

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

ANTRIM CROWN COURT SITTING AT BELFAST

R

-v-

JOHN GAILE, JOHN FRANCIS HICKEY, PAUL GAILE,
LENA GAILE, LEE PAUL GAILE, KIERAN JOHN GAILE,

BILL NO. 14/006182

R

-v-

WILLIAM LARMOUR

BILL NO. 14/008858

WEIR J

[1] Each of you has pleaded guilty to offences related to mortgage frauds perpetrated against a number of different lending institutions and it is now my responsibility to sentence you for your respective parts in those offences.

[2] The background to the offences lies in the property boom of the 1990's and 2000's. The principal offenders were you, John Gaile, and you, Hickey. It appears that in 1995 you John Gaile decided to buy a residential property and consulted Mr Hickey, a solicitor practising in Coleraine, to carry out the necessary legal work in connection with the purchase including completing the necessary documents for the mortgage lender. I have been told that the loan was, as is normal, based on a percentage of the purchase price that had been agreed. Subsequently defects were discovered in the property and the purchase price was negotiated downwards to allow for repairing them. However the lenders were not informed of this

development and the original amount of the purchase price was falsely certified to them by you Hickey as the actual purchase price. This resulted in the lender advancing a sum which unknown to them actually represented 100% of the actual purchase price.

[3] This initial event, which I accept arose without pre-planning, led to a series of deliberately overstated purchase figures for properties thereafter purchased, initially by John Gaile and later by the other Gaile defendants and by you Hickey on your own account. You John Gaile bought a total of 19 properties starting with the initial purchase described above in 1995 and ending in December 2006. You Paul Gaile bought two properties in 2006 and 2007, you Lena Gaile bought one property in 2004, you Lee Gaile bought two properties in 2006 and 2008 and you Kieran Gaile bought two properties in 2004 and 2008. You Hickey also bought four properties on your own account.

[4] I have not been able to establish whose idea this fraudulent mechanism was. I am satisfied however that it was devised either by you John Gaile or by you Hickey or by both of you. This scheme could not have worked without the involvement of a dishonest solicitor who was required to falsely certify the inflated purchase prices to the various lending institutions. You Hickey fulfilled that role. As a result the actual amount of deposit required to be found was in some cases reduced while in some cases none at all was required because the amount advanced was equal to the true purchase price while in yet others the falsely overstated purchase price was sufficient so that the amount advanced actually exceeded the true purchase price leading to there being "cash back" in some of these transactions after completion.

[5] This scam was only ended by the property crash of the late 2000's when you John Gaile were unable to keep up payments on a property at Millburn Road and it was therefore repossessed and sold at a substantial loss to the lender. Losses also accrued from purchases by Paul Gaile and Lee Gaile.

[6] The frauds came to light by accident while police were searching other business premises in a different connection and came across documents that on closer examination led them to uncover this series of frauds that might otherwise have remained concealed indefinitely.

[7] Dealing firstly with you Hickey, your culpability is in my view the greatest of all those concerned in this matter as you dishonestly abused your professional standing to facilitate this large series of frauds over a period of some 12 years until the property recession brought them to a halt. In your pre-sentence report you are recorded by the probation officer as saying that "over the years it snowballed and you could not see a way out". I do not understand why you could not see a way out as each transaction was free-standing so that you could at any point have refused to behave dishonestly in relation to the next one. The point is also made on your behalf that, according to an accountant's report, you earned relatively little from these transactions and they formed a small proportion of the earnings of your practice. In

those circumstances it ought to have been very easy for you to stop this dishonesty. I conclude that your failure to do so and indeed your employment of the scam to acquire properties for yourself was motivated not by need but by greed and the abuse of your standing as a solicitor, whose word would naturally be accepted, made your dishonesty unlikely to be detected, at least while the property market continued its apparently endless upward rise.

[8] It is most regrettable that in recent times there have been a number of detected instances of dishonesty by solicitors in this jurisdiction where previously the profession had enjoyed an excellent reputation from probity. Behaviour of this sort casts a cloud over the vast majority of members of your former profession who strive, sometimes in difficult economic circumstances, to uphold its high reputation. You have unfairly disgraced your profession and you have disgraced yourself. On this topic I cannot improve upon the words of Hodge J in R v Miles [2007] 2 Cr. App. R. (S) 5 at page 23:

“Solicitors are officers of the court. They owe a duty of utmost good faith to their clients and to the public at large. Any breach of that damages their colleagues, it damages the profession at large and reduces public confidence in the profession.”

[9] Your counsel, Mr Kane QC, has pointed out and Mr Mooney QC for the prosecution agrees that when the police interviewed you about their discovery of the incriminating documents you co-operated with them and have continued to do so to such an extent that you were willing, had it become necessary, to give evidence in the trial of your co-defendants and made a witness statement to that end. You have been struck from the roll of solicitors, a measure that you did not seek to oppose, and have thereby lost your livelihood and professional standing. It seems unlikely that you will ever be re-admitted to practice. The probation officer has noted that you are assessed as being at a low likelihood of re-offending. You are now 56 years of age with no previous criminal record. Your marriage is in difficulties partly due to these events and you have a long-standing alcohol addiction which you appear even yet to have made little effort to come to grips with. In short, your professional and personal life is in ruins and, unless you make a determined effort now to address your problems which is something only you can do, the outlook for your future life is bleak. I have anxiously considered whether an immediate custodial sentence ought to be imposed in your case and have finally concluded that it should not. Undoubtedly this on-going dishonesty on the part of a solicitor indicates a starting point of significant immediate custody. But this matter has been hanging over you and the others since its detection in 2008 so that you have already suffered much. You have owned up to your part at the earliest opportunity and done all in your power to assist the prosecution. By reason of those factors I reduce the starting point from five years to two years' imprisonment and suspend the operation of that sentence for three years.

[10] John Gaile, you were the other principal offender in these matters in which you were involved from the beginning and the person who benefited from the majority of these fraudulent transactions. You did not plead guilty until just before your trial was to begin but I have been informed by Mr Harvey QC in the course of his polished submissions that that seeming lateness belies the fact that there had been lengthy discussions extending over the prior months between prosecuting and defence counsel as to the basis upon which pleas of guilty ought appropriately to be proffered and accepted and that those discussions only culminated in an agreed position immediately before the date fixed for trial. Mr Mooney QC agrees that that is so in your case and in that of each of the other defendants and that you and the others should be treated therefore, not as having admitted your guilt at the earliest opportunity as Mr Hickey did, but as having done so as soon as defence counsel became instructed. I accordingly proceed on the basis that you and the others should, without distinction between you, each receive substantial credit for your pleas of guilty.

[11] I have earlier referred to the fact that, due to the property crash, some lenders suffered losses when repayments on certain of the properties could not be met and in some cases those losses were significant. The greatest was in respect of Millburn Road where the lender lost some £236,000. However, as Mr Mooney QC fairly pointed out, it is really not possible to distinguish between losses caused by the criminal acts and those caused by the collapse of market in the late 2000s. It may however be presumed that the extent of the losses suffered by the lending institutions would have been somewhat reduced had the loans been smaller as they would have been had the lenders known the true purchase prices at the time of making their advances. Mr Harvey also drew attention to the fact, illustrated by a number of the transactions in this case, that the lending institutions did not assess the amount of the loans to be advanced solely by taking a percentage of the purchase prices asserted by the intending borrowers to have been agreed but rather by instructing their own independent valuers to value the properties and thereafter their loans were based upon whatever percentage they were willing to advance against those independent valuations, which might be less or more than the amount the purchaser said he had agreed to pay. I accept that proposition but in my view it can be no answer to a charge of falsely asserting an inflated purchase price as you John Gaile by your pleas of guilty but also be taken to have accepted. However, Mr Harvey was on surer ground when he made the point that these frauds were not, unlike those in some of the reported cases such as R v Agnew, a decision of the Court of Appeal, intended to simply obtain the money advances but not to actually acquire the properties. You did actually intend to acquire the properties and improve them and then either keep them to let out or sell them on at a profit and that is what you did. You kept up the mortgage payments until the markets collapsed and on all but the Millburn Road and Ferry Quay Place properties no loss was in fact suffered by any lender on any of your transactions. However, as Carswell LJ observed in Agnew's case, quoting with approval from Moreland J in R v Rice [1992] 14 Cr. App. R. (S) 231 at 232:

“The gravamen of this type of offence is that a building society lends out money on mortgage to mortgagors, believing them to be genuine in their representations. The loss to the building society at that time is the loss of the security in the genuineness of the mortgagor. It is in many cases entirely fortuitous, depending on property prices, whether at the end of the day a building society recoups its financial loss ... when the losses flow from frauds of this kind.”

[12] You have a not insubstantial criminal record, although mostly for relatively minor offences, some of which have a flavour of dishonesty. You are 52 years old with a good working record and a number of business activities including architectural salvage and roofing as well as a public house, in which businesses you employ a number of people. In the probation report it is recorded that you consider yourself to be in your present situation because of poor advice from your solicitor and financial advisor. But I consider that you knew very well what you were doing and willingly participated, glad of the extra financial flexibility that these fraudulent applications provided. I accept the probation assessment that you continue to seek to minimise your own involvement and that you are at medium risk of re-offending for the reasons contained in the probation report. My starting point for your offending is a sentence of three years’ imprisonment which I reduce by approximately one quarter for your plea of guilty to a sentence of two years’ imprisonment. Because I cannot be certain whether you or Hickey initiated this course of criminal conduct I have decided, not without much hesitation, to suspend your sentence for a period of three years.

[13] Paul Gaile, it is agreed that your culpability is less than that of Hickey and John Gaile. You were involved in two transactions relating to two properties at Coleraine Business Park, one of which you occupied for your own window-fitting business and the other you intended to let out. Unfortunately for you the advent of the recession frustrated that plan and the properties had to be repossessed and sold at a loss. I have no doubt that in your case and in that of each of the others with whom I have still to deal you became involved at the instigation of John Gaile and, perhaps Hickey. Indeed one of the units was sold on to you by John Gaile in October 2006, he himself having bought it using the scam in April 2005. You accept through your counsel Mr McCreanor QC that your culpability is greater than that of the others apart from Hickey and John Gaile and I consider that a realistic assessment. You are 38 years old with only a minor criminal record and are assessed by the Probation Service as being at low risk of re-offending. As I have decided not to impose an immediate custodial sentence on the two principal offenders I shall also impose a suspended sentence upon you. I sentence you to twelve months’ imprisonment suspended for three years.

[14] Lena and Lee Gaile, I shall deal with you together. Ms Orr QC pointed out that you each have clear criminal records and, in common with all the other defendants, you too have good working records. It is said on your behalf, Lena Gaile, that you did not understand what was being done and merely signed what was put in front of you in the one transaction that you were involved in. You Lee Gaile were involved in two transactions, one of which was the acquisition of Drumard Drive from Lena. You are a self-employed bricklayer who has been the double victim of the recession because, as Ms Orr put it, your activities which you hoped would be an investment for the future turned out to be the very opposite. I sentence each of you to six months' imprisonment suspended for two years.

[15] I deal next with you, Kieran Gaile. It is accepted you are in the lowest category of culpability. In your case also I accept that you were a minor participant in the fraud orchestrated by Hickey and John Gaile. No loss was suffered as a result of your participation in the two transactions that involved you. You have responded to the recession by building a successful construction business in England to which you commute. You are 30 years old with a minor criminal record and are assessed as being at a low likelihood of re-offending. