JUDICIARY OF
ENGLAND AND WALES

R
-v-
Dominic Chappell

Southwark Crown Court
Sentencing Remarks of Mr Justice Bryan
5 November 2020

1. Dominic Chappell, you have been found guilty of three counts of cheating the Public Revenue in relation to the fraudulent and dishonest non-payment of VAT, corporation tax and income tax over a sustained period of time. I must now sentence you for this catalogue of serious offending.

2. The backdrop to your offending is the acquisition, and subsequent management, of the British Home Stores ("BHS") chain of department stores which you purchased from Sir Philip Green's Arcadia Group for £1 on 11 March 2015 through your corporate vehicle Retail Acquisitions Limited ("RAL").

3. In the context of your involvement in the acquisition and the services you provided to RAL in that regard, you were entitled to a generous remuneration package including consultancy and success fees that totalled £622,000 to be paid to you through another of your corporate vehicles Swiss Rock Plc, later Swiss Rock Ltd (collectively "Swiss Rock") who would invoice for your services. However your rewards were soon very much more than this.

4. Within the first two days after the purchase you received 2 tranches of £300,000, and then on 19 March 2015 a further payment of £50,000 a few days later, all from RAL and all into your personal Lloyd's account (rather than via Swiss Rock which would have been a more conventional route). These payments alone triggered Swiss Rock's obligation to register for VAT (exceeding the then £81,000 threshold for VAT registration).

5. Very substantial further sums soon followed for the benefit of Swiss Rock and yourself. On 25 March 2015 a further £250,000 was paid to Swiss Rock's bank account, followed by another £250,000 the next day. Thereafter, on 14 April 2015 a further £50,000 was paid into your personal Lloyds account. On 16 April a further £521,976 was paid to the Swiss Rock account directly from the BHS group account and marked on the payment details as a RAL payment. On 26 June 2015 a further £50,000 was paid into your personal Lloyds account.

6. These payments come to a gross sum of £1,721,000. They were subsequently invoiced to RAL as including VAT. All the invoices were marked *"Consultancy – agreed success fees on the completion of the purchase of BHS*", with the exception of the 16th April 2015 payment which did not get an invoice until September 2016, and was simply marked

"consultancy". On 22 April 2015 a RAL board resolution regularised the position after the event and increased your consultancy fee to £1,770,000 (including VAT) which was recorded as being in the light of you having to work considerably more than one day a week and to take account of expenses and disbursements connected with the acquisition of BHS. You also drew a not insubstantial salary as a director of BHS Group Limited at this time of around £25,000 per month (net after deduction of tax on a PAYE basis).

7. All this had implications for various taxes as would have been obvious to any business man and was, as the evidence demonstrated, known to you. First, Swiss Rock was liable to register for VAT, and to account for the VAT it charged its invoices on its quarterly VAT returns. Secondly, Swiss Rock would need to file accounts and pay corporation tax on its profits and, thirdly, you would have to declare any associated income received from Swiss Rock (in the form of dividends) on your self-assessment tax return. None of this was, or should have been, particularly complex – Swiss Rock, in particular, was essentially little more than a corporate vehicle for you to receive your fees from RAL in a tax efficient manner.

8. Due to the receipts anticipated to come into Swiss Rock upon the acquisition of BHS, Swiss Rock should have registered for VAT in March 2015 even in advance of the receipts. However upon the substantial receipts being received in March 2015 from RAL Swiss Rock was also liable to register. You completed and signed the VAT 1 registration form informing HMRC that Swiss Rock had crossed the threshold in receipts in March signing the form on 20 April. Due, it appears, to the oversight of your accountant (Simon Scott at Kingsbere) it was in fact sent on 13 May and only received by HMRC on 14 May (when it should have been received by the end of April based on March receipts). HMRC accordingly considered whether to issue a late notification penalty. However in the course of a call you made to them (per a file note that I am satisfied is accurate) you told them that there were no receipts in March which was a lie. It achieved the no doubt desired effect and no penalty was issued. Whilst of no relevance to this sentencing exercise, the jury might well have thought that it was, perhaps, an early insight into your attitude to your tax affairs.

9. The VAT registration was effective from 1 May 2015, and the first return was to be made by 30 November 2015 for the period ending 31 October 2015. As the HMRC correspondence made clear, and as you knew, that included accounting for VAT pre-registration (i.e. the 20% VAT on the substantial sums received in March). As a director of Swiss Rock you were responsible for Swiss Rock's VAT affairs and, as you well knew, Swiss Rock did not file the VAT return for the period ending 31 October or indeed any subsequent VAT quarter, indeed no VAT returns whatsoever were ever filed before Swiss Rock went into creditors voluntary liquidation in September 2016.

