

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

KEVIN O'KANE

SENTENCING REMARKS

McLAUGHLIN J

**The offences to be considered**

[1] Initially Kevin O'Kane was indicted on a very substantial indictment containing over 150 charges. It was realised that a trial involving so much evidence would be an excessive burden on a jury and as a result the trial was split in two. In consequence it proceeded to trial on a first indictment containing a total of 28 counts. In the course of the trial I directed the jury to acquit the defendant of count 27 and he was found not guilty unanimously by the jury on counts 1 and 2. He was convicted unanimously of the remaining 25 counts consisting of 21 offences of obtaining a money transfer by deception and four of obtaining property by deception. Following his conviction I received an application from him that he should be arraigned on the second indictment before I completed the sentencing process. The second indictment originally contained 132 counts but four of them were deleted by agreement and the defendant pleaded guilty to the remaining 128 counts. These charges consisted of 143 counts of obtaining a money transfer and 8 counts of obtaining property by deception together with two counts alleging offences under the Fraud Act 2006. The distinction between the offences of obtaining property and obtaining a money transfer by deception is immaterial for the purposes of sentencing. The reason the charges were framed in this way was simply to reflect

the difference in the legal concept of money and a cheque. All of the offences were committed between 1 August 2005 and July 2007.

## **Background**

[2] At his trial the defendant made the case on oath when giving evidence that he was a 50:50 partner of a Turkish national called Kubiley Atmaca. He said that Atmaca had claimed to be the owner of a villa development known as Golden Beach Villas, Altinkum, Turkey and claimed his role was confined to selling the villas in Ireland whilst Atmaca was to look after all the construction and legal matters in Turkey.

[3] Mr O'Kane said that he met Atmaca in 2004 when he bought a villa, in a different part of Turkey, and Atmaca was acting, as best I can describe it, as the site foreman there. His job had been to oversee completion of the villas under construction and to help customers complete them to their own satisfaction. It seems that he was well regarded for the work that he did for the customers, most of whom were foreigners, and he helped with matters like furnishing and fitting the houses given that most of the people would have found that difficult as they lived abroad. Mr O'Kane completed the purchase of his own villa at that time without any apparent difficulties and obtained full legal title to it. He said that as a result of this contact he became very friendly with Atmaca to the point where he claimed he came to treat him as a son. He claimed at one point that his wife had brought clothes out to Turkey for him from Northern Ireland and he stated that he allowed Atmaca to live in his villa over the winter months of 2004-2005.

[4] In May 2005 Kevin O'Kane visited his villa and struck up his friendship with Atmaca again. During this time he discussed the possibility of buying a small piece of land in order to build perhaps 3 or 4 houses on a speculative basis. They looked around various possible sites known to Atmaca during that visit but nothing suitable emerged.

[5] In July 2005 Kevin O'Kane returned to Turkey, met up with Atmaca again, discussed property ownership or development and viewed more property. It was at this stage that Atmaca introduced him to Golden Beach. Mr O'Kane alleged that Atmaca said he was the owner of the land and the developer of the project and that he had accepted all of this as true, there being no obvious reason why he should not have done so. As a result of further discussions they agreed to become 50:50 partners.

[6] It was at this point in his evidence that credibility became stretched to breaking point. The Golden Beach development consisted, by common consent, of 100 semi detached villas, a very large project by any standards. It was agreed by everyone, including the victims, estate agents who gave evidence in the trial, and others who were knowledgeable of the subject, that these villas were large,

beautifully finished and ideally situated. The site was finished to a high standard with walkways, landscaping, two swimming pools, a tennis court, a small shop and restaurant. The location of the site was as close to idyllic as could be imagined as it was a matter of a few yards from the beautiful sandy beach which was right on the Aegean Sea. The defendant could not explain how Atmaca, who was little more than a site foreman in 2004, who lived in his house over the previous winter, had by June 2005 become a major developer of luxury properties for resale to the international market.

[7] The alternative possibility, denied by Mr O’Kane throughout, was more in keeping with common sense and was entirely consistent with what he had said nearer to the events, just after the problems began to emerge. I refer to an interview he gave to Ulster Television, whose journalists visited Turkey to investigate and prepare a documentary, which featured an interview with the accused, and also to the contents of his first interview under caution.

[8] On these occasions he explained his role in selling the villas was a result of Atmaca explaining to him that the houses could be bought (obviously from the true owner) for £45,000 for the first 10 and for £50,000 thereafter. It was possible to supply a good furniture package for £5,000 extra. As a result of their agreement they planned to sell these villas for £75,000 fully furnished. Mr O’Kane was to be responsible for the sales to be promoted in Ireland and Atmaca would deal with administrative and legal matters in Turkey. The legal issues were to be dealt with by a notary, not a solicitor, and necessitated the individual client giving a power of attorney to Atmaca to enable him to complete the purchases. There is no doubt that what was on offer was obviously a highly attractive package both in terms of quality and price when compared to equivalent “Mediterranean” developments nearer to home.

[9] The sales operation began shortly after Mr O’Kane’s return from his visit to Turkey in June 2005 and in total I am told the charges involve some 59 victims with a sum of just under £3.9 million allegedly lost by them. None of the so called purchasers who made an agreement with Mr O’Kane ever received legal title or ownership of a villa.

[10] The version of events sworn to at his trial by Kevin O’Kane is so obviously preposterous that it would be pointless to sentence him on that basis. I dismiss without hesitation, as the jury has clearly done also, that he had any honest belief that Atmaca was the owner, let alone developer, of Golden Beach Villas. The sheer scale of the project, the capital involved, the planning and legal necessities, the complex nature of the construction contracts and procurement that would have been required to produce such a project could not possibly have been put together by Atmaca as he was described in this case by Mr O’Kane or anyone else who met him. The role of Atmaca was rarely more than that of an administrator, indeed one of the clients described him as Mr O’Kane’s “goffer”. This alternative, which he denied in

cross examination, makes more sense and fits with what we know actually happened, namely that the true owner of the development sold the properties and passed good title to their present owners, but not to any of the persons named as victims in the indictments.

[11] This approach also repudiates any possibility that Mr O’Kane was himself the owner, builder or developer of Golden Beach. The central allegation of all of the victims is that he made these false claims to each of them and these are at the root of all of the charges. Importantly that is not just what the victims allege because their accounts were supported by the evidence of Mr Hannath, Ms Jameson and Ms Caulfield; they are independent estate agents and witnesses who were not purchasers of any of the properties. I have no doubt whatsoever that the jury concluded the false representations of Mr O’Kane to the effect that he was the owner of the land, builder and developer of Golden Beach induced them to buy the properties. There is also a very high degree of probability that other factors operated in their minds, e.g. the quality of the project, its special location, the climate, the price and the facilities on offer. His false representations, however, caused or contributed to them purchasing properties from him and ultimately to losing their money.

[12] By taking this approach I can reconcile the claim by Kevin O’Kane that he never wanted to deprive people of their money or give nothing in return. This, if anything, is an approach in ease of him. I consider that his original intention was to strike an agreement with a buyer, get the money as quickly as possible and then to buy the villa for the person. The fraud consisted of telling the customers he was the owner already and then never actually acquiring title to any of the properties he purported to sell. All of the money he collected (with an exception I shall return to) is accepted by the prosecution to have been sent to Turkey – indeed it was sent mostly by the clients themselves – but was paid into accounts from which it has disappeared almost completely.

[13] I understand some property and assets, of an unspecified value, have been frozen by the Turkish authorities but there is no way of saying whether any of it, or its value, will find its way back to the victims. As a result of civil proceedings in the High Court in Northern Ireland Kevin O’Kane’s assets within this jurisdiction and internationally have been frozen so some recovery of losses may result from that process.

[14] Counts 114 and 115 on the second indictment relate to offences under the Fraud Act 2006 by virtue of the date of the offences. The latter is not materially different from the provisions of the Theft Act in so far as any action or culpability of the defendant is concerned. The former count however alleges he gained £300,000 from a Mr Fallon on the false representation that he needed the money to buy land near Bodrum, Turkey, and by paying it he would receive in return 5 two bedroomed apartments in consideration. This money has been lost also.

