

JERSEY / JUDGMENT

AG v Pearce [2023] JRC 199 (26 October 2023)

[2023] JRC 199

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JUDGMENT

THE COMMISSIONER:

Background

1. On 20 July 2023 this Court made a confiscation order against the Defendant under Article 3 of the Proceeds of Crime (Jersey) Law 1999 ("the 1999 Law") and we now give our reasons for making that order. 2. The Defendant was convicted on 17 December 2020 following a six-day Inferior Number trial concerning three counts of entering into or becoming concerned in a money laundering arrangement. 3. The prosecution of the Defendant stemmed from what was described by the prosecution as the most complex drug-related and money laundering investigation ever undertaken by the Jersey authorities. The operation culminated in the seizure of MDMA, cocaine and cannabis resin, with a street value of up to £919,000 imported by yacht at Bel Val Bay on 21 June 2019. Seven of those involved in the importation were sentenced by the Superior Number on 23 September 2020 following guilty pleas. Such an operation required the movement of cash from Jersey to the UK where the drugs were sourced. A variety of methods were used by members of the enterprise to launder money, including physically carrying the cash out of the island; a risky undertaking, as evidenced by the seizure of £30,000 in cash hidden in the boot lining of the car of one of the members of the enterprise. 4. At the Defendant's sentencing hearing on 5 July 2021 Commissioner Clyde-Smith described how the Defendant's involvement came to the attention of the authorities when members of the enterprise were seen going into his shop in St Helier's Central Market, from where he conducted a jewellery and gold bullion business through his company. 5. The Defendant facilitated the movement of cash in the following way: (i) A sum of cash would be handed to him in his shop by a member of the enterprise. (ii) The Defendant would deposit that cash in his personal and business bank accounts. (iii) The Defendant would purchase gold bullion from a dealer in London. (iv) The gold or its proceeds of sale would be made available to members of the enterprise in the UK. 6. The Defendant was sentenced on each of the three counts to seven and a half years' imprisonment to run concurrently. At the sentencing hearing, the Attorney General made an application for a confiscation order in accordance with the provisions of Article 3 of the 1999 Law and the Court found that there

were exceptional circumstances justifying the adjournment of that application to a date to be fixed. 7. The exceptional circumstances included: (i) that the Viscount have been left with what was described as a vast number of assets to be inventoried which had yet to be completed; (ii) the Defendant had to agree the inventory; and (iii) the Viscount was to consider making inquiry of Thaddeus Pearce, the Defendant's brother, who the Defendant said had been running his business in his absence. 8. A further adjournment of the proceedings was granted by the Court at a directions hearing on 15 September 2021, the Court finding that there were exceptional circumstances on the basis that the Viscount was still in the process of preparing the inventory and valuation of the assets seized. 9. The proceedings were further adjourned to 20 December 2021 on which date a directions hearing was held and in order to progress matters the Court ordered that the Defendant use his reasonable endeavours, pursuant to Article 8 of the 1999 Law, to provide certain information relating to a trust that he alleged held the assets of the business that he operated. This information was to be provided by 31 January 2022 and included details as to when the trust was created, the trusts, powers and provisions pursuant to which the shares were alleged to be held by the Defendant on trust, a copy of the trust deed (if in writing), if created orally then by whom and in whose presence it was created and any other documentation evidencing the existence of the trust. The Saisie Judiciaire 10. On 14 January 2021, the Royal Court had ordered that a saisie judiciaire be granted in respect of the realisable property of the defendant, including a number of bank accounts held in the name of Jersey Online Traders Limited ("JOT"), a collection of comics and shares in any company including JOT and businesses conducted by JOT. On 29 April 2021 the Defendant sought to challenge the ambit of the saisie judiciaire, acknowledging that he had not complied with his obligations to inform the Viscount of the assets held by him but asserting that as he had no assets he was therefore not obliged to do so. He stated that the shares in JOT were held by him in trust but did not produce any evidence demonstrating the existence of a trust. He further submitted that all the businesses that he had previously conducted through JOT had been transferred to his brother, Thaddeus Pearce, and his cousin, Simon Green, before his trial. Witnesses heard at the confiscation hearing 11. The Prosecution called Mr David Sowden, a Client Service Director and forensic accountant at Grant Thornton UK LLP, as an expert witness. Mr Sowden had prepared a number of reports analysing transactions on the bank accounts of JOT and the Defendant, the first being used at the trial and three subsequent Confiscation Reports, the latter two of which were in response to reports prepared by the Defendant's expert witness. 12. The Defendant called Mr David Winch, a chartered and forensic accountant, of Sedulo Forensic Accountants, as an expert witness. The reports of both experts were before the Court but it did not prove necessary for Mr Winch to give evidence before us. 13. Both Mr Sowden and Mr Winch had analysed the bank accounts and trading records of the Defendant and his businesses in order to quantify what were described as the "large unexplained cash receipts" (i.e. cash receipts of £1,000 or more) over the period from 2016 to May 2019. Mr Sowden had quantified large cash receipts as £1,569,918 and Mr Winch had quantified them as £1,146,065.23. The latter figure was however subsequently revised by Mr. Winch to £1,185,060.23 taking into account certain

