In The Supreme Court of Bermuda

CRIMINAL JURISDICTION
Case No. 13 of 2019

BETWEEN:

THE QUEEN

-and-

VINCENT MAST

Before: **The Hon. Justice Juan P. Wolffe, Acting Puisne Judge**

Appearances: Mr. Alan Richards for the Prosecution
Ms. Elisabeth Christopher for the Defendant

Dates of Hearing: 17th, 18th, 20th, and 27th December 2019, and 3rd January 2020
Date of Ruling: 12th February 2020

RULING

Application for Dismissal – Section 31 of the Criminal Jurisdiction and Procedure Act 2015 – Fraudulent Inducement to Invest – Money Laundering – Furnishing False Information – Segregated Accounts Companies

1. By way of an Indictment dated the 25th April 2019 the Defendant has been charged with the following offences:

Count 1: Fraudulent Inducement to Invest, contrary to section 404(a) of the Criminal Code

Count 2: Money Laundering, contrary to section 43(1)(e) of the Proceeds of Crime Act 1997 (the "POCA")

Count 3: Furnishing False Information, contrary to section 33(1)(b) of the Bermuda Monetary Authority Act 1969 (the "BMAA")

Count 4: Furnishing False Information, contrary to section 33(1)(b) of the "BMAA"

2. The Defendant now makes an application for dismissal of all of the counts against him pursuant to section 31 of the Criminal Jurisdiction and Procedure Act 2015 (the "CJPA")("Section 31 application").

The test to be applied on this Section 31 application

3. Section 31 of the CJPA provides the following:

> *"Application for dismissal*
>
> *31 (1) A person who is sent for trial under section 23 or 24 on any charge or charges may, at any time—*
>
> *(a) after he is served with copies of the documents containing the evidence on which the charge or charges are based; and*
> *(b) before he is arraigned (and whether or not an indictment has been preferred against him),*
>
> *apply orally or in writing to the Supreme Court for the charge, or any of the charges, in the case to be dismissed.*
>
> *(2) The judge shall dismiss a charge (and accordingly quash any count relating to it in any indictment preferred against the applicant) which is the subject of any such application if it appears to him that the evidence against the applicant would not be sufficient for a jury properly to convict him."*

4. Thus, the test is one of "sufficiency" in that a judge may dismiss a charge "*if it appears to him that the evidence against the applicant would not be sufficient for a jury properly to*

convict him". Pertinent to the case at bar, which involves voluminous documentation, paragraph 1-54 of the 2019 Edition of Archbold also states that:

> *"Where the evidence is largely documentary, and the case depends on the inferences or conclusions to be drawn from it, the judge must assess the inferences or conclusions that the prosecution propose to ask the jury to draw from the documents, and decide whether it appears to him that the jury could properly draw those inferences and come to those conclusions…..It was also said that when giving reasons for his decision a judge is not obliged to consider every document referred to and to summarise his conclusions on it."*

5. I will therefore now turn to the Prosecution's case which it asserts provides sufficient evidence upon which a jury could properly convict the Defendant of all of the counts on the Indictment.

The Prosecution's Case

6. I will separately set out the Prosecution's case in respect of each count on the Indictment.

Count 1: Fraudulent Inducement to invest

7. The Prosecution alleges that between the 25th January 2018 and the 14th November 2018 the Defendant induced a Katsuhisa Nakashima ("Nakashima") and others to invest money on deposit with a company named St. George's Limited ("SGL") by dishonest concealment of material facts, namely, that SGL was not actually being run as a "Segregated Accounts Company" ("SAC"). In support of Count 1 the Prosecution rely on witness statements and documentary evidence that:

- SGL was formerly known as Orca Life Ltd. ("Orca") which was incorporated on the 9th November 2009 and which became a Class C Insurer pursuant to the Insurance Act 1978 on or about 30th September 2011. On or about 28th June 2013 the name changed from Orca to SGL, and on or about 27th November 2013 SGL was duly registered as a SAC pursuant to section 6 of the Segregated Accounts

Companies Act 2000 ("SACA"). Bates Nos. 743 to 747 set out the incorporation documents of Orca and SGL.

- Bates Nos. 748 to 756 contain the following details in respect of the structure of SGL:

  Directors: Mr. Ramesh Dusoruth ("Dusoruth"), the Defendant, Harbour Administration (BVL) Limited ("Habour"), and Timothy Stoddart ("Stoddart")
  Insurance Manager: Strategic Risk Management Solutions Limited ("SRS")
  Managing Entity: Harbour Fiduciary Services Limited ("Harbour Fiduciary")
  Principal Representative: SRS
  Related Party: Mr. Andrew Hupman ("Hupman")
  Secretary: Harbour Fiduciary
  Shareholder: Les Petits Fourmies Ltd. ("LPF"). SGL is a wholly owned subsidiary of LPF and its beneficial owner is Dusoruth.

  It is the Prosecution's position that although there were other directors of SGL Dusoruth was the owner of SGL and the Defendant was its CEO, and, that the Defendant, as second to Dusoruth, was intimately and extensively involved in the management and control of SGL.

- SGL, *inter alia*, offered to predominately Asian clients the possibility of purchasing short term (3 to 5 year) annuity products.

- The investment strategy of SGL was to market to potential investors low risk policies with the added protection of "segregated accounts" i.e. that SGL was a SAC. This investment strategy was sent out by a Mr. Steven Kagawa ("Kagawa") who is the CEO of a company called Pacific Bridge Companies ("PB") which provides financial advice, marketing and distribution of financial products to high net worth individuals (see Bates Nos. 582 to 590 and statement of Kagawa dated 11th February 2019 on page 51 of the Court Record).

Additionally, the Prosecution submits, the website of SGL, www.stgeorgeltd.com, clearly represented that SGL was a SAC and that each investment or annuity would have its own segregated account which would not be comingled with SGL's general account (see Bates Nos. 811 to 815).

- The signatories of SGL's accounts held at the HSBC bank were Dusoruth and the Defendant (see Bates No. 838), and, that signatories for SGL's accounts were split into three groups: Group A – a David Sykes ("Sykes"), Hupman, and a Elma Chambers ("Chambers"); Group B – Officers of Harbour Fiduciary; and Group C – Dusoruth and the Defendant. SGL's signing policy for authorizing money transfers were (a) anyone from Group A or B with one signatory from Group C, or (b) two signatories from Group C.

- The majority of the policyholder premiums flowed through SGL's HSBC accounts via another SGL account held at a bank called Bank Julius Baer which is located in Switzerland ("Julius Baer"). Then, the Prosecution says, the premiums migrated into an affiliate company in the United Kingdom called Marsh Wall 30 Limited ("MW30") which owned property known as and located at 30 Marsh Wall, Canary Wharf, London E149TP ("30 Marsh Wall"). Dusoruth was the beneficial owner of MW30.

  Apparently, 30 Marsh Wall was to be demolished and re-developed in partnership with the Marriott Hotel Group with future rental earnings (an illiquid asset) going to pay interest on loans from SGL to MW30. As of the date of this hearing, planning permission had not be granted to develop the site.

- In or around July 2016 a Eric Donkoh and a Joel Mwaura, respectively the Assistant Director (Insurance Supervision Long Term) and the Senior Analyst at the Bermuda Monetary Authority ("BMA"), met with Artex Risk Solutions (Bermuda)("Artex")(SGL's then Insurance Manager) and PricewaterhouseCoopers

("PwC")(SGL's then auditors) who stated that SGL would not be able to meet its final filing deadline of 27th July 2016 due to delays in the audit. This meeting was followed up by a letter from Artex on the 3rd August 2016 which set out the actions which the Board of SGL were going to take to come back into compliance.

- From July 2016 to 21st March 2017 Dusoruth continuously met with or entered into correspondence with various representatives of the BMA to inform or update them about how the liquidity and compliance issues of SGL were being addressed [copies of the minutes of the meetings and correspondence form part of the Prosecution's Bundle of Documents]. The liquidity issue centered around the amount of cash or cash equivalent assets that could be called upon to refund investors should the need arise. Therefore, in those meetings and correspondence it was discussed, *inter alia*, that: there was a failure of SGL's previous management to run the business in accordance with the business plan; there were plans to restore the desired liquidity position of 50:50 ratio between liquid and illiquid assets between then and 2017 (at the time assets were 96% illiquid); a "one-time" dividend was to be made to LPF which would be set-off against outstanding investments SGL held with LPF; in order to safeguard investor's money that no further dividends were going to be made without the BMA's approval and that SGL's investments were to return to a diversified portfolio of fixed income securities; SGL's assets will be split into cash, rated and non-rated binds, equity and funds; there would be the creation of a formal Investment Committee of SGL to oversee investments; audits were to be completed for all entities linked to SGL outside of Bermuda and that they were expected to be completed by 17th December 2016; all liquidity requirements will be met by the time the first policy was due to mature in October 2019; the majority of SGL's assets were in private loans that would mature on 31st September 2017; SGL was in the process of establishing a $2,000,000 credit line with Julius Baer; the majority of the assets of SGL were in private loans with $44.4 million maturing on the 31st December 2017 and that two (2) sterling loans were dependent on sale of an underlying property or sale of the corporate entity; all new funds would be invested

in liquid assets until a target of 50% liquid and 50% illiquid assets was met; and, that there was a delay of the credit line with Julius Baer.

