

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CRI 2010-004-015174
[2013] NZHC 2139**

THE QUEEN

v

NEILL ALLAN WILLIAMS

Appearances: B H Dickey for the Crown
 S N B Wimsett for the Accused

Date: 22 August 2013

SENTENCING REMARKS OF GILBERT J

Introduction

[1] Mr Williams, you appear for sentence today having pleaded guilty to two counts of theft by a person in a special relationship under s 220 Crimes Act 1961. These offences each carry a maximum penalty of seven years' imprisonment.

Facts

[2] Although you were not a director, because you were a bankrupt at the time, you were heavily involved in the management and operations of the Five Star group, including Five Star Finance and Five Star Consumer Finance. Five Star's core business was to borrow from members of the public and lend the money to consumers to fund the purchase of household items.

[3] The Five Star Consumer Finance trust deed, pursuant to which monies were raised from the public, imposed various restrictions on how those monies could be used. In particular, the trust deed prohibited the extent and terms of any related party lending.

[4] Between 2003 and 2007, Five Star entered into a number of related party loans in breach of these restrictions. You were involved in arranging and approving these unauthorised related party loans, knowing that they breached the terms of the trust deed.

[5] Count 1, to which you have pleaded guilty, relates to seven loans to related parties totalling \$29.2 million. Various loan agreements, journal entries and other transaction documents were prepared to disguise the true nature of these related party loans to make it appear as if they were legitimate advances to third parties. These third parties were all associated with you or the other Five Star directors. They did not receive the money and were told at the time that they would not need to repay these notional loans. By disguising the related party lending in this way, you and the directors of Five Star intended to mislead the trustee and the auditors so that Five Star could continue to borrow further funds from members of the public.

[6] You played a central role in facilitating these unauthorised transactions including by directing the transfer of funds and completing some of the cheques required.

[7] Count 2, to which you have also pleaded guilty, relates to a series of interrelated transactions in March 2007. These transactions had two purposes. The first was to facilitate related party lending to Five Star Finance. The second was to clean up various other related party lending including the loans referred to in Count 1 which were due to mature. The unauthorised transactions involved totalled approximately \$14.2 million.

[8] You played a central role in designing and implementing these transactions. You provided the instructions to Five Star's legal advisors so that they could provide advice to the board as to whether these transactions were permitted under the trust deed. You assured the solicitors that the borrowers were not related parties and that the loans otherwise complied with the terms of the trust deed, knowing full well that this was not the case.

[9] Five Star Consumer Finance was placed into receivership in August 2007 owing approximately \$54 million to 2,300 secured debenture investors. Total losses to investors are estimated to be \$35 million.

Related offending

[10] You are currently serving a term of three years and seven months' imprisonment for related offending also arising out of your involvement at Five Star. On 19 April 2013 you were sentenced for charges brought under s 58 Securities Act 1978 (x 3), s 41 Financial Reporting Act 1993 (x 1) and s 59 Securities Act 1978 (x 12), having pleaded guilty to those offences in October 2010. I will refer to these as the "Securities Act offending".

[11] In sentencing you today, I must have regard to the Securities Act offending and the penalties imposed in respect of it. The proper approach is to consider the total penalty that is appropriate for all offending, being the charges for which you are

being sentenced today and the Securities Act offending for which you have already been sentenced.

Principles and purposes of sentencing

[12] I take into account all of the relevant purposes and principles of sentencing as is set out in the Sentencing Act 2002. In cases like this, where directors or in your case, de facto directors, of public issuers knowingly breach trust deed obligations causing significant losses to investors, the sentence imposed must reflect the need to denounce such conduct and to deter others from offending in a similar way. The sentence must also promote in you a sense of responsibility for the enormous harm you have caused to such a large number of people who invested their money in good faith and in the reasonable expectation that it would be dealt with in accordance with the terms of the trust deed. Having said that, I am obliged to impose the least restrictive outcome appropriate in the circumstances and one which is consistent with the sentences imposed in comparable cases and on your co-offenders, who have already pleaded guilty and been sentenced.

Personal Circumstances

[13] You are 79 years old. You are in remission from cancer and have other health issues.

[14] I take into account that you did not personally benefit from the offending. You have limited means and you are a bankrupt.

Starting Point

[15] The starting point for sentencing today must reflect the totality of your offending, including the Securities Act offending. I will assess the appropriate term of imprisonment as if you were being sentenced for all such offending. This will result in the sentence you are currently serving being extended.

[16] The offending for which you are being sentenced today under the Crimes Act is more serious than the Securities Act offending because it involves dishonesty and the maximum penalty is greater.

[17] The starting points adopted in sentencing your co-offenders, Messrs Kirk, MacDonald and Bowden who were the three directors of Five Star, were respectively six years' imprisonment, five years' imprisonment, and four years and nine months' imprisonment.

[18] I reviewed the sentencing decisions relating to your co-offenders. I have also considered the statement of facts and the evidence I heard over the first four days of the trial. I have come to the conclusion that your culpability is less than Mr Kirk but greater than that of Mr MacDonald. You are clearly more culpable than Mr Bowden. Although you were not a director and did not attend board meetings, you were a de facto director and played a central role in the offending to which you have now pleaded guilty.

[19] This would indicate a starting point of five years and six months' imprisonment to achieve consistency with your co-offenders.

Adjustment to the starting point

[20] I take into account your age and poor health. I apply a discount of six months for those factors.

Guilty plea

[21] Your guilty plea came extremely late, four days into the trial. Having regard to the procedural background in this matter, I am not prepared to allow any discount for this late guilty plea. A conviction in this case was inevitable.

Result

[22] You are sentenced on each of the two counts to a term of imprisonment of five years. Those terms are to be served concurrently with each other and

concurrently with the sentences that you are already serving in relation to the Securities Act offending.

M. A. Gilbert J

M A Gilbert J