstatements which would be of existing facts as opposed to the present holding of a future intention, for example a misstatement as to the qualifications of the person giving the financial advice, the bulk of the inducements to invest money will be as to future conduct. Indeed the other two ways of committing the offence, making a promise or forecast, by their definition involve making statements as to the future, promising to do something in the future, forecasting that something will happen in the future. 5.

Secondly, the authorities, which in this case are primarily English, all in my judgement demonstrate that the maker has the present intention to do something that is a statement within this Article. The only authority said to be to the contrary which is the authority upon which Mr Preston relies, is the case of R-v-Dent

[1955] 2 QB 590. That was a decision of the Court of Criminal Appeal as it then was, with the judgment being given by Mr Justice Devlin as he then was and it was a very specific decision on the offence under the Larceny Act 1916 of obtaining property by false pretences, against the background of what was then settled law that a promise could not be a false pretence under the Act. The Court held that if a promise as to future conduct could not be the necessary false pretence under this section, then nor could a statement as to future intention. 6. That authority was commented on much more recently by Professor Sir John Smith QC in his note to the case of Y [2002] Crim LR 588. Not for the first time a good starting point for an argument as to the meaning of any authority or statute is Professor Sir John Smith's comment and note in the Criminal Law Review. What he says is this :- "When is a fact not a 'fact'? The various intentions which the present defendant was alleged to have concealed seem clearly to be elements in the actus reus . A present intention is a fact as many authorities have long recognised. It is surprising to find the old case of Dent [1955] 2 Q. B. 590 being resurrected and relied on for the contrary proposition. Devlin J. said it was a rule of the common law that a misrepresentation as to the defendant's state of mind was not a false pretence; but obtaining by false pretences was not a crime at common law. The Larceny Act 1916, like its predecessors did not define a false pretence but the courts from Goodhall

[1821] Russ. & Ry 461 onwards held that it did not include a misrepresentation of a state of mind. The rule seems to reflect a judicial attitude that people should not be so stupid as to be taken in by such representations ("Shall we indict one man for making a fool of another?"). Devlin J. made clear that the court was not deciding that a present state of mind was not a fact. "Such a ruling would have been absurd. It would have been even more preposterous to apply it to a modern statute." 7. All the other authorities of much more recent origin go the other way. I deal with them briefly. They are helpfully set out by Mr Jowitt in his skeleton argument. In R-v- Sunair Holidays

[1973] 1 WLR 1105. Mr Justice McKenna said this:- "A promise or forecast may contain by implication a statement of present fact. The person who makes the promise may be implying that his present intention is to keep it or that he has at present the power to perform it. The person who makes the forecast may be implying that he now believes that his prediction will come true or that he has the means of bringing it to pass. Such implied statements of present intention, means or belief, when they are made, may well be within section 14 of the Act of 1968 and therefore punishable if they were false and were made knowingly or recklessly. But, if they are punishable, the offence is not the breaking of a promise or the failure to make a prediction come true. It is the making of a false statement of an existing fact, somebody's present state of mind or present means." 8. British Airways

Board-v-Taylor

[1976] 1 WLR 13, a House of Lords case, a number of their Lordships in their speeches dealt with this issue. (i) Lord Wilberforce:- "Everyone is familiar with the proposition that a statement of intention may itself be a statement of fact and may be true or false". (ii) Lord Simon of Glaisdale :- "My Lords, in my respectful view the principles of law applicable to the question certified for your Lordships' consideration were stated cogently and accurately by McKenna J., giving the judgment of the Court of Appeal in Reg.-v- Sunair Holidays Ltd. [1973] 1 W. L. R. 1105." (iii) Lord Edmund-Davis:- "But the facts of this case illustrate yet again that an assertion of existing fact and a promise of future conduct may both be found in one and the same statement." 9. And again he cites with admiring approval the judgment of Mr Justice McKenna. 10. Lewin -v-Barratt Homes Limited Unreported 19th November 1999; a decision of the Divisional Court, I don't cite from it but it follows a similar pattern. In the case of Y (in respect of which Professor Sir John Smith, provided the Note concerning the view of Dent that Counsel had attempted to into the case) the Administrative Court in Y drew attention to the fact that Mr Justice Devlin in Dent was dealing specifically with the offence of obtaining by false pretences under the Larceny Act. In my judgment the modern authorities are against Mr Preston's submissions, and indeed properly considered the case of Dent does not go against it. 11. Finally if it is necessary to do so, as a matter of common sense, if a statement of the kind in the present case, which broadly speaking (though it takes different forms) is saying "if you give me your money to invest I will invest it in property in respect of which you will have a beneficial interest", was made dishonestly, it would be extraordinary if it were not an offence contrary to this Article. It seems to be exactly the sort of mischief which the law was intended to deal with, that is to say, prevent fraudulent inducements to invest money. 12. For those reasons Mr Preston's submissions are rejected. Authorities Investors Prevention of Fraud (Jersey) Law 1967. Larceny Act 1916. R-v-Dent [1955] 2 QB 590. R-v-Sunair Holidays [1973] 1 WLR 1105. British Airways Board-v-Taylor [1976] 1 WLR 13. Lewin -v-Barratt Homes Limited Unreported 19th November 1999. Page Last Updated: 04 Nov 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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