

COURT OF APPEAL.

127.

9th July, 1996.

Before: J.M. Collins, Esq., Q.C., (President),  
R.D. Harman, Esq., Q.C., and  
Sir Peter Crill, K.B.E.,

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Lido Bay Hotel, Limited;  
Barry Shelton

- v -

The Attorney General

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Applications by Lido Bay Hotel, Limited and by Barry Shelton for leave to appeal against conviction before the Royal Court, *en Police Correctionnelle*, on 29th November, 1995; and by Barry Shelton for leave to appeal against a FINE OF £6,000 WITH COSTS OF £2,000, imposed on 27th March, 1996, 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), on which count A FINE OF £6,000 was imposed; 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), on which count A FINE OF £1,000 was imposed; 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), on which count A FINE OF £6,000 was imposed;

Both defendants were ordered to pay COSTS, JOINTLY AND SEVERALLY OF £2,000.

Leave to appeal against conviction was refused by the Bailiff on 5th January, 1996.

Leave to appeal against sentence was refused by the Bailiff on 8th May, 1996.

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Advocate S.J. Habin for the Appellants.  
C.E. Whelan, Esq., Crown Advocate.

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JUDGMENT  
(on appeal against conviction)

5 THE PRESIDENT: The Lido Bay Hotel Limited was convicted on 29th  
November, 1995, of two offences by the Royal Court sitting en  
police correctionnelle. One of these offences was an offence  
against Article 2 (1) of the Lodging Housing (Registration)  
10 (Jersey) Law, 1962 to which I will refer as the "Lodging Houses  
Law". The other was for an offence against Article 4 (a) of the  
Immigration (Hotel Records) (Jersey) Order, 1991, to which I will  
refer as the Immigration Order. At the same hearing Mr. Barry  
Shelton was convicted of an offence of knowingly and wilfully  
aiding and abetting, counselling, procuring or commanding the  
first mentioned of the above offences that were the subject of the  
convictions of the Lido Bay Hotel Limited to which I will refer as  
"the Company".

15 Both the Company and Mr. Shelton now seek leave to appeal.  
The offence against the Lodging Houses Law, in respect of which  
the Company was so convicted and in respect of which Mr. Shelton  
was himself so convicted for aiding an abetting, was one of  
keeping a lodging house which was not registered under the Lodging  
20 Houses Law. The offence against the Immigration Order was one of  
failing to comply with the obligation to furnish such information  
as is required by Article 3 of that Order and which is to be  
provided by the keeper. That information includes the full name  
and nationality of those staying at the Lido Bay Hotel at the  
25 material time together with passport and other specific details in  
respect of aliens.

30 The effect of the Lodging Houses Law and of the Tourism  
(Jersey) Law, 1948 is to distinguish between lodging houses and  
hotels, imposing different régimes under their respective terms.  
Article 14 of the Lodging Houses Law provides that the keeper of a  
registered lodging house is not to "*offer or provide accommodation*  
*for reward in the lodging house for any person whom he believes or*  
*has reasonable cause to believe, to be a tourist to the Island*", a  
35 tourist being defined in Article 1 of the Law as a "*person who*  
*visits the Island for the purposes only of recreation*". There

is, however, no equivalent provision preventing hotels registered as such operating as lodging houses.

5 The provision in the Lodging Houses Law of salient importance in connection with this application is that which defines a lodging house. A lodging house is defined in Article 1 as "*any premises on which is conducted the business of providing lodging with or without board, for reward, other than premises registered under the Tourism (Jersey) Law, 1948 as amended*". Premises so  
10 registered under the Tourism Law therefore do not require registration under the Lodging Houses Law itself.