10. You also knew perfectly well, I am satisfied, that VAT was due on Swiss Rock's receipts. HMRC issued prime assessments (sums to be paid on account when a VAT return was not filed) that you received and, having spoken to HMRC paid the first of those (for £8,433). I am satisfied that you were simply buying time knowing that the amount of VAT due was very much greater than this given the receipts from RAL and associated VAT due.

11. There were issues with accessing on-line VAT filing but this was no justification for you not resolving such issues like any other tax payer, and filing on line in short order. Months went by without matters being remedied, and it was only on 17 June 2016 that Swiss Rock was finally enrolled to submit VAT returns on line. Even then no VAT returns (or payment of VAT) followed right through to the winding up of Swiss Rock in September 2016 over two months later.

12. Despite your efforts to suggest before the jury that there were expenses that would have cancelled out the very substantial amount of VAT due, this is not consistent with the expert evidence, the jury were sure that VAT was due, and they clearly rejected your justifications for why the VAT was not paid. The net VAT due for the period ended 31 October 2015 was £196,153. Including the VAT due in subsequent quarters the total VAT due in the quarters to 31 July 2016 (the last quarter before Swiss Rock's liquidation) was £351,944. I am satisfied, based on the expert evidence, that these figures represent the VAT that was due. No VAT whatsoever was ever paid. In contrast, RAL reclaimed the VAT that it had paid Swiss Rock in March 2015 on its VAT Returns, and after appropriate VAT checks, the associated VAT reclaims were allowed.

13. The position in relation to Swiss Rock's corporation tax and your income tax was equally clear. On 5 October 2015 Simon Scott wrote to you enclosing the Swiss Rock statutory accounts for the trading period 31/1/14 to 2/4/15 which were, in due course, signed (and therefore approved) by you also enclosing Swiss Rock's corporation tax return. He expressly informed you that there was a corporation tax liability of £196,053.45 and that it was due on 3 January 2016.He subsequently filed that return on 26 October 2015 that return having been approved by you. In his letter to you he identified earnings of £958,333 and trade debtors of £650,000 at 2 April 2015, and identified that you had personal drawdowns coming to a total of £363,000 which were treated as dividends in the accounts. I am satisfied (as were the jury) that you agreed to the £363,000 being treated as dividends in the accounts with the result that you were liable to pay the associated income tax.. I am further satisfied, based on the expert evidence, that the income tax liability was £86,163.52. That tax liability should have been included on your self-assessment tax return, and paid by 31 January 2016.

14. Accordingly, there was a corporation tax liability of £196,053.45 due on 3 January 2016, and you were due to submit your personal tax return and pay the associated tax of £86,163.52 on the dividends received on 31 January 2016. The outstanding VAT prime assessment had not been paid, nor had a VAT return been filed for the much larger amount of VAT due. It was your own evidence that you had the ability to pay all these sums at that time.

15. You did not pay your tax. Instead you holidayed in the Bahamas over the Christmas period on a yacht that was purchased in your name for Euro320,000 (albeit with money from RAL), and which you renamed "MAVERICK 6". As you put it in contemporary emails, *" I am having to slum it in the Bahamas for the next three weeks. I know you will all feel my pain*". On your return you did not pay the VAT, the corporation tax or your income tax. Rather the day after the latter should have been paid you purchased a Bentley Continental for £91,000 and purchased a pair of Beretta guns for £11,000 (net after a part-

exchange). The purchase of a further vehicle, Land Rover for £33,000 soon followed on 23rd February 2016. Monies continued to flow into you from RAL as already noted, including some £500,000 in March 2016 alone. Your evidence was that you continued to have the ability to pay any tax due in March and April (as was clearly the case), and indeed your consistent evidence was that you would have been able to borrow funds (if need be) to pay any tax due. At no stage, perhaps wisely, did you run a defence that you were too impoverished to pay any tax due.

16. This state of affairs was continuing with you knowing, perfectly well, that these taxes were due, a conclusion entirely justified on the evidence, and one that the jury clearly reached. In this regard there were the VAT prime assessments (11 December 2015 and a second on 11 March 2016), repeated HMRC reminders to pay VAT (for example on 30 December 2015, 13 January 2015, 29 March 2016 and 12 April 2016) and subsequent correspondence (such as on 5 May 2016), HMRC demand notices and subsequent final demand notices for corporation tax (on 13 January 2016 and 20 January 2016) followed by HMRC warning of winding up action on 9 March 2016 and then on 27 April 2016 that a winding up petition would be filed (such petition being filed in July 2016), though even that was no more successful in eliciting payment of any of the corporation tax due. It is quite clear that you were prepared to let Swiss Rock go into liquidation without paying the corporation tax and VAT liability. The jury by its verdicts were sure that you dishonestly evaded payment of such taxes.

