



IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2023/01981/B2

Neutral Citation Number: [2023] EWCA Crim 1244

Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 6th October 2023

B e f o r e:

LORD JUSTICE STUART-SMITH

MR JUSTICE CHOUDHURY

THE RECORDER OF NOTTINGHAM

(Her Honour Judge Shant KC)

(Sitting as a Judge of the Court of Appeal Criminal Divisions)

R E X

- v -

REBECCA THOMPSON

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Miss G Daly appeared on behalf of the Appellant

Miss A Keighley appeared on behalf of the Crown

J U D G M E N T

Friday 6th October 2023

LORD JUSTICE STUART-SMITH: I shall ask Mr Justice Choudhury to give the judgment of the court.

MR JUSTICE CHOUDHURY:

1. On 11th November 2015, in the Crown Court at Wolverhampton, the applicant changed her plea to guilty on three counts of dishonestly making false representations.

2. The facts, very briefly, are that on various dates in 2013 the applicant, in communications with financial institutions, impersonated a Ms Ashfield (her husband's aunt) and thereby caused the funds under two investment policies belonging to Ms Ashfield to be paid into the applicant's account. The sums so paid came to a total of just under £32,000.

3. The applicant had also arranged for Mr Ashfield's disability living allowance to be paid into her account. The sum defrauded by that means was £1,511.10.

4. On 1st February 2016, the applicant was sentenced to 20 months' imprisonment on each count to run concurrently.

5. On 28th October 2019, in confiscation proceedings under the Proceeds of Crime Act 2002 ("POCA"), His Honour Judge Boora considered whether a confiscation order should be made against the applicant.

6. The applicant lived in Wolverhampton ("the property") with her husband, Mr Mark Thompson, their adult son, who has learning difficulties, and, as at the date of conviction, Mr Thompson's mother, Kathleen. The property, which had previously been owned by Mr

Thompson's parents, was held in Mr Thompson's sole name. It had been transferred to him some years earlier.

7. Notwithstanding the sole ownership status of the property, the Judge found that the applicant held a 45 per cent beneficial interest in the equity in the property. That interest was valued at £64,459.80. The overall agreed equity value in the property at the time was £143,244.

8. The Judge proceeded to make a confiscation order against the applicant in the sum of £35,922.47.

9. The applicant's applications for an extension of time (around three and a half years) and for leave to appeal against the finding as to her interest in the property have been referred to the full court by the Registrar.

10. Miss Keighley, who appears on behalf of the Crown (but who did not appear below), has very helpfully indicated that the Crown does not contest the applications. Given the latter concession and the court's view that there was good reason for the delay, we grant the extension of time sought and we grant leave to appeal.

11. As to the substance of the appeal, both Miss Keighley and Miss Davy, who appears for the applicant (but also did not appear below), agree that the Judge was led into error in considering whether the applicant had an interest in the property. It is common ground that the Judge was not directed to key provisions contained in section 84 of POCA. Section 84 provides, amongst other matters, that property is held by a person for the purposes of confiscation proceedings "if the relevant person holds an interest in it". An interest in land for these purposes is confined to "any legal estate, beneficial interest or power": section 84(1)(b) and (2)(a) and (f).

12. Miss Daly submits that the correct approach to be taken in sole ownership cases is that set out by the House of Lords in *Stack v Dowden* [2007] UKHL 17, [2007] 2 AC 432, in which Baroness Hale stated:

"56. Just as the starting point where there is sole legal ownership is sole beneficial ownership, the starting point where there is joint legal ownership is joint beneficial ownership. The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership. **So, in sole ownership cases it is upon the non-owner to show that he has any interest at all.** In joint ownership cases, it is upon the joint owner who claims to have other than a joint beneficial interest." (emphasis added)

13. The Judge was not referred to this authority, and none was cited in his ruling. Instead, the Judge was erroneously invited to consider the question of interest as if it were a question of determining what would happen if the court were exercising its power pursuant to the Matrimonial Causes Act 1973, to make discretionary orders as to the distribution of assets and income as between spouses on a decree of divorce, judicial separation, or nullity. Miss Daly submits that the 1973 Act was wholly irrelevant to the task before the Judge.

14. Miss Keighley accepts those submissions. Given that sensible concession, it is not necessary for this court to engage in an extensive discussion of the law. Suffice it to say that it is plain to this court that the 1973 Act was not relevant and that the Judge was led into error by not being invited by counsel below to consider whether the applicant had any interest in the property within the meaning of section 84 of POCA.

15. The sole legal ownership of the property was in Mr Thompson's name. In those circumstances it would be for the non-owner (in this case the Crown) to show that the applicant had any interest at all: see *Stack v Dowden* at [56]. Not only did the Judge not have that burden in mind, but there was also no consideration of whether there was any common intention

between the applicant and her husband that she should share the beneficial interest in the property with him: see *Jones v Kernott* [2011] UKSC 53, [2012] 1 AC 776 at [52].

16. Ordinarily, the matter would have been remitted, pursuant to section 11(3)(a) of the Criminal Appeal Act 1968, for reconsideration below, in accordance with the terms of section 84 of POCA. However, Miss Keighley has stated that, given the passage of time and the likely sums involved, the Crown does not invite remittal. In the circumstances, including the fact that the applicant is incapacitated and suffering from a terminal illness, that is a very sensible and reasonable concession.

17. In these circumstances we allow the appeal. We quash the confiscation order made on 28th October 2019. There is no order for remittal.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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