15 It was not disputed that the Lido Bay Hotel comprised premises owned by the Company between 1991 and 1995 nor was it disputed that Mr. Shelton was, through one or two other companies, the controlling shareholder of the company; indeed, he held an interest of 90% or so. It was disputed, however, that those premises consisted of, or comprised, a lodging house at the  
20 relevant time, although what Mr. Shelton referred to in evidence as the "tourist guests", were moved into other hotels within the group of companies in early 1995. Thereafter, Mr. Shelton preferred to call the occupants "long term guests" under the hotel register, albeit not tourists. A Mr. Staines who was employed as the manager gave evidence, which was not disputed by Mr. Shelton,  
25 that Mr. Shelton had given him certain instructions in February and March, 1995. These instructions were, taking them together, to the effect that the hotel would not be opening for tourists at all from March, 1995, and that Mr. Staines from February, 1995, through to March, 1995, and onwards was to take in what were  
30 described by Mr. Staines as "sleepers", that is to say persons who were in effect to be given board and lodging.

35 Having looked at the evidence with care and considered the arguments which have been put before us today we consider that it was clearly proved and rightly accepted by the Royal Court, first, that the Lido Bay Hotel was in fact being operated by the Company as a lodging house in 1995, and more specifically between February and July of that year. Secondly, that it was not registered as such for the year 1995. Thirdly, it was not registered either as  
40 a hotel under the Tourism Law in 1995. Registration is a question of fact and the absence of any such registration for 1995 in our view was clearly proved by the evidence of Mrs. Minchinton who was a Hotel Inspector of the States of Jersey Tourism Committee. Thus no registration fee as distinct from application  
45 fee was invoiced or paid for 1995 and no registration certificate was issued, nor indeed intended to be issued, for that year. I will refer later to the specific arguments in respect of the construction of the terms of the law which were put before us this  
50 morning.

The lack of registration for 1995 can be simply explained. There had been a history of criticism of the facilities available

at the Lido Bay Hotel and in particular of the lack of proper bathroom and toilet facilities on the second floor from 1991 onwards. It is right to say that a new policy was apparently brought in in 1991 by which higher standards were required than had been previously. The lack of proper bathroom and toilet facilities on the second floor led to correspondence which was summarised in a document which was before the Royal Court and which was placed before us, entitled "*Lido Bay Hotel File 125 - chronological list of events regarding the unsatisfactory distribution of public facilities*". I will not attempt to go through the list of correspondence and contacts which that contains but refer only to a few items.

There was correspondence in April of 1993 in the course of which a Mr. King, who was general manager of the shareholding company, wrote acknowledging that they were fully aware of the deficiencies of the Lido Bay Hotel. In a letter which he wrote in that month Mr. King stated that they understood that if a full development, that is to say a full redevelopment of the hotel, was not to take place then the necessary work to rectify the deficiencies to which I have referred would have to be implemented. On that basis the Lido Bay Hotel was registered as a hotel in 1993. Likewise in 1994 it was registered and Mrs. Minchinton asked for written confirmation from the holding companies as to the work that they were going to do and she noted in a letter in that month that Mr. Shelton had told her in June that either the major work would be done in the winter or that there would be alterations to the top floor to conform with standards. That conversation was confirmed by Mrs. Minchinton's letter of 6th June, 1994. Between then and 28th June, 1995, no relevant work was done on the premises and nothing more took place between the Appellants and the authorities other than the making of a formal application for renewal on 7th September, 1994, accompanied by the £2 application fee. The explanation for inactivity on the part of the Tourism authority at this point comes from a conversation which was spoken to by Mrs. Minchinton in her evidence when she recorded that she had spoken to a gentleman called Mr. Slous and in a file note (dated 21st February, 1995) she said:

*"Mr. Slous telephoned to say the hotel will not be open for visitors this year, will be taking lodgers for the season, anticipates major rebuilding to commence July. Alan Blampied suggests Mr. Slous put the above in writing but he didn't think it was necessary. The application to register the hotel was not therefore proceeded with".*

It was at about that time that Mr. Shelton gave the instructions to Mr. Staines with regard to the keeping of the "sleepers" on the premises.

