

In the Court of Appeal
(Criminal Division)

Regina
V.

John Palmer

Response on behalf of the appellant. to the skeleton argument of the prosecution

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Agents for STUDIO LEGALE INTERNAZIONALE
ROMA-LARGO G TARTINI 3/4
00198 ITALIA
Avv.GIOVANNI DI STEFANO

1. This document is the response to those points raised in the prosecution skeleton which are not addressed in the written submissions made on behalf of the Appellant.

The validity of the notice served on May 21,2001. (Para 3(a))

2. It is submitted that Judge Gordon was entirely correct to rule that the notice submitted on May 21, 2001, was not a valid notice for the purpose for of the Criminal Justice Act 1988 section 72(1). The terms of the section are clear and mandatory. It is submitted that they constitute a condition precedent to the institution of confiscation proceedings under this Act. The question whether or not the appellant was prejudiced in any way by the failure to serve a notice in the appropriate terms is irrelevant. There

is an analogy with the case where a prosecution cannot be commenced without the consent of the Attorney General or the Director of Public Prosecutions. If a prosecution is commenced without the appropriate consent, there can be no doubt that the proceedings which follow are totally void, whether or not the matter has otherwise proceeded in a perfectly normal and correct manner and whether or not the defendant has been prejudiced in anyway (see Angel (1968) 52 Cr.App.R. 280, a case where a conviction on a plea of guilty was quashed on the ground that the appropriate consent had not been given.)

3. There appears to be no reason why the prosecution did not serve a notice in the terms required by section 72(1). It appears from the document headed "A note on confiscation etc" that the prosecution were alert to the fact that Count 1 of the indictment was covered by the original version of the 1988 Act. Even if the effect of the Proceeds of Crime Act 1995 section 16(5) was overlooked at this stage, it appears to have been the duty of the prosecution, on the view of the law which they then took, to have served a notice in accordance with section 72(1) in respect of Count 1, if they sought confiscation in respect of Count 1
4. On May 21, 2001, the appellant was representing himself. It is submitted that in that in those circumstances there was a particular duty both on the court and on the prosecution to ensure that all requirements of the law were fully satisfied.
5. As a result of the confiscation proceedings, subject to the outcome of this appeal, the appellant faces a confiscation order for an amount in excess of £30 million, with default terms totalling 11 years, consecutive to a sentence of eight years imprisonment for the offence. He is entitled to expect that before penalties of this magnitude are imposed, all the requirements of the law laid out in unambiguous terms in statute should be fulfilled.

The ruling that the appellant benefited from the offences only to the extent those who bought second timeshares were actually deceived. (Para. 6)

6. It is submitted that the learned judge's ruling that monies could be treated as "benefit" only if they were received from persons who had actually been deceived by the false representations made by or on behalf of the appellant was correct.
7. The appellant was convicted of conspiracy to defraud; in this context that has the traditional meaning of conspiring to obtain by deceit. The essence of the offence is the deceit. If a person to whom false representations have been made, parts with his money otherwise than in reliance on and as a result of the false representations, no offence of obtaining by deception has been committed. If the defendant had been indicted not for conspiracy, but for numerous individual offences of obtaining by deception from a particular victim, it is clear that he would have been convicted of obtaining by deception only from those who parted with their money in reliance on the deception, and that his benefit would have been limited to that amount. The same principle must apply to you the case of conspiracy to defraud, where the fraud consists of obtaining by deception. If the monies were obtained otherwise than as a result of the false representations, it is submitted that there is no connection with the offence for the purposes of section 71(4).
8. It is submitted that policy of the confiscation provisions of the 1988 Act is to remove from the defendant the proceeds of his crime and no more than that. ("The policy of the Act and the effect of section 71(6) is that the confiscation order must not exceed the amount that might be realised, for a court cannot confiscate more than exists. *And it must not exceed the benefit, for the underlying policy is to confiscate the proceeds of the crime, but not more*" Per Holman J. in **Barwick** [2001] 1 Cr.App.R.(S.) 445)
9. The defendant in this case has been sentenced to a term of eight years imprisonment, for two offences in respect of each of which the maximum sentence was 10 years. It follows that he has received a sentence close to the maximum term which was realistically available to be sentencing judge. It is submitted that in determining the amount of any confiscation order, the court should carefully limit the amount of the

order to the amount which the defendant has received as a result of the offences, and avoid imposing what would amount in this case to an additional fine on top of a substantial sentence of imprisonment.