smaller "grouped" amounts that had been banked by the Defendant and included by Mr Sowden in his report. Given that the realisable amount was clearly going to be significantly less than the amount that either of the experts had calculated for the purposes of assessing benefit the Crown, whilst not agreeing the figure assessed by Mr Winch, was content for the court to base its calculation of benefit on Mr Winch's figure of £1,185,060.23. 14. We also heard evidence from the Defendant, his brother, Thaddeus Pearce, Louise Evans, a customer of the Defendant, and his mother, Mrs Margaret O'Brien. The test to be satisfied in order to make a confiscation order 15. The requirements for the making of a confiscation order are set out in Article 3 of the 1999 Law, and are, in summary, as follows: (i) Firstly, has the Defendant benefitted from any relevant criminal conduct? In this respect the burden of proof is on the Crown. (ii) Secondly, if the court has determined that the defendant has so benefited, what is the value of the benefit that the Defendant has obtained? The burden of proof again is on the Crown but subject to certain assumptions that the court can be asked to make under Article 5 of the 1999 Law. (iii) Thirdly, what sum is recoverable from the Defendant? The burden here is on the Defendant. 16. It should be noted that the standard of proof in each case is that applicable in civil proceedings, "Benefit" is defined in the Law under Article 1(2A) as follows: "(a) a person benefits from any criminal conduct if that person obtains property as a result of or in connection with the conduct; and

- (b) in particular, but without derogation from sub-paragraph (a), a person benefits if he receives any payment or other reward in connection with such conduct, whether carried on by that person or by another". 17. Article 1(2B) provides that: "For the purposes of Part 2, "relevant criminal conduct" in relation to a defendant, means the offences for which the defendant appears to be sentenced, together with any other offences which the court may take into consideration in sentencing the defendant." 18. The assumptions that we are asked to make, which are far-reaching, relate to the second question as to the value of the benefit that the Defendant has obtained. The broad effect of the assumptions is that they allow the court to assume that property held by the defendant for a period prior to the date of the criminal activity for which he is being sentenced represents the proceeds of "relevant criminal conduct". 19. The assumptions are defined in Article 5 as follows: "Article 5(5): Those assumptions are: (a) that any property appearing to the Court to be held by the defendant at any time since the date of the defendant's conviction, or appearing to the court to have been transferred to the defendant at any time since the beginning of the relevant period - (i) was received by the defendant at the earliest time when he or she appears to the court to have held it, and (ii) was received by the defendant as a result of or in connection with the commission of offences specified in Schedule 1; (b) that any of the defendant's expenditure since the beginning of the relevant period was met out of payments received by the defendant as a result of or in connection with the commission of offences specified in Schedule 1; and (c) for the purposes of valuing any property that the defendant had or is assumed to have had at any time, that the defendant received the property free of any other interests in it." 20. The conditions that need to be satisfied before the court can make the assumptions in Article 5(5) are set out Articles 5(1) and 5(2) of the 1999 Law, which provide

as follows: "(1) This Article applies for the purposes of Article 3 where a defendant appears before the court to be sentence in respect of a qualifying offence-