17. Your knowledge of the taxes due is also shown by your telephone contact with HMRC in 2016. For example you spoke with HMRC on 8 February 2016 and promised to pay the corporation tax due of £196,969.42 (including interest) within the next 2-3 weeks stating that you could make "PIF" (Payment in Full). I am quite satisfied that you did not tell the HMRC officer that you were intending to restate the accounts and that this would show that there was no corporation tax due. On the contrary you promised payment in full.

18. More generally, you sought to persuade the jury that you never believed that corporation tax was due, that Mr Scott had misstated the accounts and had failed to take into account allowable expenses with the result that Swiss Rock would have made a loss, and would not have been able to declare the dividends and so no income tax was due, and that HMRC were aware of your view and an intention to restate the accounts (in the context of corporation tax). I am satisfied on the evidence, so that I am sure, that you had no such belief contemporaneously not least given the inconsistency between this and the HMRC telephone records, Mr Scott's evidence and the lack of contemporary documentary support. Indeed I am satisfied that it was only after you had consulted Liz Coleman in May 2016 (an ex-HMRC employee and tax advisor) and it became apparent that you might become subject to a criminal investigation, that you first invented the story that you did not believe that any corporation tax was due, and that it had been wrong to declare dividends.

19. I would only add in relation to the factual position that the experts were in agreement that VAT, corporation tax and income tax were due, as was Mr Scott of Kingsbere accountants. Mr Aiden Treacey a chartered accountant employed by RAL who also did some work for Swiss Rock, also concluded that corporation tax was due when he undertook a trial balance exercise in September 2016 (having himself sought to identify

any allowable expenses). In any event tax is payable when it is due, whether or not the taxpayer might thereafter re-state the accounts within the permissible period. The jury were satisfied in relation to each count that you had engaged in fraudulent (that is, dishonest) conduct with the result that tax was diverted from the Revenue and the Revenue was deprived of money to which it is entitled.

20. In this regard I am quite satisfied that you chose not to pay the corporation tax and VAT that was due from Swiss Rock (despite yourself being able to pay it and/or borrow to pay it), took money that could have paid such taxes out of Swiss Rock over its life for your own benefit, and cynically allowed Swiss Rock as a limited liability company to go to the wall, like many others before it, in the hope that HMRC would whistle in the wind for the outstanding tax. By the same token it was always your case that you could have paid any income tax due (and it was due) but you chose not to do so. Indeed that must be right given that you still had assets that you could have sold (including your Bentley and yacht), assets which, you were to lament to the jury, you later had to sell anyway to fund lawyers and accountants to assist you with your dealings with the likes of the Pension Regulator amongst others. You were obliged to pay your income tax like any other member of society. The jury were satisfied that you were dishonest in not doing so.

21. The relevant sentencing guidelines in respect of your offending are the Fraud, Bribery & Money Laundering Guidelines for Revenue Fraud Table 1. Turning first to culpability I am satisfied, as is common ground, that this is high culpability (category A) offending on your part. First, your fraudulent evasion of tax took place over a sustained period of time. Secondly you abrogated your responsibilities, and abused your position, as a director of Swiss Rock. Thirdly, you carried out a relatively sophisticated course of conduct over an extended period of time that had a number of strands (including the promises to pay, alleged difficulties with online registration and the like) as you fobbed off HMRC over many months. You were successful in this regard in delaying winding up action against Swiss Rock over a period of a number of months culminating in a creditors voluntary liquidation in September 2016 by which stage little was available to Swiss Rock's creditors.

22. In terms of harm, this is reflected in the gain or intended gain to the offender or loss or intended loss to the HMRC, and in this regard it is appropriate to have regard to the totality of your offending across the counts. On the Crown's case the value of gain to you/loss to HMRC was £351,944 on Count 1 in respect of VAT, £164,064.68 on Count 2 in respect of corporation tax and £86,163.52 in respect of income tax, a total of £602,172.20. On the evidence I have heard, including the expert evidence, I am sure that such sums were due and I so find. I consider, however, that it would be appropriate to take into account the two sums that you did pay of £8,433 in respect of VAT and £10,000 in respect of corporation tax reducing the figure to £583,739.20.

23. You gave evidence that you believed that there were personal and/or corporate liabilities that had not been taken into account by your accountants (who you sought to characterise as incompetent) or the experts (who were aware of your stance) and you believed these would (if the accounts were re-stated) reduce the taxes that were due. The accounts have not been re-stated, and I was not impressed with such oral evidence which lacked evidential corroboration, nor were the experts, who agreed the tax due on the basis of the information available to them. I do not consider any allowance should be made for the other matters you identified, or that the figure for tax owed should be reduced downwards.