## Sentencing guidelines

[15] In the course of the hearing of the plea in mitigation I was referred to two cases in particular. In R v. Trevor Clarke [1998] 2 Criminal Appeal Reports 137, the Court of Appeal of England and Wales set out guidelines for sentencing in cases of theft involving a breach of trust. A key factor identified linked the length of sentence to the amount stolen, e.g. in contested cases involving between £250,000-£1 million a sentence of 5 to 9 years might be merited and in excess of 10 years where a sum greater than £1 million was stolen. The principles of that case were applied by Hart J in the Crown Court in Northern Ireland in R v. Nurse, 22 January 2010. The learned judge concluded that taking account of all the relevant factors, including the amount stolen, approximately £480,000, the commensurate sentence on a contest for the theft charges was 6 years which he reduced to 3 years to reflect the mitigating factors (including a very early plea of guilty).

[16] Helpful as these cases were intended to be the reality is that Kevin O'Kane is not charged with theft and in any event the maximum sentence for the offences of obtaining property or a money transfer by deception is 10 years.

[17] The best help I can find, and which I propose to rely upon, is in the recently published paper from the Sentencing Guidelines Council entitled "Sentencing for Fraud - Statutory Offences. Definitive Guideline" dated October 2009. This is available on the Council's website. At page 19 under the heading "Confidence Fraud" the factors to be taken into consideration are set out and suggested ranges of sentences are provided upon the basis an accused is a first time offender who pleaded not guilty. A confidence fraud "involves a victim transferring money as a result of being deceived or misled by the offender" and includes "fraudulent sales of goods or services that are never received and investments that are never obtained for the investor." These offences of which Mr O'Kane has been convicted, or pleaded guilty, fall squarely into that category.

[18] In the guidelines the "determinants of seriousness" are set out. Among those found in this case are the amount involved, the multiplicity of the frauds committed over a lengthy period and the large numbers of victims. Annex B of the guidelines also set out more general "overarching principles" indicating seriousness and emphasise that a specially serious psychological effect on a victim points to unusually serious harm and should be taken into account where relevant. Having seen some of the victims and read the victim impact statements provided by some of them, I am satisfied that many of the clients of Mr O'Kane have suffered greatly, not just financially but also psychologically. Many of them are left with a sense of disbelief and self doubt that they fell for such a confidence fraud in this way and others have suffered from the sheer breach of trust and confidence which they placed in him. For many of them this has led to great disruption of their lives, their

sense of peace and well being. There is no doubt I should have regard to the impact on each of the persons involved but I do not have medical evidence showing that there has been “an especially serious” effect to indicate that any of them has suffered more than usually serious harm in the sense intended by the guidelines.

[19] As a result of discussions with counsel at the hearing of the plea, I am satisfied I should regard these cases as falling into the category of “Confidence fraud characterised by a degree of planning and multiple transactions” which leads to a designated starting point of 5 years custody but with a range of 4-7 years suggested given the sums of money involved in these charges. The final sentence within the range is to be fixed by adjusting the starting point up or down depending on the degree of aggravation or mitigation present.

### **Aggravating Features**

[20] I have already indicated these in a general sense and I shall set them out formally.

1. The multiplicity of the victims – 59 in total.
2. The extended duration of the offences – committed between August 2005 and July 2007.
3. The extent of the losses - £3.9 million approximately, which includes the life savings of many of the victims but also many of them are left paying bank loans and second mortgages involving repayments of hundreds of pounds per month for very many years to come.
4. Whilst the accused is entitled to the presumption of innocence and the extension of that principle so that the prosecution can be required to prove the case beyond a reasonable doubt, the defendant went way beyond that in the course of his trial. His defence involved throwing insults at the victims by branding them as liars in a public forum, by accusing them of conspiring together to make similar lying cases and of taking revenge on him for their losses. The belated acceptance by him of his guilt demonstrates that their individual allegations that he claimed to be the owner, builder and developer were in fact true and that he lied, not them.
5. The accused took money from Mr Cavan, who wanted to buy two houses and who handed over £150,000, but pocketed some of it. This arose at the very end of March and April 2007 when it was already obvious to Kevin O’Kane that there was a major problem including the circulation of forged title papers to the properties. He did not bring any of this to the attention of Mr Cavan when he took his money and

he put it into his own bank account or into the bank account of Anka Construction which he controlled.

6. The victims come from a wide range of backgrounds but many of them were his neighbours and friends, indeed possibly family in some instances, but one thing is common to all of those named in the charges, they are all victims of his serious breach of trust.