- (a) if the Attorney General asks the court to apply it for the purposes of that Article; or
 - (b) if the court considers that, even though the Attorney General has not asked it to do so, it is appropriate for its to do so.
- (2) An offence is a qualifying offence for the purposes of this Part if it is an offence in respect of which all of the following conditions are satisfied, namely:
- (a) it is an offence specified in Schedule1;
 - (b) it is an offence committed after this Article comes into force; and
 - (c) the court is satisfied that it is an offence from which the defendant has benefited." 21. It was accepted by the parties that conditions
- (a) and (b) under Article 5(2) were satisfied in this case. The condition in Article 5(2)(c) was not accepted by the Defendant as having been satisfied. 22. The Attorney General's written submissions to us were that the Defendant had benefitted from criminal conduct, the submissions stating, at paragraphs 42 and 43: "42. The Prosecution's case is that the Defendant has benefited from criminal conduct in terms of article 1(2A) of the 1999 Law.
43. The Prosecution's case on benefit relies on the assumptions set out in articles 5(4) and 5(5) of the 1999 Law." 23. That submission however ignored the fact that in order to apply the assumptions the Court first had to find that the Defendant has benefited. The assumptions clearly cannot be used to satisfy the very hurdle that has to be crossed before they can apply. 24. At paragraph 14 of the Attorney General's Reply to two documents that were filed on 1 February 2022 on behalf of the Defendant (which were themselves responding to the requests for further information concerning the alleged trust) he stated that " The Defendant accepts that he has benefited from his criminal conduct ". However, this acceptance was based on a paragraph in the Defendant's Outline Reply to the Attorney General's Statement signed by his then lawyer on 16 December 2021. This paragraph put forward a proposal entitled " A possible way forward " where the Defendant suggested, among other matters, that he would not object to a declaration that he had benefited from relevant criminal conduct in the sum of £1,246.21. Accordingly, the acceptance upon which the Attorney General relied was no more than an offer which was part of a proposal that was not accepted by him. We do not regard that as sufficient to discharge the burden of proof on the Attorney General in order to apply the assumptions. 25. Accordingly, the first test required for the purposes of making a confiscation order needs to be satisfied, not only for the purposes of making a confiscation order but also in order to apply the assumptions. 26. We have referred to the definition of benefit, the relevant aspect of which in this case requires the Defendant to have obtained property from the offence for which he was sentenced. The Attorney General asserts that the cash that the Defendant received was received by him initially and then deposited in either the business or his personal account using the paying in machine at

the bank or over the counter. On behalf of the Attorney General Advocate Santos-Costa suggested that once the Defendant had the cash he could do what he wanted with it and accordingly he had the necessary degree of power and control to have been regarded as obtaining it. Advocate Steenson, on the other hand argued that in dealing with the cash the Defendant was merely acting on behalf of the company in relation to a business transaction and therefore could not be said to have obtained it. He further suggested that what the Prosecution were seeking to do was in effect to " pierce the corporate veil " of the company in circumstances where that was not permissible. 27. We were referred to the decision of the Jersey Court of Appeal in Templeton-Brown v. AG

[2022] (2) JLR 241 . That case related to an appellant who had been charged with conspiracy to supply drugs. His role in the conspiracy was to have his rented lock-up garage used for the storage of drugs. The value of the drugs found in the garage was £79,500, which was significantly less than the total value of the drugs seized, of £507,000. In the sentencing remarks the Appellant was said to be " more than a mere custodian, but he was a custodian, he had an important part to play....." . The Royal Court made a confiscation order against the Appellant on the basis that the value of the drugs in the garage was £79,500 and rejected the Prosecution's argument that, as a conspirator, the Appellant should be taken to have obtained, along with his co-conspirators, the totality of the drugs involved in the conspiracy. The appellant, seeking leave to appeal against the confiscation order, submitted, *inter alia* , that he had not " obtained " any property in the course of the conspiracy, and therefore did not benefit from any criminal conduct so as to be liable to a confiscation order. 28. The Court of Appeal reviewed a number of cases from England and Wales which, it was argued, established that a person will not " obtain " property for the purposes of the relevant confiscatory provisions in that jurisdiction where the person has no legal interest in it and neither has the person any power of disposition or control so that someone who is a courier or custodian of property, and nothing more, does not " obtain " it. The Court of Appeal held, at paragraphs 63 and 64 of the judgment, that: "63....ordinarily a defendant will obtain a chattel within Article 1(2A)(a) only if the Defendant comes to own it or assume (that his, take to himself or herself) the right of an owner, this right connoting a power of disposition or control.