In June of 1995, and more specifically on 28th June, 1995, there was what has been described by the advocate on behalf of the Appellants as a "raid" on the premises. A Mr. Mavity, an Enforcement Officer, visited the Lido Bay Hotel on 28th June, 1995, with an Immigration Nationality Officer and some Police Officers. Mr. Mavity was shown a list of about 54 names against room numbers and he interviewed some 30 people. His evidence was that it was clear to him that the premises were being used as a lodging house. Mr. Staines was interviewed first and then in the afternoon the Appellant, Mr. Shelton, was interviewed and he was asked to confirm that he was a director of The Company and he said "yes" and so Mr. Mavity continued:

*"Then on behalf of your company I must caution you that I have reason to suspect that these premises are being used as an illegal lodging house. I must caution you in that you are not obliged to say anything unless you wish to do so but anything you do say will be taken down in writing and may be given in evidence."* - To that Mr. Shelton replied - *"You've got it all wrong, we are a registered hotel"* - to which Mr. Mavity said - *"Not since December you haven't been."* - to which Mr. Shelton replied - *"You are wrong and you will have egg on your face over this one. Jimmy Barker had you criticised, you'll be criticised for this".*

After a further exchange Mr. Mavity left the premises. He returned on the 19th July having had a letter from Mr. Shelton asking for a meeting re the Lido Bay Hotel to establish the criteria required to register under the Lodging House Laws. He went back to the premises and he found that the premises were not of the standard which would be required. On that occasion he spoke to Mr. Shelton and said to him:

*"As you requested we have just carried out an inspection of the premises with a view to its possible registration as a lodging house. It appears that the premises are still occupied by a substantial number of persons therefore I have reason to believe these premises are still being utilised as an illegal lodging house. I must, therefore, caution you for suspected breach (he then referred to the Lodging House Law) between 28th June, 1995, and today".* Mr. Shelton was cautioned and he said - *"In my opinion I am a registered hotel and even if there is a transgression the job of the Housing Department is to come down and see what can be done not caution us straight away."* Mr. Mavity said: *"You are operating an unregistered lodging house"*, to which he replied: *"That's your opinion."* - Mr. Mavity said - *"That's a fact you are no longer registered as a hotel."* - Mr. Shelton replied - *"Well, my argument about that is with Tourism, that's their problem not yours. We have been running this place*

5           like for 6 months or more and no one has complained have they, well, have they? To come down here and caution people without a complaint, well, it's typical bureaucracy, you bloody civil servants are all the same, this is a registered hotel and if Tourism say I'm not then that's their problem."

          His voice became raised and Mr. Mavity left the premises.

10           There is a decision of the Royal Court of 14th November, 1989, in the case of the Attorney General -v- Arthur & Ors (1990) JLR 11 to the effect that offences under Article 14 of the Housing (Jersey) Law, 1949 as amended were not offences of strict liability. We are prepared to approach this appeal on the basis  
15           that the relevant statutory provisions are similarly not provisions of strict liability but the matter has not been fully argued before us and we express no view either way as to the correctness of that decision or to its applicability to the Lodging Houses Law. We do not need to do so but we would stress  
20           that we approach this appeal on the basis that *mens rea* is in fact required. In the case of Mr. Shelton, the offence of "knowingly and willingly" aiding and abetting the commission of the offence by the company itself imports a requirement that *mens rea* be proved in his case.

25           The Royal Court expressed itself in the course of giving judgment on 29th November, 1995 in these terms, having referred to the case of Arthur.

30           *"We cannot see that the argument is relevant. The Company, of whom Mr. Shelton, as we have said, is the alter ego, acted in full knowledge of the law. Mr. Shelton was not a tyro. He had twenty years' experience. His companies were strapped for cash. He could not carry  
35           out the developments (be they the greater or the lesser version proposed) and decided to move the guests out and turn the property over to a different form of earning potential.*

40           *He must have known that the hotel was not registered. The warning signs were as clear as ever they could be".*

          We consider this finding to be fully justified. Furthermore we would add that it seems clear to us, having looked at the  
45           intermediate correspondence and bearing in mind the evidence which I have summarised from Mr. Mavity as to the visit on 19th July, that at a time when Mr. Shelton had already been informed that the premises were not considered to be registered as a hotel and indeed when he was writing letters with regard to seeking to  
50           obtain registration, he must have known that there was reason to believe that the hotel was not registered. We refer to the period between the 25th June and the 19th July. That period was

covered by the charge before the Royal Court and adds further strength to the finding that Mr. Shelton knew perfectly well during the relevant period that the hotel had not been registered.