### **Mitigating factors**

1. Kevin O'Kane is now 52 years old and has a completely clear record. He has been married to a devoted wife for over 30 years and they have four grown up children and six grandchildren. Two of his sons work in the family business. His wife, a former nurse at Holywell Hospital, has, like him, suffered considerable ill health since 2007 when this scheme collapsed.
2. He is a self made man who operates a fuel supply business which he created from nothing by his own labours. He left school at 16, worked in a factory until he suffered an industrial accident at 18 or 19 and commenced the business with the compensation which he received. He has provided employment for several people over all of the intervening years.
3. I note also that he has lived and worked in the Portglenone and Bellaghy areas most of his life. He was regarded as a man of good character, a pillar of the community, indeed in some senses that fact facilitated him to commit these offences. He has done a very considerable amount of voluntary work in his Parish, he has helped run the local GAA club, he coached a junior soccer scheme and managed the Antrim Minors GAA side for 5 years. He provided a significant bundle of personal and character references, which I have read, and these confirm his entitlement to be regarded as a person of hitherto good character. The authors of these include his Parish Priest, his General Practitioner, his accountant, friends and neighbours.
4. He has acknowledged through his counsel, and to the probation officer who prepared the pre sentence report, that he now accepts his guilt. He has demonstrated this by pleading guilty to all of the outstanding charges and a fulsome apology by him was read out in open court. In opening the plea on his behalf Senior Counsel explained that Mr O'Kane had only come to realise of late how the sales approach which he adopted had in fact been criminal. I am prepared to accept that the apology which he has proffered is genuinely intended rather than that it is proffered merely to benefit himself at this stage. I regard his plea

of guilty to so many offences underpins that acceptance and I also accept his explanation for not pleading guilty earlier, even though it is somewhat difficult to understand why that should be so given that he was advised throughout by experienced solicitor, junior and senior counsel.

5. Whilst he fought the case over many weeks, adding greatly to the stress of his victims in consequence, the fact is he has now pleaded guilty. There is no doubt that by doing so he has saved great expense and spared the remaining victims the stress and ordeal of having to give evidence and perhaps attend at lengthy trial. The reality is however is that he had little practical choice but to plead guilty given the emphatic nature of the jury's verdict. Nevertheless I do consider it appropriate to make some allowance in the sentence which I am about to impose for the pleas and the apology which he has made.
6. I note from the pre sentence report that the risk of reoffending is low. My own assessment is that it is highly improbable that Kevin O'Kane will come before the court on a criminal charge of any kind in the future.
7. I have also been given a considerable file of correspondence passing between him (mainly authored by Jennifer McFadden on his behalf) and various MPs, MLAs and even the President of Ireland. This demonstrates to me that he did not just walk away from the debacle which he had created but did try to achieve some sort of resolution which might lead to some recompense for the victims. It is inevitable all of them will suffer significant losses however even if some recovery does take place.

[21] I accept that the inevitability of a custodial sentence, with the inevitable loss of liberty for a significant period, will bear particularly heavily upon him given his state of health and that the burden will be added to knowing the effects that his imprisonment will have upon his wife who is an innocent victim in all of this.

## **Conclusions**

[22] As I indicated at the time of hearing the plea I intend to impose one sentence to reflect the totality principle. I shall apply the sentence to all of the counts without exception. In doing so I also make clear that the sentences will all be served concurrently. Having regard to the sentencing guidelines I consider that these charges warrant a term at the higher end of the range specified, namely 4-7 years and I consider that the appropriate sentence in the case of a first offence where the accused contested all the charges is one of 6 years imprisonment. I have indicated however I would be prepared to make



some allowance for the fact that the accused, albeit belatedly, accepted his guilt, offered an apology and underscored that by pleading guilty to all of the remaining charges and accepting his guilt in respect of those of which he was convicted by the jury. This was not an easy step to take and I acknowledge that. I also allow for all of the various mitigating factors which I have set out earlier. I am satisfied that the charges are so serious that only a custodial sentence with immediate effect will suffice. Taking all of these factors into account I have decided that the commensurate sentence appropriate is one of 4 ½ years. That sentence will apply to all of the 153 charges before me and they shall all run concurrently.

[23] These offences were committed before the current sentencing regime came into force and so it is necessary for me to consider whether I should impose a so called custody-probation order. In view of my conclusion that there is little likelihood of him reoffending, his clear record and stable family life I do not consider such an order would serve any useful purpose. I have of course reflected these considerations in mitigation of the sentence that would otherwise have been imposed.