64. That said, it should be kept in mind that the words "obtained" is a word of ordinary language, and what we have just described is not a substitute for the words of the Article. But what the cases do establish is that merely because one holds or has physical possession of something it does not follow that one has "obtained" it. There must be more than merely having it. What will matter is how and for what purpose one has to come to hold or have physical possession and what then one can or does do with it. The dictionary meaning of the verb "obtained" in the Shorter Oxford English Dictionary, indeed the first given meaning, is to "procure or gain, as the result of purpose and effort". In our judgment the cases establish that as a minimum there must be some element of right acquired or asserted for the person to have obtained it." 29. It is clear from Mr Sowden's analysis of the large cash transactions that significant quantities of cash were into both the business and personal accounts of the

Defendant by means the paying-in machines in the St Helier branch of the bank at which the Defendant maintained his business and personal accounts. The quantities of cash were so large that on occasions the machines would jam, ultimately leading to the bank refusing to accept cash payments other than over the counter. 30. Count 1 of the three counts in respect of which the defendant was convicted following his trial related to a money laundering arrangement alleged to have involved the Defendant and a Trevor Cloonan on or around 13 March 2019. It was admitted at trial that between 15 and 19 March 2019 £37,370 of cash was deposited into the Defendant's business and personal bank accounts and that this cash was used, together with other funds held in the business account, to fund the purchase of bullion, which was collected by the Defendant in person in Hatton Garden, London, on or about 23 March 2019. 31. The Defendant admitted, in his evidence before us, that he would on occasions pay cash sums into his personal account in order to avoid the bank charge of 1% on payments into his business account. It was clear that he drew little distinction between the business and personal accounts when paying-in sums in cash, referring to having to "sneak through" the sums via his personal accounts with care as the bank would be watchful. 32. In relation to the argument that this is an impermissible piercing of the corporate veil we were referred to a decision of the Court of Appeal for England and Wales, *Regina v Fulton*

[2019] 4 WLR 123 . 33. In *Fulton* , the defendant was an experienced foreign exchange dealer employed by one of several money services bureaux found to have been involved in laundering the proceeds of a significant fraud. He was convicted at trial of conspiracy to disguise, convert or transfer criminal property and sentenced to a term of imprisonment. The defendant had been aware that the trades which he carried out at the bureaux on behalf of the client, one of the principal figures in the conspiracy, were not legitimate trades but the laundering of illegal funds. His appeal against sentence was dismissed and he was made the subject of a confiscation order. The judge found that the defendant: (i) although acting as an employee, had knowingly played a significant role in the conspiracy and had been responsible for trades passing £17.85 million through the company; (ii) while not a signatory to the company bank account he had ready and authorised access to the account and the company's banking platform and was approved to make trades and transfers without requiring further authorisation from his employer; and (iii) had not made a significant personal gain above his salary but had been motivated by getting more business for the company and therefore more commission for everyone there. The judge concluded that the defendant had been in control of the money transfers within the company bank account and obtained the money transfers into the accounts from companies fronted by his co-conspirator, jointly on behalf of himself and the other conspirators, with the intention that the criminal property it represented would be passed on to others within the conspiracy, and that for the purposes of Section 76(4) of the Proceeds of Crime Act 2002 and for the purposes of determining the recoverable amount he had obtained property with a value of £17.85 million as a result of his criminal conduct. Dismissing the appeal, Thirwall J, in delivering the judgment of the Court of Appeal said,

