

**IN THE HIGH COURT OF THE COOK ISLANDS  
HELD AT RAROTONGA  
(CRIMINAL DIVISION)**

**CR NO 550/11**

**POLICE**

v

**LEELESH CHANDAR**

Hearing Dates: 31 October - 6 November 2012

Counsel: Ms Henry & Mr Manavaroa for the Crown  
Messrs George & Samuel for the Defendant

Sentence: 9 November 2012

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**SENTENCING NOTES OF GRICE J**

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[1] Mr Chandar you appear today for sentencing on a serious charge of theft. It carries a maximum penalty of 5 years imprisonment. You were found guilty by a jury earlier this week on that charge after a trial that ran five days.

[2] The Crown has outlined the offence which, in short, relates to “Nigerian scam”. You were contacted by a Jennifer Osnov on Facebook shortly after your wife set you up a Facebook page. You did not actually operate the Facebook, your wife and a friend did that for you.

[3] Ms Osnov (who was probably a Nigerian scamster) offered you a job as an evaluator of Western Union services. You would take the money that had been put

into your wife's Westpac account and with her consent send it by Western Union to an address in Nigeria.

[4] You carried out two of these transactions on the 2<sup>nd</sup> and 3<sup>rd</sup> August 2011 (now well over a year ago) thinking you were dealing with money that was the property of Jennifer Osnov. The Nigerian scamster phoned you, Facebooked you and pressured you. You did what she told you to do. She then said take 10 percent as your commission which amounted to \$1120.

[5] So far one can accept how you got caught up, but on the 3<sup>rd</sup> August at about 1 o'clock the Westpac Bank Manager Mr John Evans advised you the money had been put into your wife's Westpac account fraudulently. It was actually "dirty money" that had been diverted by a trick from three ordinary Westpac Cook Island customers into your wife's account. The Bank systems had not picked it up until then. The diversions into your wife's account were made shortly before you were requested by Jennifer Osnov to withdraw the money.

[6] You did what the fraudster told you, took the money to Western Union, and sent it to Nigeria. The first transaction was completed on the 2<sup>nd</sup> August. The second transaction occurred on the 3<sup>rd</sup> August but was able to be recovered due to your cooperation as soon as the Bank Manager advised you what had happened. By then Western Union had taken their fee and would not give that back. You had deducted your 10 percent commission. The Bank recovered the second transaction that went to Nigeria, but all the money from the first transaction was lost to it.

[7] The total of the transactions was \$11,200. Of that \$5270 was recovered. You gave the Bank Manager \$100 cash - the money you had with you on the 3<sup>rd</sup> August. The balance of \$1020 commission taken was not with you at the time and you said you would come and pay it.

[8] The money was not repaid. The Crown's case, accepted by the jury, was that you kept it knowing it to be fraudulently obtained and have never paid it to this day.

[9] The Crown submits that this offending is serious, that you deliberately kept that \$1020 despite saying you would return it. That is what the jury found.

[10] Your counsel urges leniency given the situation you find yourself in. Probation Service have pulled out all stops to get a probation report available in three days so you could be sentenced and get this matter behind you. I commend the Probation Service for getting this done to enable the matter to be dealt with in this session.

[11] You live with your wife in Rarotonga where you came from Fiji to work. You have been struggling financially on low wages, sending your money home to Fiji for your two children and family. Your wife, your Church and your family have supported you in the ordeal that flowed from your part in the Nigerian scam. You both consider you were blameless and got caught. That may have been at the outset but as things transpired you should have known or you did know.

[12] You are currently employed and a fulsome letter of support has been provided by your employer Danny Mataroa, whom I see is here today, supporting you. Your wife describes you as an honest trustworthy and family oriented man. You have many responsibilities to your two children and extended family. Mrs Chandar is very concerned about the possibility of your being incarcerated. You both had hoped things would come out differently, but they did not.

[13] All your savings have been spent on costs related to the trial. You are limited in your ability to obtain higher paying work. While you can understand basic English language, your reading and writing is limited.

[14] You, through your counsel, at the trial and today, indicated that you were discouraged by the way you were treated during the investigation by the Police. I will come to that in a moment. You did cooperate with the Bank in recovering money for Western Union, which would not have happened if you had not gone over with the Bank Manager and retrieved it. Your counsel has indicated you are apologetic to the victims who were tricked into giving their passwords and other information to the scammers to enable the money to be put into your wife's account.

[15] The Probation Service says that there is nothing that leads them to the conclusion that you are likely to offend again. You have no previous convictions.

You now take responsibility for your behaviour. You are ashamed of your action and this has been a haunting experience for you.

[16] Mr George adds that you enjoy a good reputation in the Fijian and church community. You have got a good employment record. He points me to the character references which are included. These are persuasive: from the Head of the Fijian community President in Rarotonga; from David and Isabel Akanoa, offering their help, and from Danny Mataroa who says you are an honest hard working reliable trustworthy and willing to learn new skills. There is also a reference from Cook Islands Funeral Service in which Mr Muriwai, says he has found you to be honest reliable and trustworthy and a good friend. You are fortunate to have that support.

[17] You are not in a position to pay a monetary fine in the circumstances but you have offered to pay reparation. That is a factor that counts in your favour. The Crown has indicated this important in this sentencing.

[18] The Crown explained that the complaint you said you made when giving evidence was in fact made to Senior Sergeant Tuaati but you gave the wrong the officer's name. It is serious that nothing was done about the complaint at the time it was made. Sergeant Boaza apparently had not been told of it before giving evidence. This supports your evidence and honesty about that complaint. That is a point in your favour.

[19] The Crown urges that I emphasise accountability, responsibility for actions, renunciation of the conduct, and deterrence both for you and for the community at large: that these things not be tolerated. People must be on their guard against these scams.

[20] You have indicated that you will arrange for payment of the balance of \$1020. No doubt that will be by arrangement for payment by instalments which you should organise as soon as possible.

[21] The Crown does not seek a custodial sentence but urges 18 months' probation as well as an order for reparation.

[22] By way of mitigation: you are a first offender, a hard worker, nothing in your background shows any indication of dishonesty, you have good support from your referees, and you cooperated with the Bank to get the money back. On the other hand you had ample opportunity to repay it and you did not.

[23] Taking all of those matters into account, I order that you undertake 12 months probationary supervision with the first 6 months to be served on community service.

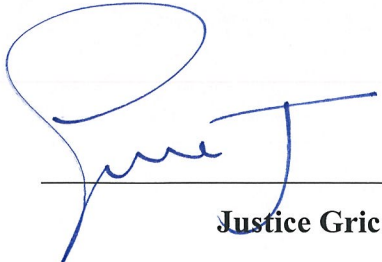
[24] I make an order for restitution of \$1020. I note that there is \$300 in your wife's bank account and with her consent arrangements you wish to be make arrangements with the Bank to pay that money toward the \$1020.

[25] I order Court costs of \$30.

[26] I hope you can now put this matter behind you and get on with your life.

[27] As an important footnote, I mention my concern about the handling of the complaint you lodged with the police alleging Sergeant Boaza had put you in a cell. Ms Henry has been very candid about it - to her credit she followed it through and investigated the allegation. She has now put the correct position before the Court. You said that you had made the complaint and indeed you had. The problem is that the Police did not investigate it.

[28] We need to be secure in and able to trust our institutions. It is of grave concern that this complaint went uninvestigated. It is of particular concern that you were facing a trial - there was no evidence of the complaint as it had not been investigated. I trust it will be followed up and I ask Ms Henry to take steps to make sure it is.



Justice Grice