

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

**CR NO'S 48-56/17,
66/16, 73/16, 97/16**

COLLECTOR OF REVENUE

v

STRICKLAND MOTORS LTD

Date: 10 May 2017

Counsel: Ms A Mills for the Crown
Mr W Rasmussen for the Defendant

**SENTENCING NOTES OF THE HONOURABLE JUSTICE DAME JUDITH
POTTER**

[9:35:14]

[1] Before the Court is the matter of sentencing Strickland Motors Limited on 12 tax related charges. There has been no appearance by Strickland Motors Ltd this morning and Mr Rasmussen, counsel for the company, who has kindly appeared, advises that his very earnest attempts to contact Mr and Mrs Strickland last evening and this morning have been unsuccessful. These attempts have followed earlier attempts to obtain instructions from his client.

[2] The matter was called at the listed time of 9 o'clock. I adjourned it to 9.25 a.m. to check whether the defendant would appear. No appearance has been made.

[3] I have received careful written submissions from the Crown which have been considered by Mr Rasmussen. Mr Rasmussen, on the basis of the limited instructions he has been able to obtain has made submissions to the Court on behalf of the defendant this morning.

[4] I propose therefore to proceed to sentencing on the total of 12 charges comprising one representative charge of failing to file VAT returns over a period of ten months, one charge of failing to file a PAYE reconciliation and ten charges of failing to file Income Tax Returns.

[5] The penalty for the VAT offence under section 39(3) of the VAT Act is a fine not exceeding \$500 for each month of the default for the first time upon which the person is convicted of such an offence and for a fine not exceeding \$1,000 for each month of default for the second and subsequent occasions on which the person is convicted.

[6] The penalty for failing to furnish PAYE reconciliation statements is provided in s 206 of the Income Tax Act. It provides for a fine not exceeding \$10,000 and not less than \$500 and in the case of a company for a fine not exceeding \$10,000 but not less than \$1,000.

[7] The penalty relating to the charges of failing to file Income Tax Returns, which are ten in number, is the same as that for failing to file PAYE reconciliation statements, namely in the case of a company a fine not exceeding \$10,000 and not less than \$1,000.

[8] I shall state only briefly the background facts.

[9] Strickland Motors Ltd is a Cook Islands company which has been incorporated and operating since 1998 as an auto repair business at the Rarotonga Airport complex. Strickland Motors Ltd has been registered for PAYE tax since 8 February 1998 and for VAT since 6 February 1998.

[10] There has been extensive correspondence between the Revenue Management Division of the Ministry of Finance and Economic Management (the "RMD") relating to failure to file returns as required by law dating back to 1998.

[11] There was an audit in 2015. Extensive leniency has been extended to Strickland Motors in relation to its failure to file returns. At this time the offender's outstanding tax arrears are \$317,992.26.

[12] The financial situation of the company is unknown as no annual income tax returns have been filed. Mr Rasmussen has described a hard working couple operating an auto repairs business in the Cook Islands way.

[13] This is intentional and repetitive offending over a significant period of time.

[14] In mitigation, the offender entered guilty pleas to the 12 charges (some having previously been withdrawn) on 30 March 2017 but it has to be noted that this guilty plea came only after extensive correspondence with the RMD, considerable leniency and repetitive failure to comply.

[15] Consequently the offending must be regarded of a relatively serious nature. Continuous non-compliance places a strain on the RMD in terms of resources and that in turn penalises the public and those who comply with their revenue obligations as taxpayers.

[16] The Crown has made helpful recommendations as to appropriate sentencing.

[17] Mr Rasmussen, albeit on the basis of limited instructions, does not object to the level of sentencing and I propose therefore to sentence in accordance with the Crown's recommendations.

[18] In respect of CRN 73/16, a representative charge in respect of the VAT offending relating to ten periods in 2008, I impose a fine of \$150 for each month. The fine therefore totals \$1,500 in relation to the VAT charges.

[19] In relation to the PAYE reconciliation statements, CRN 66/16, relating to the period ended December 2003, I impose a fine of \$1,500.

[20] In respect of CRN 48-56/16 and 97/16 relating to Income Tax Returns, for ten periods in the years ended 2005 to 2014, I impose a fine of \$1,500 for each year. That amounts to a total fine of \$15,000 imposed in relation to the Income Tax offences.

[21] Without any information as to the financial resources of the offender it is difficult for the Court to consider how the penalties imposed, which total \$18,000, should be paid. The proposal submitted by the Crown, which on the limited information I have, seems to be entirely reasonable, is that the total fines of \$18,000 be paid by instalments over 18 months, by payments of \$1,000 per month, the first payment to be made one month from today, namely Monday the 12th June 2017. I so order.

[22] I also order Strickland Motors Ltd to pay Court costs totalling \$600.00 computed at the rate of \$50 in relation to each of the 12 informations.

Potter J.

Judith Potter, J