5 We turn to the specific matter which were argued before us by the advocate for the Appellants.

10 Mr. Habin submitted that it had not been proved that the Lido Bay Hotel was a lodging house within the meaning of the Lodging House Law in that, according to his submission, it was registered as a hotel despite the fact that registration for 1995 had not as a matter of fact occurred. His attention was drawn to Article 9 of the Tourism Law which deals with the duration of registration. That Article provides as follows:

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*"Every registration in pursuance of this law shall expire on 31st day of December next following the date on which it takes effect but shall be renewable annually in manner provided by this law".*

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It follows that any registration, whether it runs from the beginning of a year or from part way through the year, expires at the end of the year, year on year. In our view nothing can be clearer than the fact that a registration expires at the end of the calendar year to which it relates.

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Our attention was drawn to Article 11(2):

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*"Where any premises have been inspected in pursuance of paragraph (1) of this Article and the Committee is of opinion that such premises are not qualified for registration... the Committee shall give notice to that effect to the applicant.."*

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It was further contended before us that, since no notice had been given to the applicant that the registration was not being renewed in 1995, there was a breach of duty by the Committee and that until such notice was given the licence continued and endured. We reject that submission for two reasons. First, because it conflicts with Article 9. Secondly because the provisions of Article 11(2) only apply where there has been inspection of the premises such inspection, although required in the case of a new registration, is discretionary in the case of re-registration, or rather a renewal of registration. It is not contended that there was any such inspection prior to 28th June, the time of the first visit by the officials. No such notice was required therefore in this instance.

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It is perhaps not surprising that there was no inspection at that time and that Mr. Shelton chose to let sleeping dogs lie as far as the authorities were concerned. I say that because of the evidence which was given as to the inspection did take place in

5 June and July in respect of the various applications then being considered after the raid. There was a list of defects in the premises and when they were inspected for the purpose of the Tourism Law it was found that they were dirty and that fumigation was recommended in addition to other matters which can be found in the evidence.

10 The contention that the hotel was in fact registered, despite the absence of registration, is not accepted by this Court. As I have already stated we see no reason to disturb the decision of the Royal Court as to the knowledge and state of mind of Mr. Shelton throughout the period with which we are concerned and we add only the reference to the continuance of use of the premises as a lodging house during the period between the visits in June and July to which I have already referred.

15 It was further contended on behalf of the Appellants that the Royal Court had admitted hearsay evidence in the form of the evidence of Mrs. Minchinton as to her conversation on 21st February, 1995, with Mr. Slous. Complaint is made of the reliance on that conversation by the Royal Court. It is submitted that it is hearsay. We reject this submission for the following reasons. First, we do not consider that it was hearsay evidence but rather that it was admitted as an explanation for the decision of the authority not to proceed with the application. Secondly, we note that no objection was raised to the admission of this evidence at the trial. Thirdly, in view of the correspondence in April, 1994 referring to Mr. Slous, to the subsequent conversation with Mr. Shelton referring to that correspondence and the note on the letter, the Royal Court was amply justified in finding that Mr. Slous remained the agent of the Company for the purposes. But, all that is really by the way because nothing is added, apart from an explanation of the fact that the registration was not proceeded with by the authority, by the content of that conversation to that which was spoken to by Mr. Staines when he described his instructions with regards to the "sleepers" in the same month of February, 1995. Accordingly we find that there is no substance in the contention that evidence was admitted and relied upon which should have been considered as inadmissible in the Royal Court.

45 As to the Immigration Order that is a matter which can be shortly dealt with. The terms of that Order so far as material are as follows.