It would appear from the Prosecution's documents that the Defendant was not in attendance at these meetings between July 2016 and March 2017 and nor had he authored any of the letters which flowed between Dusoruth and the BMA during this period.

- From about 21st March 2017 it would appear, at least evidentially, that the Defendant came more into the picture in that he too began meeting with the BMA alongside Dusoruth in what appeared to be a continuing effort to update the BMA about the issues relating to SGL i.e. a continuation of the discussions which took place between the BMA and Dusoruth prior to March 2017. Such as, in meetings on the 21st March 2017 and 21st September 2017 Dusoruth stated, *inter alia*, that: Julius Baer was waiting for SGL's 2015 and 2016 audited accounts to approve SGL's line of credit; 30 Marsh Wall had a letter of intent to sell and that bids of up to 130% of the book value had been received; policyholder liabilities were backed 100% by liquid assets (as at 31st July 2017 SGL's liabilities were $7.1 million); SGL's management plan was to achieve an investment portfolio of private loans and asset backed securities, equity investments, and rated and non-rated bonds; and that MW30 was a new London property company he was developing with Marriott Hotels after entering into a sellable 150 year ground lease with the hotel group.

- On or about 8th December 2017 Dusoruth, the Defendant, and Sykes sent a letter to the BMA stating, *inter alia*, that: SGL reinvested the premium received from policy holders in higher risk non-rated illiquid assets; SGL had been restructuring its investment portfolio with a view to reducing intercompany loans; SGL held an illiquid asset of $55,000,000 in the form of a ground lease of a substantial UK property; from December 2017 premium received from policyholders will be used for (a) repayment of maturing policies, (b) payment of operating expenses, and (c) remaining balance placed into liquid market instruments.

- On 24th January 2018 Dusoruth and the Defendant met at the BMA and Dusoruth gave certain assurances that SGL would obtain a credit facility and that all new business generated by SGL would be invested in one month rolling deposits. In that meeting it was stated that: there was a possible sale of the ground lease of 30 Marsh Wall in Q4 2017 for GBP60 million and that there was the possibility of selling the property in March 2019 for GBP80 million after improvements were added; SGL should make partial payment *"to alleviate the liquidity issue and protect policy holders"*; the liquidity strategy would not match 50% liquid assets to contract holders by 30th June 2018 and that it would be late; and, that SGL would be changing auditors from PwC to Mazars.

- On the 25th January 2018, Dusoruth and Sykes penned a letter to the BMA stating that SGL, in order to have available liquidity to repay 100% of all policy holder liabilities at all times, would (a) obtain a credit facility from Julius Baer *"until such time that the Company [SGL] has transferred the proceeds received following the sale of sufficient existing assets [presumably 30 Marsh Wall] into cash to replace such credit line"*; and (b) *"As of 25th January 2018, the Company will, for any new business written, invest all received premia, excluding operational expenses, into one month rolling bank deposits of similar currency with one of the banks where the Company holds accounts"* (the "25th January 2018 letter")(see Bates No. 118). Dusoruth said that this plan had been approved by SGL's Board and Mr. Graham Lamb, Assistant Director in the Insurance Supervision Department of the BMA, stated that this plan proposed by SGL appeared acceptable *"if the two points were to be actioned as promised"*.

- In the following months the BMA experienced problems with SGL providing demonstrable documentary proof that they were actively addressing their liquidity problems and in particular following through with the promises that were made in the 25th January 2018 letter.

- On or about 6th April 2018 a Miss Miyo Mori ("Mori") invested $4,000,000 in two (2) SGL annuity products. HSBC banking records show that $4,000,000 was credited to the SGL account on the 10th April 2018 and then transferred out of the account on the same day. The note on the account states "Transfer to JB" and records for the Julius Baer account show a credit of $4,000,000 from SGL on the 10th April 2018.

  In late 2018 Mori sought to exercise her right under one of her annuity policies to withdraw $100,000. However, by the date of her witness statement dated the 28th February 2019 she had not received any response from SGL regarding her withdrawal request.

- On or about 5th August 2018 Nakashima invested $500,000 with SGL for the Global Flex Defender annuity. It was Nakashima's understanding that his funds would be placed in a segregated account however at the time of completing his witness statement on the 12th March 2019 he had not received any policy documents from SGL nor had he received a refund of his funds despite requests being made.

- On 22nd August 2018 the BMA met with Mazars (SGL's auditors) who voiced their concerns about "misrepresentations" they say were made by SGL regarding differences between the products that were being offered by SGL on their website and what actually happened to clients' investment money once it came into SGL's HSBC account.

- On 29th August 2018 Dusoruth and the Defendant, according to Deputy Director of the Legal and Enforcement Department and Chief Enforcement Officer of the BMA Mr. Garrett Byrne ("Byrne"), Dusoruth and the Defendant executed fifty-three (53) loan agreements directly linked to each outstanding policy issued by SGL for a total nominal value of GBP19,047,243.92. Each of these loans was between SGL and MW30, were signed by Dusoruth on behalf of MW30 and the Defendant on behalf of SGL. Each agreement stated that each loan was part of a "Senior Secured Loan"

by SGL to 30 March Wall for GBP25,000,000, that the loans were unsecured, and that the loaned amount was available to MW30 until 21st June 2021. Byrne says in his witness statement that the BMA were not aware of these loans and there is no evidence that the policyholders were advised that their assets would be used to fund the Senior Secured Loan by SGL to MW30.

- On or about 11th September 2018 the BMA, by way of a letter to SGL, imposed "Urgent Directions" to restrict SGL's license with regards to writing new business. As well, the BMA requested from SGL information about a credit facility being in place, independent valuations of the assets of SGL and LPF, a date when financial returns would be filed, written proposals as to how SGL will replace SRS and the actuary, cash flow projections for the next three (3) years, and income statement/profitability analysis.

- On the 19th September 2018 the BMA met with Dusoruth, the Defendant, Stoddart, and representatives from SRS and Harbour to discuss the need for liquidity in SGL, and that there was cash and saleable assets (presumably 30 Marsh Wall) to provide such liquidity. The BMA also made it clear that any liquid assets were to be placed in SGL's HSBC account in Bermuda.

  The Prosecution say that despite further promises and revised promises in October 2018 from Dusoruth and the Defendant to transfer monies into SGL's HSBC accounts in Bermuda, only $1,800,000 had been transferred.

- The BMA also had concerns that SGL was paying (i) $80,000 per month to a company named Orca Finance UK Limited ("Orca UK"), which was owned by LPF with the Defendant as the ultimate beneficial owner, for software licenses (since 21st March 2017 SGL had paid in excess of $1,500,000 for software to service approximately 50 policy holders), $75,000 per quarter to Orca UK for consultancy services, and for travel costs and other expenses; (ii) $27,000 per quarter to a company called Godeux, which was owned by the Defendant, for fees and travel

expenses; and (iii) Dusoruth and the Defendant executed the fifty-three (53) loan agreements totaling GBP25,000,000 between SGL and MW30 which is owned by Dusoruth. The BMA say that this was a breach of the Urgent Direction issued by the BMA that SGL would not enter into any loans without the written approval of the BMA.

- On 14th November 2018 the BMA received a letter from Leah Scott, Legal Counsel of Harbour Fiduciary, stating that Dusoruth and the Defendant had resigned as directors and officers of SGL.

- On the 15th November 2018, in a meeting with the BMA Dusoruth informed Lamb (i) that he and the Defendant had resigned their positions as directors and officers of SGL, and (ii) that he and the Defendant had jointly signed to transfer funds out of SGL to MW30 to pay interest and property development costs. There does not appear to be any evidential indication that the Defendant was at this meeting.

  Lamb was of the view that this was not in keeping with the plan set out in the 25th January 2018 letter or the Urgent Directions, and, that the priority was establishing liquidity in SGL. Any restructuring, the BMA felt, could occur after the liquidity issues were resolved.

  In the same meeting Dusoruth stated that there was nothing on the table with respect to resolving the issue of liquid assets being injected into SGL. This comment by Dusoruth was "alarming" to the BMA partly because with the resignation of Dusoruth and the Defendant they left no liquidity to cover SGL policy holder obligations.

- On 15th November 2018 Dusoruth and the Defendant were arrested. The Defendant was arrested at the LF Wade International Airport in Bermuda.

- By about 1st October 2018 SGL had fifty (50) policies related to fourty-six (46) policyholders based in Taiwan, Japan, and China. The total amount the policy holders had invested was $17,921.821 and when factoring in interest the balance as at 1st October 2018 was $18,748,161.49.

- As of the 21st January 2019, the date of Byrne's witness statement, SGL had a total outstanding account value towards its policy holders of $18,748,161.49 i.e. the total amount that was invested by policy holders with SGL.

8. The Prosecution's case is therefore that:

(i) The Defendant was "closely" and "heavily" involved in the management of SGL and was Dusoruth's "right hand man". The Prosecution say that it was Dusoruth who was the "mastermind" behind the criminal enterprise and not the Defendant but that the Defendant was at all material times a director of SGL and that he was part of a class of signatories who along with Dursoruth had the authority to transfer and withdraw funds to and from SGL's HSBC accounts.

(ii) Pursuant to the SACA, the investments made by SGL's clients were supposed to be, but were not, placed in "segregated accounts" which should have been separated from the general assets or liabilities of SGL. The existence of segregated accounts, according to the Prosecution, was supposed to have been an added statutory safeguard for investors.

(iii) The fifty (53) loan agreements executed between Dusoruth (on behalf of MW30) and the Defendant (on behalf of SGL) on 29th August 2018 was an attempt to legitimize the investment of clients' funds in 30 Marsh Wall. The Prosecution submits that this is sufficient evidence to show that the Defendant was a party to the dishonest concealment of how SGL was truly being run i.e. not as a SAC.

(iv) Up until the time BMA imposed the Urgent Directions on SGL on 11th September 2018, SGL continued to offer annuity products purportedly as a SAC when in reality it was not operating as such, and instead investors' money was being diverted into a speculative real estate venture, i.e. 30 Marsh Wall. Therefore, the Prosecution submits, these *"material facts as to the true nature of SGL were thus dishonestly concealed and persons were thereby induced to invest"* (with SGL).

(v) Had the true state of SGL's operations been known to Nakashima and others, i.e. that it was not being run as a SGL, they would not have invested with SGL. In this regard, the Prosecution refer to the statements of Kagawa, Nakashima, Mori, and a Takahi Murata ("Murata") to show that they and/or their advisors were attracted to the SAC structure of SGL and that it was because of this SAC structure that they were induced to invest with SGL.

Count 2: Money Laundering

9. Against the background of the Prosecution's factual matrix of Count 1 the Prosecution allege in Count 2 that between the 25th January 2018 and the 14th November 2018 the Defendant removed from Bermuda criminal property, namely credit balances which represented funds which were invested in SGL by their clients as a result of fraudulent inducements to invest. In support of Count 2 the Prosecution rely on evidence which they say show that:

- The transfer of the $4,000,000 belonging to Mori from SGL's HSBC account to SGL's Julius Baer account on the 10th April 2018 shows "a trend" of investors' money being transferred from SGL's accounts to other companies owned and controlled by Dusoruth or the Defendant. Another example, the Prosecution says, is that between 21st February 2018 and 31st August 2018, the sum of $6,789,985 was transferred into two (2) of SGL's HSBC accounts and then transferred to another one of SGL's HSBC account. A total of $5,540,343 was then subsequently

transferred to the following business accounts relating to Dusoruth and the Defendant:

Godeaux NV (owned by the Defendant)	-	$86,252.30
Orca UK (owned by LPF and the Defendant)	-	$784,091.23
SGL (Julius Baer account)	-	$4,550,000

A total of at least GBP1,640,000 was transferred from the Julius Baer account to MW30 during the period 3rd April 2018 to 30th June 2018.

10. The Prosecution's case under Count 2 is essentially that Dusoruth and the Defendant misled investors into placing their funds into the care of SGL but did not place those funds into a "segregated account" or purchase annuity investments. Instead, the Prosecution submits, Dusoruth and the Defendant transferred large sums of money into companies owned or controlled by themselves outside of Bermuda. It is contended by the Prosecution that as these funds were the proceeds of a fraudulent inducement to invest by the Defendant then they constitute "criminal property", and, that the Defendant should have at least suspected such.

Counts 3 and 4: Furnishing False Information

11. The Prosecution alleges that on the 27th July 2018 (Count 3) and separately again on the 17th August 2018 (Count 4) the Defendant was concerned in the furnishing, or reckless furnishing, of information to the BMA knowing such information to be misleading in a material particular. Specifically, that SGL had in place a "line of credit" that conformed with the terms of a commitment given to the BMA on 24th January 2018 to obtain such.

12. In this regard, the Prosecution say that in or around July 2016 SGL came to the attention of the BMA when then auditors for the company, Artex, reported on the 22nd July 2016 that the 2015 accounts could not be filed. It then became apparent to the BMA that SGL had liquidity issues in that they did not have sufficient funds held in "liquid assets" such

as cash and bonds to cover what was owed to investors. The BMA attempted to address this issue with SGL throughout 2017 but to no avail and on 24th January 2018 a meeting was held between the BMA, Dusoruth, and the Defendant.

13. The Prosecution assert that at this 24th January 2018 meeting Dusoruth gave two (2) assurances, specifically:

(i) That SGL would obtain a credit facility equal to the policy holder liabilities, less the cash held by the company; and,

(ii) That all new business generated by SGL, in the form of investors' premiums, would be invested, less operational company expenses, in one month rolling bank deposits.

The Prosecution say that these undertakings were confirmed in the 25th January 2018 letter which was signed by Dusoruth and Sykes who at the time was the Managing Director of SRS (the Insurance Manager and Principal Representative of SGL) and also a director of SGL. This letter was also circulated for review to other directors of SGL.

14. Subsequently, on 18th April 2018 the BMA wrote to SGL requesting interim accounts and in response on the 15th May 2018 Chambers, who was a Vice President and a qualified accountant with SRS and who worked with Sykes, forwarded to the BMA documents which included a set of SGL interim accounts which showed a significant increase in company loans for the period 31st December 2017 to 31st March 2018. Also included in the forwarded documents were:

(i) A Credit Agreement between SGL and Julius Baer dated 13th March 2018 and signed by the Defendant and Dusoruth (the "Credit Agreement");
(ii) A Pledge Agreement between LPF and Julius Baer (the "Pledge Agreement"); and,
(iii) A Support Agreement between LPF and SGL (the "Support Agreement")

15. In her witness statement dated 30th January 2019 Chambers says that she sent this documentation as confirmation of the Julius Baer credit line to SGL and that she did so on the instruction of Dusoruth and at his behest (Bates nos. 544 to 547 set out an email chain between Dusoruth and Chambers in this regard). Dusoruth assured both Chambers and members of the Board that the facility was in place. However, anticipating further questions from the BMA Chambers entered into email exchanges with Sykes on the 29th June 2018 who then called Lamb of the BMA to discuss the situation.

16. Chambers wrote to Dusoruth again on the 4th July 2018 requesting further information about the existence of a credit line with Julius Baer but she received inadequate responses. Again she raised the matter with Sykes who on the 13th July 2018 wrote a "early warning letter" to the BMA (see Bates No. 148) stating his concerns regarding what he thought was SGL's unsubstantiated credit line with Julius Baer as Dusoruth failed to provide sufficient documentation to show such. As a result, Sykes deemed SGL to be "out of compliance" with regards to the assurances made to the BMA by Dusoruth on the 24th January 2018.

17. The BMA then contacted SGL and received an email response from the Defendant on 27th July 2018 which enclosed the Credit Agreement, the Pledge Agreement, and the Support Agreement which all had already been sent by Chambers to the BMA on the 15th May 2018 (see Bates Nos. 150 to 168). The Prosecution point out that the Credit Agreement was signed by Dusoruth and the Defendant on behalf of SGL, but no one signed on behalf of Julius Baer.

18. Unsatisfied with the documentation sent by the Defendant on the 27th July 2018 the BMA requested further proof of the credit line on the 17th August 2018 and on the same date the Defendant sent to the BMA a letter from Julius Baer which stated that the facility was in place but that *"The borrower needs to apply for a credit limit"*, and that *"The signing of a credit agreement does not automatically provide the borrower with a credit limit"*.

19. The Prosecutions' case in respect of Counts 3 and 4 is therefore that:

(i) The communication from the Defendant on 27th July 2018 comprises the furnishing, or reckless furnishing, of information to the BMA by the Defendant knowing such information to be misleading in a material particular, specifically, that SGL had in place a line of credit that conformed with the terms of a commitment given to the BMA on 24th January 2018 to obtain such (Count 3).

(ii) The communication from the Defendant on the 17th August 2018 comprises the furnishing, or reckless furnishing, of information to the BMA knowing such information to be misleading in a material particular, specifically, that SGL had in place a line of credit that conformed with the terms of a commitment to obtain such which was given to the BMA on 24th January 2018 (Count 4).

(iii) The Prosecution argue that an inference can be drawn that the purpose of the Defendant providing the information on the 27th July 2018 and the 17th August 2018 was to mislead the BMA as to the true position of the "credit facility".

The crux of the Defendant's Section 31 application

20. In support of the Defendant's section 31 application, Ms. Christopher, through oral and written submissions, argues that the evidence upon which the Prosecution seeks to rely upon in respect of all Counts on the Indictment are insufficient evidence upon which a jury could properly convict the Defendant of any of the counts on the Indictment. In particular, that there is no or insufficient evidence:

(i) That SGL was not at all material times being run as a SAC, did not have a "segregated account", and did not offer annuity-type investments.

(ii) That Nakashima and/or others were "induced" by any false statement or representation of the Defendant, including whether SGL was being run as a SAC.

(iii) That the Defendant deliberately and dishonestly concealed from Nakashima and others that SGL was not being run as a SAC (to be clear, the Defendant's position is that SGL was at all material times being run as a SAC).

(iv) That the amounts transferred between the 25th January 2018 and the 14th November 2018, such as the $6,789,985 which was transferred into SGL accounts at HSBC and then transferred to other accounts for Godeaux, Orca UK, and SGL (Julius Baer), constituted "criminal property". It is the Defendant's position that these sums were properly and legitimately paid for services properly rendered, for the development of software, and for real estate (MW30), all of which were legally permissible under SACA and a SAC structure.

(v) That Chambers, before sending her email of the 18th April 2018 to the BMA which enclosed the relevant documents, had any consultation in this regard with the Defendant, or, that the Defendant had anything whatsoever to do with that email or documents being sent to the BMA. It is Ms. Christopher's position that Chambers instructions to send out the said email to the BMA came directly and solely from Dusoruth, and that there is no evidence from the Prosecution that the Defendant had any discussions with Chambers or Dusoruth in this regard, or that the Defendant played any part whatsoever.

(vi) That the Defendant made any assertions, directly or indirectly, on the 27th July 2018 or the 17th August 2018, that SGL had in place a "line of credit" that conformed with any commitment he made to the BMA on the 24th January 2018. It is Ms. Christopher's contention that it was Dusoruth on the 24th January 2018 who gave assurances that SGL would obtain a "credit facility" and that in the meeting on the said date a "credit line" was not discussed. Moreover, although that there was an interchangeable use of the words "credit line", "line of credit", "credit agreement" and "credit facility agreement" by all parties concerned there are definitional distinctions between the words "credit facility" and "credit line" (the former being of wider scope).

In any event, asserts Ms. Christopher, the email sent out by the Defendant on the 27th July 2018 does not purport to show that a "credit line" was in existence and that it was only in response to an email from Mwaura (Senior Analyst of the Insurance Supervision of the BMA) to the Defendant and Dusoruth dated the 26th July 2018 in which he [Mwaura] says that he looks forward to receiving from the Defendant a copy of the "Credit Facility Agreement" (see Bates No. 150). It should be noted that copied in on this email from Mwaura was Sykes, Chambers, and Lamb.

(vii) That the Defendant asserted that the undated letter from Julius Baer to Dusoruth stated that SGL had in place "a line of credit" that conformed with a commitment given to the BMA on the 24th January 2018 or on any other day (although the date of the letter is unclear it references an email from Dusoruth dated 11th August 2018).

(viii) That the Defendant sent any emails to the BMA, whether on the 27th July 2018, the 17th August 2018, or otherwise, which transmitted any false information.

(ix) That the Defendant was acting in a manner which was different from any other directors/officers of SGL.

21. Therefore, in respect of this section 31 application I must be satisfied that:

(i) There is sufficient evidence that the Defendant: (a) fraudulently induced Nakashima and others to invest money with SGL by dishonest concealment of material facts, namely that SGL was not being run as a SAC; (b) removed criminal property from Bermuda, namely credit balances representing funds invested in SGL pursuant to fraudulent inducements by him to invest with SGL; and (c) knowingly or recklessly furnished false information to the BMA, specifically that SGL had in place a line of credit that conformed with a commitment to obtain such given by him to the BMA on the 24th January 2018; and,

(ii) The evidence is sufficient enough for a jury to properly convict him of each of the offences charge on the Indictment.

22. In doing so, I should have regard to the weight of the evidence, and to assess any inferences or conclusions which the Prosecution proposes to ask the jury to draw from that evidence.

Decision

Count 1: Fraudulent Inducement to invest

23. Section 404 of the Criminal Code states:

> ***"Fraudulent inducement to invest or deposit***
>
> *404 Any person who, by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making (dishonestly or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person—*
>
> *(a) to invest money on deposit with him or with any other person; or*
> *(b) to enter into or offer to enter into any agreement for that purpose,*
>
> *shall be guilty of an offence, and liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for seven years."*

24. The "Particulars of Offence" as reflected on the Indictment state the following:

> *"**VINCENT MAST**, between the 25th day of January 2018 and the 14th November 2018, in the Islands of Bermuda, induced Katsuhisa Nakashima and others to invest money on deposit with a company named St. George's Limited by dishonest concealment of material facts, namely that St. George's Limited was not being run as a Segregated Accounts Company."*

25. In accordance with its stated Particulars of Offence the Prosecution must therefore have sufficient evidence that:

(a) The Defendant committed an offence between the 25th January 2018 and the 14th November 2018.
(b) SGL was not being run as a SAC.
(c) The Defendant "dishonestly" "concealed" a material fact from Nakashima and others, namely, that SGL was not being run as a SAC.
(d) Nakashima and others were induced to invest money on deposit with SGL by the Defendant dishonestly concealing that SGL was not being run as a SAC.

26. The Prosecution's case under this charge therefore hinges on whether or not SGL was in fact being run as a SAC (an issue which was the subject of extensive submissions by both Counsel). If the Prosecution adduce sufficient evidence to show that SGL was not actually being run as a SAC then I should still then go on to consider whether there is sufficient evidence (i) that the Defendant dishonestly concealed this material fact from Nakashima and others, and (ii) that Nakashima and others were induced to invest with SGL by the Defendant dishonestly concealing that SGL was not operating as a SAC.

27. However, if it can be reasonably concluded that at all material times SGL was in fact being run as a SAC then obviously it could not reasonably be said that the Defendant dishonestly or otherwise concealed any material fact i.e. that SGL was not operating as a SAC.

Whether SGL was operating as a SAC

28. At the heart of the dispute between the parties, and at the core of Count 1, is whether SGL was actually being run as a SAC. As stated earlier, it is the Prosecution's case that although registered as a SAC SGL was not being run as one. Principal to this position taken by the Prosecution is their assertion that SGL, in breach of the SACA, did not maintain "segregated accounts" which were separate and distinct from their "general account" or from any other segregated accounts. As the Prosecution asserted in an email to Ms.

Christopher dated 15th November 2018 (found in Tab 1 of the Defendant's Orange coloured Binder), SGL *"in practice intermingled client investments with both other clients and company funds"*.

29. Resolving the question as to whether SGL was operating as a SAC requires consideration of the definitions fully laid out in section 2 of the SACA and its associated provisions, as well as Bermuda case law which I will cast my attention to later. Section 2 of the SACA defines a "segregated accounts company" as:

> *"…a company which is registered under section 6 and, unless the context otherwise requires, references to "the company" shall be construed as references to such company;"*

30. As stated earlier, and there is no dispute about this, on or about 27th November 2013 SGL was duly registered as a SAC pursuant to section 6 of the SACA. Therefore, at the time of registration back in November 2013 the Registrar of Companies (the "Registrar") must have been satisfied that SGL was capable of complying with the SACA.

31. Section 2 of the SACA defines a "segregated account" as:

> *"…a separate and distinct account (comprising or including entries recording data, assets, rights, contributions, liabilities and obligations linked to such account) of a segregated accounts company pertaining to an identified or identifiable pool of assets and liabilities of such segregated accounts company which are segregated or distinguished from other assets and liabilities of the segregated accounts company for the purposes of this Act;"*

32. Distinguishing a "segregated account" from a "general account" of a SAC section 2 of SACA defines a "general account" as:

> *"…an account comprising all of the assets and liabilities of a segregated accounts company which are not linked to a segregated account of that company;"*

33. Section 2 of the SACA stipulates that "linked" is by means of:

(a) an instrument in writing including a governing instrument or contract;
(b) an entry or other notation made in respect of a transaction in the records of a segregated accounts company; or
(c) an unwritten but conclusive indication,

which identifies an asset, right, contribution, liability or obligation as belonging or pertaining to a segregated account;"

34. As to the nature of segregated accounts, and how a SAC should deal with its assets and liabilities, section 17 of SACA provides that:

"17(1) Notwithstanding any other provision of this Act, the establishment of a segregated account does not create a legal person distinct from the segregated accounts company.

(2) Notwithstanding any enactment or rule of law to the contrary, but subject to this Act, any liability linked to a segregated account shall be a liability only of that account and not the liability of any other account and the rights of creditors in respect of such liabilities shall be rights only in respect of the relevant account and not of any other account, and, for the avoidance of doubt, any asset which is linked by a segregated accounts company to a segregated account—

(a) shall be held by the segregated accounts company as a separate fund which is—

(i) not part of the general account and shall be held exclusively for the benefit of the account owners of the segregated account and any counterparty to a transaction linked to that segregated account, and

(ii) available only to meet liabilities to the account owners and creditors of that segregated account; and

(b) shall not be available or used to meet liabilities to, and shall be absolutely and for all purposes protected from, the general shareholders and from the creditors of the company who are not creditors with claims linked to segregated accounts."

35. Section 17 of the SACA is accompanied by section 17A of SACA which lays out how internal transactions of a SAC should be handled:

"17A(1) Notwithstanding any enactment or rule of law to the contrary—

(a) a segregated accounts company acting in respect of the general account may enter into transactions with the company acting in respect of one or more segregated accounts; and

(b) a segregated accounts company acting in respect of a segregated account may enter into transactions with the company acting in respect of one or more other segregated accounts."

36. Section 2 of the SACA defines "transaction" as:

> *"…any dealing of whatever nature, which may be evidenced by a governing instrument (in the case of a transaction with an account owner) or contract (in the case of a transaction with a counterparty), including the issue of any security, by which assets or liabilities become linked to a segregated account or by which the assets or liabilities linked to a segregated account are otherwise affected, or, in the case of assets linked to a segregated account which are intended by the parties to be applied to a risk of any nature, any dealing which exposes such assets to liability or loss."*

37. Moreover, section 11(1) of SACA provides that the rights, interests, and obligations of account holders in a segregated account shall be evidenced in a governing instrument and that the rights, interests, and obligations of counterparties shall be evidenced in the form of contracts. In this regard, section 2 of SACA defines "governing instrument" as written agreements, instruments, bye-laws, prospectuses, resolutions of directors, registers or other documents; and, "counterparty" as any party (other than the SAC itself) to a transactions to which the SAC is a party, and under which assets or liabilities are wholly or partly linked to a segregated account, but, an account owner shall not (in that capacity) also be a counterparty.

38. Further, section 11(2)(iii) of SACA stipulates that the SAC may take action, *inter alia*, *"for the benefit of the segregated account only, the sale, lease, exchange, transfer, pledge or other disposition of all or any part of the assets of the segregated account, or the orderly winding-up of the affairs and termination of the segregated account"*.

39. To strengthen their respective positions as to the nature of SACs Ms. Christopher and Mr. Richards, for different reasons of course, both referred extensively to the decision of Kawaley J (as he then was) in the Bermuda authority of ***BNY AIS Nominees & Gottex ABL (Cayman) Ltd. v. New Stream Capital Fund Limited [2010] Bda LR 43***. As noted by Kawaley J, before ***BNY*** the legalities of the segregated account company corporate structure had seemingly not been tested by any Court.

40. ***BNY*** is, understandably and necessarily, quite a lengthy Judgment and so setting out all of its facts may be a bit unwieldy for the purposes of this Ruling. Suffice it to say, the issues in ***BNY*** were whether the assets of a segregated account can be used to meet the liabilities (a) of other segregated accounts of the defendants which did not invest in NSI *ab initio*, and (b) of third parties altogether. Kawaley J ultimately concluded that the defendant in ***BNY*** acted in breach of the SACA and accordingly he granted a receivership order pursuant to sections 19 and 20 of the SACA, specifically:

    (i) Approving a fit and proper person as receiver of each of the segregated accounts of the defendant with all powers of a receiver under the SACA;

    (ii) Directing that the business and assets linked to each of the segregated accounts be managed by the receiver for the purposes of the distribution of the assets linked to each of the segregated accounts to those entitled therein.

41. The reasons for Kawaley J.'s findings can be distilled to the following:

    (a) Those managing SAC's are required to firewall assets belonging to segregated accounts from the SAC's general creditors and claims by other segregated account holders and by third parties.

    (b) The SAC is to keep separate accounting records for each segregated account, and to maintain a separate fund for each segregated account which is distinct from the SAC's general account.

(c) When a SAC enters into transactions on behalf of a segregated account the transaction must be linked to the relevant segregated account, and, must be for the benefit of the relevant segregated account.

(d) Where directors of SAC's seek to restructure the business of segregated accounts in a manner which makes assets linked to a segregated account available to persons who are not already counterparties of the said account they must do so with the relevant account owner's consent or under a governing instrument which empowers directors to act without the account owner's consent.

(e) The SACA should not be construed so as to restrict the economic freedom of SAC's to enter into whatever lawful transactions they wish to enter into but at all times segregated account holders rights, interests, and assets should be protected.

42. The import of the SACA regime and ***BNY***, and indeed the allure of investors to SAC's, is the multi-facetted nature of the protections that a SAC provides for investors. Thereby ensuring that: (i) an investor's assets would be firewalled or protected from the SAC's general creditors, (ii) managers of segregated accounts would deal with the investor's assets belonging or pertaining to the relevant segregated account in a manner which benefits the segregated account, and (iii) any transactions on behalf of the segregated account must be linked to the relevant segregated account. These hallmarks of a SAC are conjunctive. So even if a company has the infrastructure of a SAC, such as the existence of segregated accounts to which the investor's assets may belong or pertain to, the company must still conduct or manage that segregated account in a manner which is consistent with the SACA. In other words, a company must not only be a SAC in name and structure, but in practice it must also carry out its business properly as a SAC.

43. To be clear, as Kawaley J. stated in ***BNY***, managers of SACs should be afforded reasonable business and economic freedom to enter into a cornucopia of transactions with respect to the segregated account. This may be so even if those transaction do not ultimately benefit

the segregated account. Such is the nature of investing. However, this managerial freedom is not without limits and managers of segregated accounts are not given "carte blanche" or a blank check to do with investor's assets as they please, such as entering into transactions which are of unreasonably high risk or for the purpose of resolving cash-flow problems of the SAC. Therefore, any egregious failure or refusal to manage a segregated account to its benefit may lead to the conclusion that although a company may be characterized as a SAC in its Prospectus, governing instruments, marketing material or website it may not in actuality be operating as a SAC in accordance with the provisions of SACA.

44. In respect of a SAC maintaining segregated accounts, Mr. Richards conceded that the SACA *"does not necessarily require the SAC to hold the assets of each segregated account (and thus in this case each policy holder) into a separate bank account"*, but he further asserts *"that does not mean that the legislation entitled the SAC habitually to comingle funds and to remove them from the company and the jurisdiction, for principle investment in a single real estate project in London, owned by Mr. Dusoruth via another corporate entity."* This conduct by SGL, the Prosecution argues, was contrary to SGL's statutory obligation under SACA "*to regard each investor's deposit within a segregated account as a separate fund"*. I agree with Mr. Richards in this regard and reject the position of Ms. Christopher that under the SAC structure that it is permissible for an investor's investment to go into the general account of the SAC. Putting an investor's monies into the general account of the SAC would be antithetical to the SACA because in doing so there would virtually be no distinction between the investor's investment and the monies belonging to the SAC. Consequently, this could leave the investor's monies vulnerable to the general creditors of the SAC.

45. Ms. Christopher also submitted that the SACA is really designed for insolvency and winding-up matters. Although ***BNY*** and the other cited authority of ***Re CAI Master Allocation Fund Ltd. [2011] Bda L.R. 57*** were cases involving insolvency I disagree with the rather restrictive application of SACA offered by Ms. Christopher. No doubt sections 19 and 20 of SACA provide a statutory mechanism as to how to deal with a SAC in the event of the insolvency of a particular segregated account or of the general account of the

SAC. However, the provisions of SACA safeguard more than this. Not only does SACA further provide a statutory manual or code of conduct for SACs to abide by when dealing with their investors' assets while solvent but SACA also gives individuals who may invest with the SAC the comfort (i) that the SAC will deal with assets linked (i.e. belonging or pertaining to) to a segregated account in a manner which benefits their segregated account, and (ii) that a "firewall" (*BNY*), an "iron curtain" (*CAI*), or a "ring fence" (*USB Fund Services (Cayman) Ltd. v. New Stream Capital Fund Ltd. [2009] Bda L.R. 74*)(all Kawaley J decisions) would be placed around their assets in the event that any claims are made generally against the SAC or other segregated accounts.

46. So was SGL, up to and including the period between 25th January 2018 and 14th November 2018, conducting its business in such a manner that it could reasonably be said that it contravened the provisions of SACA and/or that it was out-of-odds with the guidance of Kawaley J in *BNY*? The Prosecution answers this question in the negative when it alleges that SGL was taking in monies on deposit from predominantly Asian investors such as Nakashima and Mori, quickly depositing those monies into SGL's HSBC account via their overseas Julius Baer account, and then for the personal benefit of Dusoruth and the Defendant immediately sending those monies (i) to MW30 which was owned by Dusoruth's company (so that 30 Marsh Wall could be developed), (ii) to Godeux NV which was owned by the Defendant, (iii) to Orca UK in which the Defendant was a beneficial owner, and (iv) to SGL's overseas Julius Baer account. All of this activity by Dusoruth and the Defendant, the Prosecution alleges, was in breach of SACA in that the transactions were carried out without them firewalling or protecting Nakashima, Mori's and other investors monies by way of segregated accounts which were separate and distinct from SGL's general accounts. But even if Nakashima's and Mori's assets belonged or pertained to a segregated account it is still arguable whether in keeping with the SACA their assets were being used for transactions that were linked to their segregated account(s) or to the benefit of their segregated account(s).