at paragraph 47: "The appellant was acting as a money launderer. His employment was the context within which he was able to carry out very large scale money laundering. He was money laundering because he was involved in the conspiracy, not because he was employed as a foreign exchange dealer. Money laundering was not a requirement of his employment. It was the result of his involvement in criminal activity. What he did was not circumscribed by the terms and conditions of his employment, he did what was necessary to achieve the aim of money laundering.... 56. We are satisfied that the appellant's lack of legal interest in the bank account of (the money services bureau) does not lead to the conclusion that he did not obtain the funds he controlled. He did so as effectively as if a co-defendant had brought the funds to the money services bureau in a suitcase and handed them to him so he could exchange them into currency of a different kind for the benefit of the two of them." 34. In relation to the Defendant's argument that the cash was obtained by JOT rather than him and that to find otherwise would be an impermissible piercing of the corporate veil the Court is satisfied that in relation to the cash that was the subject of the counts for which the Defendant was convicted, he exercised the necessary degree of control to have obtained it and it is of course of particular note that in respect of at least one occasion he felt able to transfer part of the cash to his personal account. We accordingly find that the Defendant has benefited from the relevant criminal conduct and we are therefore able to apply the assumptions under Article 5. The benefit obtained by the Defendant 35. We next have to calculate the benefit obtained by the Defendant applying the assumptions. Experts for the Crown and the Defence, namely Mr Sowden and Mr Winch had analysed the relevant transactions and whilst there was a difference of opinion in relation to the total amount of the relevant cash transactions the Crown did not object to the Court applying a lesser figure calculated by Mr Winch, namely £1,185,060.33. We accept that this figure is of a somewhat academic nature given that the realisable amount is a fraction of that total, but we nevertheless make that finding. The realisable assets 36. We next turn to the sum that is recoverable from the Defendant. The Defendant's principal asset is his 100 out of 103 shares in Jersey Online Traders Limited ("JOT"). The Defendant asserted that he held these shares on the terms of a family trust for the benefit of his uncle Simon Davis. In support of this assertion we heard evidence from Mr Pearce and his mother, Mrs Margaret O'Brien who, it was suggested had at one time been a trustee of the alleged trust. The trust 37. A number of Jersey authorities were cited to us in relation to the requirements for a valid trust. They are perhaps best summed up in the judgment of Birt, Bailiff, in *In the matter of the Exeter Settlement*

[2010] JLR 169 where he stated: " It is trite law that, in order for a trust to be valid, there must be certainty of words, certainty of subject matter and certainty of objects (see *Knight v Knight*)(3)(3 *Beav .* at 172-173; 49 E. R. at 69). This principle is reflected in Article 10 (1) of the *Trusts Jersey Law 1984*" . 38. We would add that Article 7 of the 1984 Law provides that " a trust may come into existence in any manner" and goes on to provide that " a trust may come into existence by oral declaration, or by an instrument in writing (including a will or codicil) or arise by conduct " . 39. On 1 February 2022 a statement was filed on behalf of the

Defendant purporting to provide information in respect of the alleged trust, supported by a letter from the Defendant's mother, Margaret O'Brien. 40. The letter from Mrs O'Brien stated that " in the early 1980s, my father, Clifford Desmond Davis, was very anxious to provide for the welfare of his severely disabled son Simon Davis, into the distant future. With this priority in mind, he bought shares in British Gas, British Telecom, TSB and other companies in my name for each of my six children ". She further stated that " all of us understood that the purchases were made on the understanding that the assets of the trust would be retained so as to provide financial support for Simon Davis if he needed financial help at any time" . She went on to say that " as Simon's welfare is the chief priority of the trust very few distributions have even been contemplated to any of the minor beneficiaries ". She stated that the defendant was chosen by his grandfather to take over from her as trustee in the late 1990s, around the time of her divorce, and that at the same time, her daughter, Theresa O'Brien, was added as a minor beneficiary. In the letter she said that she recalled that she was " the nominee shareholder of Jersey Online Traders Limited at one point in 2012. This was sometime after I ceased to be trustee of the family trust. I transferred these nominee shares to Darius as trustee in 2014" . 41. Mrs O'Brien gave evidence before us in relation to the matter of the trust. She said that when Margaret Thatcher's government was privatising a number of public companies in the 1980s her father had purchased shares for each of her children. She said that his view as expressed to her was that " if ever Simon needs anything he is to come first ". When she was asked, in cross-examination, if she remembered if she was trustee she responded " in so far as my dad said I trust you with this I was trustee" . When asked with what it was that her father was saying he trusted her she referred to the fact that money had also been given, through her, by her father to enable her husband Nigel to open a shop in Waterloo Street some time before 1983. We accept that Mrs O'Brien was doing her best to assist the Court but in the Court's view her evidence suggests that at its highest there was a general family agreement that the family would put Simon Davies interests before their own given his serious disability. That is commendable but in our view it does not amount to the creation of a trust in the legal sense. Trust in Mrs O'Brien's sense being used in the sense of being " trusted to do the right thing for Mr Davies ". 42. We turn now to the evidence given by the Defendant in relation to the trust. 43. In his evidence in chief the Defendant stated that he earned £10,500 per annum as a director of JOT and that this was the full extent of his earnings. He further stated that the company had never issued a dividend as he regarded this as an inefficient method to extract money from the company given that tax would have to be paid on the dividend. He suggested that instead the company could be sold or wound up at the end of its life and no tax would then be payable. He further stated that the only person who would be entitled to a dividend from the company would be Simon Davis, as the beneficiary of the trust upon which the JOT shares were held, and even then it would only be necessary to declare a dividend if funds were needed by him. He said that he had instructions as to what to do with the shares on Mr Davis' death. He accepted that he had never asked Mr Davis if he needed funds from the company but said that he would rely on other members of the family to ask Mr Davis and to communicate what was