50 An obligation as to the keeping of records and the obtaining of information from the persons to whom this refers rests upon the keeper. In Article 1(1) of the Immigration Order the "keeper" is defined thus:

*"...in relation to any premises, includes any person who for reward receives any other person to stay in the*



*premises, whether on his own behalf or as manager or otherwise on behalf of any other person".*

By Article 3 of the same Order it was provided as follows:

5           *"(1) Every person of or over sixteen years of age who stays at any premises to which this Order applies shall, on arriving at the premises, inform the keeper of the premises of his full name and nationality.*

10           *(2) Every such person who is an alien shall also inform the keeper of the premises -*

15           *(a) on arriving at the premises, of the number and place of issue of his passport, certificate of registration or other document establishing his identity and nationality;*

20           *(b) on arriving at the premises, of the full address at which he ordinarily resides; and*

25           *(c) on or before his departure from the premises, of his next destination and, if it is known to him, his full address there".*

Further, by Article 4 the "keeper" was required to keep a record in writing for a period of twelve months of:

30           *"The date of arrival of every such person and of all the information given to him by any such person (that is any person over 16 years old staying at the premises) in pursuance of the said Article (that is Article 3)".*

35           The evidence before the Royal Court, and in particular that of Mr. Staines supported by the records themselves, clearly indicated that no proper record was kept of the names of the persons staying at the Lido Bay Hotel, the record produced contenting itself with such references as "Paul (Scouse)", "Eddy's nephew" and in the case of Portuguese lodgers "Manuel", "Jose",  
40           "Celeste" and "Renata". Further, in the case of those Portuguese persons at least there was no such record of passport numbers and the like as was required by the Article quoted from above.

45           There was a clear breach therefore of the terms of the Immigration Order.

50           Further, there was clear evidence that the Lido Bay Hotel Limited by its "alter ego" Mr. Shelton was directly responsible for that breach in that it was Mr. Shelton who gave to Mr. Staines the totally inadequate instructions of which the latter spoke, namely that, he (Mr. Staines) was just to record "the room number and the name" of the lodgers to be accommodated at the Lido Bay

Hotel. Thus no mention was made of the need to record passport details and the like in the case of aliens and none was suggested.

5 Accordingly, we find that there is no substance in either of the projected appeals against conviction on the part of the Lido Bay Hotel or in Mr. Shelton's projected appeal and in each case we dismiss the application for leave to appeal against conviction.

10 JUDGMENT  
(appeal against sentence)

15 Mr. Shelton alone seeks leave to appeal against sentence, no application being made by the Lido Bay Hotel Limited. Everything has been said which could be said by Mr. Habin on behalf of his client, but we consider that there is no substance whatsoever in the grounds of appeal which have been advanced. We find nothing wrong in principle in the approach of the Royal Court. A calculation of the profit earned by the business while in breach was carried out which arrived at a total sum which has been 20 equally divided between the company and Mr. Shelton, the controlling shareholder to the extent already mentioned. Bearing in mind Mr. Shelton's direct responsibility, as spoken to by his conviction of knowingly and wilfully aiding and abetting the 25 offence under the Lodging Houses Law, it is right that he should personally bear such a proportion of the resulting sum as the Court has determined. The second matter urged upon us was that the sum so arrived at should have given credit for the profit on a notional five lodgers, this being the total permitted without 30 registration and infringement of the law. This contention is totally unsustainable in circumstances in which the whole operation has been illegal from start to finish, that is from February, 1995 to July, 1996.

35 Accordingly, leave to appeal against sentence is refused.

Authorities.  
(conviction appeal)

Tourism (Jersey) Law, 1948: Articles 9, 10, 11.

Lodging Houses (Registration) (Jersey) Law, 1962.

Immigration (Hotel Records) (Jersey) Order 1991.

A.G. -v- St. Aubins Wine Bar (17th May, 1995) Jersey Unreported.

A.G. -v- Arthur & Ors. (1990) JLR 11; (16th January, 1990) Jersey Unreported.

Authorities  
(sentence appeal)

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