47. Ms. Christopher is of the view that none of this activity was contrary to the spirit and intent of the SACA and that the Prosecution's case under Count 1 is rooted in a fundamental

misunderstanding of the Prosecution as to the definition and nature of segregated accounts. In this regard, she says that (i) the essence of the segregated structure is not in the segregated bank account but in the rights, interests and obligations in the account (not bank account), and (ii) there is nothing wrong with investor's monies going into the general account of an SAC.

48. Ms. Christopher may be correct that the SACA does not prohibit investors' monies being placed into a single project such as real estate or paying for services rendered (such as by Orca UK and Godeaux), and that SACA does not prohibit SAC's entering into overseas transactions. Indeed, in their discussions with Dusoruth and the Defendant from July 2016 about SGL's liquidity problems the BMA was well aware of MW30 and 30 Marsh Wall, and, it does not appear that in their apparent extensive discussions with Dusoruth, the Defendant, and other representatives of SGL that the BMA raised any concerns as to whether SGL was operating as a SAC. Ms. Christopher was also right to raise the point that the BMA were well aware of the investment strategies of SGL and that at no time whatsoever did anyone from the BMA indicate to Dusoruth and/or the Defendant that these investment strategies were inconsistent with SGL's obligations under SACA. It appears that BMA's primary focus was to remedy the perceived liquidity problems of SGL.

49. However, the gravamen of the Prosecution's case, as I understand it, is not that SGL could not generally invest in a single real estate project or embark upon the proposed investment strategies, but that Dusoruth's and the Defendant's conduct in carrying out, or not carrying out, the promised investment strategies and transactions raised serious questions as to whether the transactions were actually linked to any segregated account of SGL and whether any of the transactions were to the benefit of the segregated accounts. Moreover, whether the transactions were actually for the benefit of Dusoruth and the Defendant as the Prosecution posits.

50. In this regard, Mr. Richards highlighted that from July 2016 to November 2018 SGL, Dusoruth, and the Defendant failed or refused to live up to the promises made and directions given by the BMA, such as those which were made at the 24th January 2018

meeting and followed up in a letter from Dusoruth and Sykes on the 25th January 2018, and the Urgent Directions imposed on the 11th September 2018. More specifically, the Prosecution's evidence is that SGL's management accounts did not reflect SGL's promised investment strategy in that: no Investment Committee was set up; the 50:50 ratio of liquid to illiquid assets did not occur; Dusoruth did not submit any documentation as to a credit line with Julius Baer; there were no letters of intent to sell 30 Marsh Wall; there was no documentation as to SGL's liquid assets, the incorporation of MW30 or the entering into a ground lease with Marriott Hotels for 30 Marsh Wall; the 30th September 2018 SGL Management accounts showed that by December 2017 only $1,000,000 was held as cash and no other liquid assets were held, and by the first quarter only $3.1 million of liquid assets cash was held (giving a coverage of only 16% of contract holder funds); liquid investments were only 8% of contract holder funds; that all new businesses were not invested in one month rolling bank deposits as promised; 30 Marsh Wall was not independently audited, and there was uncertainty as to the property's value and future lease option revenue.

51. The Prosecution further assert that Dusoruth and the Defendant's delinquency in living up to their promises remained unabated despite efforts by the BMA to bring them in line with their promises. Such as on or about 20th October 2017 the BMA instigating supervisory action against SGL in order to get it to increase its liquidity to equal SGL's Economic Balance Sheet reserves in a short time frame and to obtain independent valuations of 30 Marsh Wall. In addition, SRS (SGL's Insurance Manager and Principal Representative) statement that SGL was moving towards investing 50% of contract holders funds in investment grade assets in the coming quarters with a goal date at the end of June 2018, and, that SRS were hopeful of a 3rd party valuation for 30 Marsh Wall.

52. Further, when entering into transactions and implementing whatever investment strategies, it was still vitally imperative that SGL, Dusoruth or the Defendant, and for that matter any other signatory to SGL's bank account, to enter into transactions which were linked to the relevant segregated account and which were to the benefit of the segregated account. This was required whether or not the Defendant and/or Dusoruth were authorized to enter into

transactions by virtue of their Group C signatory status, or that any other person under their Group A or B signatory statuses could have done so as well (such as those set out in Bates Nos. 422 to 425). I therefore do not agree with Ms. Christopher's assertion that in proving Count 1 on the Indictment that the Prosecution has to prove that the Defendant did an act which he was authorized to do.

53. Therefore, in determining whether SGL was actually operating as a SAC in accordance with the SACA i.e. for the benefit of Nakashima, Mori, and other investor's segregated accounts, a properly directed jury may have regard to evidence which the Prosecution says speaks to:

(i) The liquidity problems of SGL from July 2016 to November 2018 which at all material times appears to have been acknowledged by the Defendant and Dusoruth in meetings and correspondence with the BMA.

(ii) The breaking of promises and revised promises by Dusoruth and/or the Defendant to address the liquidity issues of SGL, such as agreed upon plans to restore the desired liquidity position of 50:50 ratio between liquid and illiquid assets.

(iii) The failure or refusal of Dusoruth and the Defendant to adhere to the assurances made by Dusoruth in the 24th January 2018 meeting and in the 25th January 2018 letter to obtain a line of credit and to invest all new business generated by SGL in one month rolling deposits.

(iv) The failure or refusal of Dusoruth and the Defendant to abide by the BMA's Urgent Directions issued on the 11th September 2018.

(v) The failure or refusal of Dusoruth and the Defendant to provide sufficient documentary proof that they were actually addressing the liquidity problems of SGL.

(vi) The manner in which Mori's $4,000,000 was invested on the 10th April 2018 and then on the same day the same amount being transferred to Julius Baer. Presumably, the Prosecution seeks to invite the jury to draw the inference that the $4,000,000 in the Julius Baer account is the same $4,000,000 that was invested with SGL by Mori on the 6th April 2018 and which was credited to SGL's HSBC account on the 10th April 2018. Further, Mori not receiving any response from SGL in respect of her request in late 2018 to withdraw $100,000 from her annuity policy.

(vii) The acceptance of Nakashima's $500,000 on the 5th August 2018 for the Global Flex Defender annuity but SGL not forwarding to him the relevant policy documents and not refunding his funds despite repeated requests to do so.

(viii) The concerns of Mazars, SGL's auditors, that SGL was offering products on their website which did not accord with what actually happened with client's investment money once it came into SGL's HSBC account.

(ix) The execution of the 53 unsecured loan agreements on 29th August 2018 in the sum of GBP19,047,243.92 between SGL and MW30 (which were signed by Dusoruth and the Defendant and not the other Group A or B signatories) without any notice being given to the BMA or to policy holders that their assets would be used to fund a loan to property which was owned by Dusoruth.

(x) The failure or refusal of Dusoruth or the Defendant to transfer liquid assets of SGL into SGL's HSBC account in Bermuda (other than the transference of $1,800,000).

(xi) The payment of significant fees or loans to companies or properties owned by Dusoruth (MW30) and the Defendant (Orca UK and Godeux).

(xii) SGL having a total outstanding account value towards it policy holders in the sum of $18,748,161.49.

(xiii) The resignation of both Dusoruth and the Defendant on or about 15th November 2018 without there being any plan to address the liquidity problems of SGL or to cover SGL policy holder obligation.

54. In consideration of the above, a properly directed jury could conceivably draw inferences and reach the conclusion that SGL, because of the actions and inactions of Dusoruth and the Defendant, was not actually operating as a SAC. Specifically, the jury could conclude that Dusoruth and the Defendant (i) did not protect or firewall Nakashima's, Mori's, or other investors assets which should have belonged to or pertained to a segregated account which was separate and distinct from SGL's general account; (ii) did not enter into transactions that were linked to Nakashima's, Mori's or other investors segregated accounts, if created; and (iii) did not enter into transactions which benefitted Nakashima's, Mori's, or other investor's segregated accounts, if created; and (iv) entered into transactions which solely benefitted themselves or businesses owned or controlled by them (such as the payments to Orca UK and Godeaux, and the 53 loan agreements for MW30). In doing so the jury could conclude that this this conduct by the Defendant and Dusoruth, if they so find, was more than mismanagement or incompetency on the part Defendant and Dusoruth but that it was concerted on their part use investors' assets for their own benefit. This is bolstered by the fact that as of the date of giving their witness statements Nakashima and Mori had not had their investments returned, SGL still had an enormous outstanding account value towards it policy holders, and, that there was no plan put in place by Dusoruth or the Defendant to address the dire liquidity problems of SGL when they resigned from the Board of SGL.

