

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

CR NO. 262/11

BUSINESS TRADE & INVESTMENT BOARD (BTIB)

(Informant)

v

TAAKOKA ISLAND VILLAS LIMITED

(Defendant)

Hearing: 20 July 2012

Counsel: Ms Evans for the Informant
Ms Rokoika for the Defendant

Sentence: 20 July 2012

SENTENCING NOTES OF DOHERTY J

[1] The defendant company has confirmed a guilty plea to an amended information. The original information laid in a representative way ran afoul of s 15 of the Criminal Procedures Act 1980-81. That section allows only one crime per information, if I can put it as broadly as that. This information alleged offending for each year from 1 July 1994 to 30 June 2003.

[2] The Crown sought and I granted an amendment which was unopposed to have this information to failing to file a return for the year ending 30 June 2003.

[3] The aim of the Development Investment Act and the Regulations that flow from it is to allow the Development Investment Board to monitor the activities of each foreign company or enterprise while it carries out its business in the Cook Islands. It is therefore a regulatory statute.

[4] The offence is one of strict liability. This company for various reasons did not file for the year ending 30 June 2003 nor did it file for a good number of years previously and since. It has not been charged with any of those individually but counsel accepts that this ongoing conduct could be viewed by the Court as an aggravating feature.

[5] The matter is one of strict liability. It has a maximum fine of \$2,000, a minimum of \$200. I have been able to peruse the very full information provided by counsel for both the informant and the defendant. There has been quite a history in relation to charges laid under this Act and it has resulted in quite a number being withdrawn and this is the final wash-up of the situation.

[6] The company has also been embroiled in various amounts and degrees of litigation in relation to its business. Counsel tells me that it has very few assets and is beholden to its investors. I note that no financial information has been filed for the Court to have that view confirmed. The way counsel is talking there is a possibility that the company is insolvent but that has not been said nor have I seen the information that will take me to that view, so I must sentence the company on the basis that it is able to pay a fine.

[7] This is nothing out of the ordinary. I am advised that it is the first time that prosecutions have been brought to fruition under this legislation, nearly 35 years of it has been in existence. That would tend one to the view that general deterrence is not necessary in relation to this legislation, nor is it appropriate that there be some sort of tariff set when this is the first and only prosecution in 35 years.

[8] I intend to view this on the basis that whilst there is one charge, it is an aggravating feature the company has had to be dragged to comply with its commitments under these regulations and the Act.

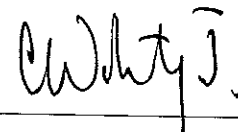
[9] I must however take into account the fact that it has now pleaded guilty, albeit belatedly, it was after many of the charges withdrawn and it might well be the first reasonable opportunity for it to have done so.

[10] I also take into account that, albeit belatedly, the company has filed all of the returns that it is required to do bar the one due only last month for the financial year ending 2011 or 12 I'm not sure which.

[11] Bearing in mind the maximum and the minimum that can be imposed, if this was a one-off charge brought in a timely way with an immediate plea of guilty and no other previous matters, the fine is likely to have been something near the minimum.

[12] But, taking into account the aggravating event of its like conduct, I think an appropriate starting point is perhaps a \$600 fine. From that it will receive a deduction of \$150 for its guilty plea, which did come once all other matters were resolved and at a reasonably early opportunity.

[13] I also make the Order for the payment of \$30 Court costs.



Colin Doherty J