required to him. In relation to the trust his evidence was that there was no written declaration of trust and that it was not a Jersey trust but a " United Kingdom common law trust ". He referred in evidence to a document which had been filed on his behalf, dated 16 December 2021, by his then lawyer being the " Defendant's Outline Reply to the Attorney General's Statement dated 29 November 2021 ". At paragraph 3.2 of this document details of the annual returns of JOT from 2013 to 2019 were set out in tabular form as follows :

Return date	Total number of issued shares	Shareholder(s)	Number of Shares
1 Jan 2012		Linda Margaret O'Brien as Trustee	
1 Jan 2013		Karen Julia Evans Guardian ad litem of Simon Jude Davis	
1 Jan 2014		Darius Pearce (Trustee)	
1 Jan 2015		Karen Julia Evans	
1 Jan 2016		Darius Pearce (Trustee of Simon Jude Davis)	
1 Jan 2017		Karen Julia Evans	
1 Jan 2018		Darius Pearce (As Trustee)	
1 Jan 2019		Karen Julia Evans	

44. In his examination in chief the Defendant stated that the 100 shares that he held on trust for Simon Davis were held for Mr Davis during his lifetime and after his death they were to be divided between the descendants of his mother save for him as trustee. In relation to the absence of records concerning the trust he said that any records relating to it would have been on his business premises and that documents that weren't seized by the police or Viscount had been lost as a result of the premises being cleared out by the Inspector of Markets. 45. In response to questions put to him in cross-examination the Defendant stated that the trust had been created by his grandfather and that his role as trustee was to invest money to benefit the beneficiaries and to ensure that if money was required then it would be available. He reiterated that on the death of Simon Davis the funds could be distributed to descendants of his mother. In response to a question as to why Mr Davis had never received any benefit from the trust he stated that Mr Davis was in receipt of benefits in the UK from the local council and if he were to receive a benefit from the trust this would affect his entitlement. He went on to say " it's not for me to prove the trust exists, simply to prove the assets don't belong to me. If it has not been properly settled it would revert to the estate of my grandfather" . 46. In relation to the entries by the Defendant on the annual returns of JOT the court has some difficulty in accepting the veracity of documentation produced by him. During the course of his cross-examination Advocate Santos Costa put to the Defendant copies of documentation that had been obtained from his and JOT's bankers, HSBC. One of the documents was a letter from the Company Secretary of JOT dated 29 May 2018 stating that the Defendant received " annual remuneration for his services as Director to the Company in the sum of £35,000 and an additional bonus based on the results of the Company" . The Defendant stated that he had never seen that letter and that it was not signed by him, suggesting that it came from his father. When asked about the figure stated in relation to his remuneration he replied " It's not unusual to exaggerate your income to a bank". 47. The Defendant was also shown a personal information sheet which was signed by him, dated 26 November 2015. The sheet contained a section in relation to " salary/annual income " in which the Defendant had inserted a figure of £72,000 in respect of " personal annual income ". When asked about this he responded " I suspect the £72,000 relates to the profit

of the company " and when it was put to him that it was shown as " personal annual income " he replied " the information that I provided to HSBC is not exactly the same as represented to the income tax authorities. If I show higher income to obtain a loan from a bank it appears that is what it is" . When asked whether the truth is somewhat blurred in his world he responded " No, it's clear what I've done ". 48. When looking at the three certainties for the creation of a trust, oral or otherwise it is difficult to identify any certainty as to the wording or terms of the alleged trust. 49. The evidence of Mrs O'Brien would suggest that her father, the Defendant's grandfather may have created a trust in respect of individual parcels of shares in the companies which were the subject of privatisation by Margaret Thatcher's government. However, these would have been separate, fixed trusts, one for each grandchild. Such arrangements were common at that time given that there was a maximum number of shares that any one individual could purchase for themselves. Mrs O'Brien's recollection of her father wanting the family to put Simon Davis's welfare above their own does not appear to have been part of those arrangements and we would regard those wishes to be no more than a hope that the family would look after Mr Davis. The Defendant's suggestion that he placed the JOT shares into a family trust created by his grandfather would not have created a trust as there was no family trust into which to place them, certainly not one in favour of Simon Davis. Furthermore, the Defendant's conduct does not suggest that he regarded himself as trustee of a trust for the benefit of Mr Davis: he made no attempt to ascertain whether his alleged beneficiary required financial assistance and his stated intentions for JOT, namely not to declare a dividend, which would result in tax being payable, but to allow the company to continue until being wound-up or sold were at odds with a trust for the benefit of an elderly individual. 50. The Defendant was not averse to creating the illusion of a particular state of affairs when it suited his purpose, for example the documentation supplied to HSBC, and we regard his suggestion that the shares of JOT were held in favour of a trust in favour of Mr Davis as just such an illusion. Furthermore the Defendant's assertion that he had transferred all the businesses conducted by JOT to his brother and cousin prior to his trial is hardly consistent with the acts of a trustee. We are not satisfied that the shares in JOT held by the Defendant are not realisable assets for the purposes of the confiscation order. 51. The Crown has valued the business assets of JOT Limited at £148,718.92, the principal assets being items of jewellery. Intervention by Mr Thaddeus Pearce 52. We heard evidence from Mr Thaddeus Pearce, the Defendant's brother, who intervened to claim both the tools of his jewellers trade which he said had been made the subject of the saisie and also items of stock that had come from his business when it was closed and which he said were the subject of an agreement with his brother that his brother could sell them, but on the understanding that he would replace them with items of an equivalent value. He said that he had listed his items and that those items that were part of his original stock could be identified by the particular price tag that he used. 53. Mr Thaddeus Pearce had also sworn an affidavit on 21 January 2021 in support of his claim. 54. In relation to the tools we are satisfied that these belonged to Mr Thaddeus Pearce and we hereby direct the Viscount to return them to him. Some of the tools and jewellery

equipment items are identified in Mr Pearce's affidavit and we note that they exclude any items which are claimed by a Mark Smith. We suggest that the Viscount endeavours to reach agreement with Mr Pearce in relation to the tools and equipment and we give the Viscount liberty to apply to this court if the matter cannot be resolved. 55. In relation to the items of jewellery claimed by Thaddeus Pearce, we make no finding at present and will leave their ownership to be determined by the Viscount with liberty to apply to the Court should it be necessary. 56. Without making any finding, we can see that there is an argument that Mr Thaddeus Pearce may be able to assert in respect of his claim to those of his original items which were not sold by the Defendant and replaced by items of an equivalent value (in accordance with the agreement between them). The evidence of Thaddeus Pearce was that these items can be identified by the particular price tag that he attached to them. However his claim to ownership of substituted items may be more difficult as it is arguable that they may have in effect have become part of the working capital of the business, leaving Thaddeus Pearce as a mere creditor. 57. We therefore deduct from the value of the business assets the sum of £5,000 in respect of Mr Thaddeus Pearce's tools. We recognise that there are other third party claims against the company and therefore the amount that may eventually be realised could well be diminished as a result. However, on the basis of the evidence before us we calculate the value of the 100 shares to be £148,348.05. 58. In relation to Mr Pearce's other assets the Crown have conceded that the figure of £70,000 in respect of bullion held in the UK may be deducted, as there is no evidence of its existence. Also to be deducted is the balance in a Starling account of £72.75. Taking the value of the shares in JOT to be £148,348.05 and the value of Mr Pearce's personal assets to be £1,304.85 we calculate the value of the realisable assets to be £149,652.90 and we make a confiscation order in that amount. 59. It will be for the Viscount to reinstate the company if necessary, and to realise its assets and to satisfy any accepted liabilities. Should the amount realised be less than the confiscation order, an application can be made to the Court to vary it. 60. We impose a sentence of 12 months' imprisonment in default of payment of the amount ordered but would expect a further application to the Court to be made prior to that sentence being served. Authorities Proceeds of Crime (Jersey) Law 1999. Templeton-Brown

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Prepared on 26 October 2026 · Esheria