55. I therefore find that there is sufficient evidence upon which a jury could find that SGL was not operating as a SAC.

Whether the Defendant dishonestly concealed that SGL was not operating as a SAC

56. In the context of the definition of "dishonesty" in the authority of *Ivey v. Genting Casinos UK Ltd. (t/a Crockfords Club)[2018] Cr.App.R. 12 (2017)* the Prosecution must prove that

the Defendant had the knowledge or belief that he was concealing the fact that SGL was not operating as a SAC. If the jury finds that SGL was not actually operating as a SAC then it is open to the jury to then conclude that Dusoruth and the Defendant were well aware that it was not. In this regard, the jury may point to the BMA constantly meeting with Dusoruth and the Defendant to discuss the liquidity problems of SGL, the alleged broken promises of Dusoruth and the Defendant, and the alleged non-compliance with the 25th January 2018 letter and the Urgent Directions. If the jury finds that Dusoruth and the Defendant, by their actions and inactions, well knew that SGL was not operating as a SAC then they could go on to then consider that they deliberately and dishonestly concealed this from potential investors, such as Mori and Nakashima. By the time Mori and Nakashima invested with SGL in April 2018 and August 2018 respectively the BMA, Dusoruth, and the Defendant were already deeply ensconced in dialogue as to how the liquidity issues of SGL were to be addressed, what was required of Dusoruth and the Defendant in addressing the liquidity problems, and the failure or refusal of Dusoruth and the Defendant to comply with the 25th January 2018 letter. A jury may reach the conclusion that despite these discussions with the BMA and despite promises made to put all premia into one month rolling deposits that Dusoruth and the Defendant dealt with investor's money in a way which was inconsistent with the provisions of SACA. For example, in respect of Mori's investment there is evidence to suggest that as soon as her $4,000,000 came into SGL's HSBC account on the 10th April 2018 that it was almost immediately transferred to the Julius Baer account. A jury may conclude that Dusoruth and the Defendant well knew that this was not only in contravention of the plan outlined in the 25th January 2018 letter, but that it was also not in keeping an SAC's obligation to place investors' assets into a segregated account and to only use the assets for the benefit of that segregated account.

57. From this, a properly directed jury may conclude that Dusoruth and the Defendant deliberately and dishonestly concealed from potential and existing investors that SGL came to the attention of the BMA because of liquidity concerns, and, that Dusoruth and the Defendant deliberately and dishonestly concealed the fact SGL was not actually operating as a SAC pursuant to the SACA.

58. I therefore find that there is sufficient evidence for a jury to find that the Defendant dishonestly concealed from Nakashima and others that SGL was not operating as a SGL.

59. This leads me to the issue as to whether Nakashima and other investors were induced to invest in SGL because of the dishonest concealment by the Defendant that SGL was not operating as a SAC.

Whether Nakashima and others were induced by the Defendant to invest in SGL by the Defendant dishonestly concealing that SGL was not being run as a SAC

60. I first wish to address Ms. Christopher's argument that even if it can be sufficiently established that SGL was not being run as a SAC there is insufficient evidence to show that the Defendant fraudulently induced Nakashima, Mori, or anyone to invest in SGL by dishonestly concealing that it was being run as a SAC. The Prosecution seems to casts Dusoruth as the primary offender and the Defendant as his "right hand man". Dusoruth's role certainly cannot be diminished, particularly from July 2016 to March 2017 when it appears that the Defendant was not even in the picture when the BMA was meeting solely with Dusoruth. It can also be said that even when the Defendant came more into the picture after March 2017 that Dusoruth was still very much in the driver's seat. However, there is evidence from which the jury can conclude that the Defendant was not just an unwitting stooge of Dusoruth (if indeed the jury finds that offences were committed) and played an integral role in managing and controlling the operations of SGL. Such as: the Defendant's position as Director and CEO of SGL; the Defendant signing the Welcoming Letters to investors; the Defendant's attendance at the 24th January 2018 meeting with the BMA; the Defendant signing the 53 loan agreements on behalf of SGL in August 2018; and, payments being made to companies owned by the Defendant. Therefore, there is sufficient evidence upon which a jury can decide that the Defendant was in a position to induce Nakashima, Mori, and others to invest in SGL.

61. If the jury finds that Dusoruth and the Defendant dishonestly concealed that SGL was not operating as a SAC it can then go on to consider whether Nakashima, Mori or others would

have invested with SGL had they known that SGL was not operating as a SAC. It is patently obvious that the attraction of any SAC to existing and potential investors is that their investment assets would be protected from the general creditors of the SAC or from claims by other segregated accounts. This SAC structure of SGL must have been a major selling point for SGL, Dusoruth and the Defendant to make to potential investors through their governing instruments, website, Welcoming Letters and through people like Kagawa of PB and Murata (both of whom marketed and extolled the apparent investment virtues of SGL). Indeed, it would appear from the witness statements of Mori and Nakashima that they were induced to invest their $4,000,000 and $500,000 respectively because SGL used a segregated accounts structure which would protect their investments. A jury can therefore reach the conclusion that the only reason why Mori and Nakashima were induced to invest in SGL was because it billed itself as a SAC.

62. If the jury establishes that Nakashima, Mori and others invested with SGL because of its SAC structure the jury can then go on to consider whether they would have been induced to invest with SGL had they known that SGL was not actually operating as a SAC. In doing so it would be open to the jury consider whether the Defendant and Dusoruth dishonestly concealed that SGL was not operating as a SGL because had they done so Nakashima, Mori and others may not have been induced to invest with SGL. In other words, the jury may find, that by dishonestly concealing that SGL was not running as a SAC the Defendant and Dusoruth induced Nakashima, Mori and others to invest with SGL.

63. I therefore find that there is sufficient evidence for a jury to conclude that the Defendant induced Nakashima and others to invest with SGL by dishonestly concealing that SGL was not running as a SAC.

64. On a final note, Ms. Christopher asserts (i) that failure to comply with the provisions of SACA does not, pursuant to section 27A of SACA, render a transaction or interest in a segregated account void or voidable, and (ii) that under section 30 that the SACA has built in offences for persons who, *inter alia*, make a false statement or declaration that he knows

or has reasonable grounds to believe to be false, deceptive or misleading in a material particular. I do not find that either of these submissions have much weight.

65. Section 27A of SACA is designed to give protection and comfort to other owners of segregated accounts or even third parties, who in good faith entered into legitimate transactions with the SAC, that their agreement or contract could still be honoured, and that their economic interests maintained, even though the SAC may not have been in compliance with the SACA. Therefore, just because transactions entered into by a company masquerading as a SAC are not automatically void or are voidable does not mean that that SAC could not be charged with a criminal offence under SACA, the Criminal Code, or some other piece of legislation.

66. In respect of there being an offence under section 30 of SACA which may have been open to the Prosecution to charge the Defendant matters not, and the fact that such an offence exists should not form part of my decision as to whether to accede to the Defendant's section 31 application. The Prosecution is entitled to prosecute an offender under whatever legislation they deem fit as long as in their estimation there is a sufficient evidential foundation to do so. Of course, whether or not the Prosecution's case in fact rises to the level of sufficiency on any particular criminal charge under any particular statute is ultimately for the Court to decide. Hence this section 31 application.

67. In consideration of the above mentioned paragraphs I find that there is sufficient evidence upon which jury can properly convict the Defendant of Count 1 on the Indictment.

Count 2: Money Laundering

68. Section 43(1) of the POCA says:

> ***"Concealing or transferring criminal property***
>
> *43 (1) A person commits an offence if he –*

(a) conceals criminal property;
(b) disguises criminal property;
(c) converts criminal property;
(d) transfers criminal property; or
(e) removes criminal property from Bermuda."

69. The "Particulars of Offence" on the Indictment in respect of this Count 2 are as follows:

> *"**VINCENT MAST**, between the 25th January 2018 and the 14th day of November 2018, removed from the Islands of Bermuda criminal property, namely credit balances representing funds invested in St. George's Limited pursuant to fraudulent inducements to invest therein."*

70. The Prosecution must therefore have sufficient evidence to show that:

(a) The Defendant committed an offence between the 25th January 2018 and the 14th November 2018.
(b) The Defendant "removed" property from Bermuda and that this property was "criminal property".
(c) The criminal property was credit balances representing funds invested in SGL.
(d) The said credit balances were invested in SGL pursuant to fraudulent inducements to invest i.e. an element of Count 1 on the Indictment.