24. On this basis of the figure of £583,739.20, your offending is in Category 4 (loss between £500,000 and £2,000,000), with a starting point for category 4A of 7 years' imprisonment and a range of 5 to 8 years' imprisonment. I bear in mind that the starting point is based on a figure £1,000,000 and accordingly some downward adjustment in the starting point would therefore be appropriate given the amount of the loss. However the Guideline starting point is based on a single offence. You are being sentenced in respect of 3 separate offences of cheating the Revenue in relation to three separate offences which increases the seriousness of your overall offending. Whilst being alive to double counting (given that harm has been based on all three offences), as I confirm I have been, it is common ground that the appropriate approach is to have regard to the totality of the offending, pass concurrent sentences on each count, and regard the multiple offences as an aggravating factor justifying an upward adjustment. The net effect is, I am satisfied, that a sentence of just over the starting point of 7 years would be appropriate before considering mitigation.

25. You have previous motoring convictions which I put to one side as not of relevance. But you are not of positive good character. Your offending occurred against a backdrop of successive bankruptcies (four in total, the last of which was in 2009 the bankruptcy sum being £24m) as well as company insolvencies. You were also convicted on 11 January 2018 under section 77 of the Pensions Act 2004 in respect of your refusal to provide information required under section 72 notices issued by the Pensions Regulator. Whilst these convictions post date your current criminality there is some overlap in time given that they relate to your conduct between May 2016 and August 2017. I regard such matters as neutralising the suggestion that you have no relevant convictions as a mitigating factor but not as increasing the overall seriousness of your offending.

26. Turning to matters relied upon by way of mitigation, I reject the suggestion that you had little or no prospect of success. Not paying VAT or corporation tax, taking receipts out of the company, and then putting a company into liquidation relying on the company's limited liability status is one of the oldest tricks in the book, placing as it does, in a criminal context, the burden on the prosecution to prove dishonesty to the criminal standard, as they have. It is hardly a mitigating factor to pray in aid the brazen manner in which you went about avoiding paying taxes that were due, and then saying it had little or no prospect of success. Equally in pursuing or not pursuing non-payment of income tax in a civil context your ability to pay could have been of relevance, and in a criminal context, the prosecution faced the same burden on dishonesty.

27. Nor do I consider it apt to characterise the activity as originally legitimate. Whilst this is not a case of a corporate structure being used with the intention of perpetrating revenue fraud (eg MTIC frauds where companies are set up for the sole purpose of fraud), the gravamen of your offending is a long and consistent course of conduct designed to cheat the Revenue of tax to which it was owed. It is not a mitigating feature that the tax itself was generated through the use of legitimate corporate structures. Put another way, the activity is your evasion of tax. That activity was unlawful from the start.

28. I do take into account the lapse of time between apprehension and trial of four years, albeit it was a long, complex, and documentary heavy investigation as with many such frauds rendering some delay between apprehension and trial inevitable.

29. Turning to personal mitigating features in relation to your offending. There is no doubt that your offending took place at a time when you were under immense pressure in seeking to save BHS from entering into administration which it did on 25 April 2016, and after it entered administration in the immediate aftermath leading up to liquidation of Swiss Rock and I have taken that into account. However, ultimately, none of that excuses, or mitigates to any great extent, your very serious offending in dishonestly evading three separate taxes that you knew were required to be paid and that you were in correspondence with your accountants and HMRC about despite your other time pressures. You were not overwhelmed by your other pressures, and you were not too busy, or under too much pressure, to spare the time to buy yourself trappings of luxury with monies that would have been better deployed to pay the taxes due.

30. I have taken into account the unenviable personal situation you now find yourself in, with events having cost you your marriage and your reputation, leaving you essentially penniless and owing millions to the Pension Regulator. You cannot, however, lay all the blame for that at the door of others including Sir Philip Green. It is you, not anyone else, who has ruined your reputation by your offending, however much the actions of others may have damaged you financially.

31. I have also taken into account that you are the primary carer for elderly and unwell parents and that you have a young son with learning difficulties. It perhaps goes without saying, but I say it any way, that I have also had express and careful regard to the guidance in *R v Manning* and the impact of the pandemic in the overall sentence passed.

32. Evading the Public Revenue is a very serious offence, and your offending in relation to three separate taxes involving substantial amounts of unpaid tax evaded over a substantial period of time is an egregious example of such offending.

33. Your offending is so serious that neither a fine alone nor a community sentence can be justified for it, and only an immediate custodial sentence is appropriate. This will be shortest which in my opinion matches the seriousness of your offending, and takes into account the mitigating factors in your case and the period you will spend on licence following your release.

34. Having regard to the aggravating and mitigating features of your offending, and having had careful regard to totality as well as the current features of the pandemic, the sentence I pass is one of 6 years' imprisonment on each of Counts 1 to 3, concurrent on each count, a total sentence of 6 year's imprisonment.

35. You will serve one half of this sentence in custody. You will then be released on licence for the remainder of your sentence. While you are on licence, you must comply with all its conditions. At any time during your licence, the Secretary of State may withdraw it and order your return to custody.

36. The appropriate statutory surcharge will be applied.