71. Count 2 (removing criminal property) is linked with Count 1 (fraudulent inducement to invest) in that if the jury finds that the Defendant and Dusoruth fraudulently induced investors to invest with SGL by dishonestly concealing that SGL was not operating as a SAC, and that by them knowing that SGL was not operating as a SAC the Defendant and Dusoruth removed the said investor's funds from Bermuda, then it is open to the jury to conclude that the investor's funds constituted criminal property that was removed from Bermuda by the Defendant and Dusoruth. In reaching this decision the jury may have regard to the evidence, if they accept it, as to the transference of Mori's $4,000,000 to the Julius Baer account almost immediately after it was put into SGL's HSBC account, the 53 loan agreements signed by Dusoruth and the Defendant, the payment of monies to

companies owned by the Defendant and/or Dusoruth, the outstanding account value of SGL, and that Mori was not able to withdraw $100,000 from her policy when she requested.

72. In the circumstances, I find that there is sufficient evidence for a jury to properly convict the Defendant of Count 2 on the Indictment.

Counts 3 and 4: Furnishing False Information

73. Section 33 of the BMAA provides that:

> "***Transmitting false information***
>
> *33 (1) Where the Authority requires information—*
>
> *(a) in the discharge of its functions under section 21(1)(a); or*
>
> *(b) in the discharge of its functions under section 21(1)(d) or its functions relating to the supervision, regulation or inspection of a financial institution under this Act,*
>
> *then a person commits an offence if he furnishes or is concerned with furnishing any information to the Authority knowing the same to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular.*
>
> *(2) A person who commits an offence—*
>
> *(a) under subsection (1)(a) is liable on summary conviction to a fine of $10,000 or imprisonment for six months or both;*
>
> *(b) under subsection (1)(b) is liable on summary conviction to a fine of $50,000 or imprisonment for two years or both or on conviction on indictment to a fine of $100,000 or imprisonment for five years or both.*
>
> *(3) Where an offence under subsection (1) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other officer of the body corporate, he, a [sic] well as the body corporate, shall be deemed to be guilty of an offence and is liable to be proceeded against and punished accordingly.*

(4) Where the affairs of a body corporate are managed by the members, subsection (3) applies in relation to the acts and defaults of a member in connection with his functions of management as if her were a director of the body corporate.

(5) Where a partnership is guilty of an offence under subsection (1), every partner, other than a partner who is proved to have been ignorant or to have attempted to prevent the commission of the offence, is also guilty of the offence and is liable to be proceeded against and punished accordingly.

(6) Where any other association, incorporated or not, is guilty of an offence under subsection (1)—

(a) every officer of the association who is bound to fulfil any duty of which the breach is the offence; or if there is no such officer,

(b) every member of the governing body other than a member who is proved to have been ignorant of or to have attempted to prevent the commission of the offence,

is also guilty of the offence and is liable to be proceeded against and punished accordingly."

74. The "Particulars of Offence" for Counts 3 and 4 on the Indictment are respectively as follows:

*"**VINCENT MAST**, on the 27th day of July 2018, in the Islands of Bermuda, was concerned in the furnishing of information to the Bermuda Monetary Authority ("BMA"), which it had required pursuant to its functions relating to the supervision of a financial institution, knowing the same to be misleading in a material particular, or recklessly furnished such information, which asserted that St. George's Limited had in place a line of credit that conformed with the terms of a commitment to obtain the same given to the BMA on 24th January 2018 when it did not."* (Count 3)

And

*"**VINCENT MAST**, on the 17th day of August 2018, in the Islands of Bermuda, was concerned in the furnishing of information to the Bermuda Monetary Authority ("BMA"), which it had required pursuant to its functions relating to the supervision of a financial institution, knowing the same to be misleading in a material particular, or recklessly furnished such information, which asserted that St. George's Limited had in place a line of credit that conformed with the terms of a commitment to obtain the same given to the BMA on 24th January 2018 when it did not."* (Count 4)

75. The Prosecution must therefore have sufficient evidence to show that:

(a) The Defendant committed offences on the 27th July 2018 (Count 3) and on the 17th August 2018 (Count 4).

(b) The Defendant "furnished" information to the BMA which at the material time was carrying out its functions relating to the supervision of SGL (a financial institution).

(c) The information which the Defendant furnished to the BMA was misleading in a material particular, i.e. that SGL had "in place" "line of credit" that "conformed with the terms of a commitment to obtain" a line of credit given to the BMA on the 24th January 2018.

(d) The Defendant gave a commitment to the BMA on the 24th January 2018 that SGL would have in place a line of credit.

(e) SGL did not in fact have in place a line of credit.

(f) When the Defendant furnished the information to the BMA on the 27th July 2018 and the 17th August 2018 that he knew that it was misleading, or that he was reckless in furnishing the information.

76. As said earlier, it is the Prosecution's case that on the 27th July 2018 the Defendant sent to the BMA an email which enclosed the Credit Agreement, the Pledge Agreement, and the Support Agreement, purporting to show that SGL had in place a line of credit with Julius Baer when in fact no such line of credit was in place (Count 3). Likewise,

the Prosecution say that on the 17th August 2018 that the Defendant sent a letter from Julius Baer purporting to show that a line of credit was in place (Count 4). I wish to raise a few of issues with the Prosecution's case in respect of these two counts.

77. Firstly, it is unclear as to exactly what the BMA required from SGL or the Defendant as there seems to have been different terminology bandied about in meetings and correspondence between the BMA, SGL, Dusoruth, and the Defendant. For example, the words "credit line", "line of credit", "credit agreement" and "credit facility agreement" were all used interchangeably to presumably refer to the same request by the BMA, but each of them could potentially have different definitions. Even the words "line of credit" used in the Particulars of Offence of both Count 3 and 4 are not the words used in the 25th January 2018 letter which refers to "credit line", and the words "credit facility" used in the Prosecution's submissions is not the same as the words "line of credit" used in the Particulars of Offence. So on the surface one can conclude that it was unclear exactly what the BMA was requesting of the Defendant, and that the Defendant, without any attempt to mislead the BMA, was only providing that which he understood the BMA was requesting.

78. Secondly, on the 27th July 2018 the Defendant was simply re-sending documentation which had already been sent to the BMA by Chambers on the 15th May 2018. Chambers sent this documentation at the behest of Dusoruth and Ms. Christopher is correct to highlight that there is no evidence to suggest that the Defendant was a part of these discussions between Chambers and Dusoruth. If indeed the Defendant misled the BMA on the 27th July 2018 it can equally be said that Chambers and SGL's Board, which approved the documentation, also mislead the BMA. Clearly the BMA are not of the view that Chambers or SGL's Board mislead them and so one must question why they felt they were misled by the Defendant. Further, and again, one could conclude that the Defendant was only sending what he thought was required by the BMA, particularly because he was only resending that which was already sent by Chambers.

79. Thirdly, the Defendant was only sending that which was asked for by Mwaura in his email dated 26th July 2018 in which Mwaura stated that he was looking forward to receipt of the "Credit Facility Agreement". A jury can therefore conclude that the Defendant was not providing any information to the BMA which was misleading or false in any way.

80. Fourthly, in respect of Count 2 the Prosecution rely on an undated letter from Julius Baer which was sent to the BMA by the Defendant on 17th August 2018. The Prosecution say that the Defendant, by sending this letter, mislead them into believing that SGL had a line of credit in place. However, this is not consistent with the words in the covering email sent by the Defendant which only stated that the letter from Julius Baer confirmed that a facility was in place. This again may be semantics but nowhere in the Defendant's email does it state that a line of credit was in place. Indeed, the contents of the Defendant's email is consistent with the letter from Julius Baer which states that SGL and Julius Baer executed a Credit Agreement but that the Credit Limit still needs to be applied for. It is therefore open to the jury to conclude that the only information that the Defendant was imparting to the BMA was that a credit facility was in place by virtue of the execution of the Credit Agreement, and not that a line of credit or credit line from which monies can be transferred was also in place.

81. In the circumstances, I find that there is insufficient evidence from which a jury could properly convict the Defendant of Counts 3 and 4 on the Indictment.

82. I should note that my finding that there is insufficient evidence that the Defendant furnished false information to the BMA is not inconsistent with my finding that there is sufficient evidence that the Defendant fraudulently induced individuals to invest (Count 1). While there may have been confusion as to the terminology as to what exactly the BMA required i.e. a line of credit, a credit line, or a credit facility, there is sufficient evidence to suggest that for a long period of time the Defendant and/or Dusoruth did not obtain any of them as they promised to do so.

Conclusion

83. In consideration of the above paragraphs I find that:

(a) There is sufficient evidence upon which a jury could properly convict the Defendant of Counts 1 and 2 on the Indictment. Accordingly, I do not accede to the Defendant's section 31 application in respect of Counts 1 and 2.

(b) There is insufficient evidence upon which a jury could properly convict the Defendant of Counts 3 and 4 on the Indictment. Accordingly, I accede to the Defendant's section 31 application and thereby dismiss Counts 3 and 4 against the Defendant.

Dated the 12th day of February, 2020

The Hon. Acting Justice Juan P. Wolffe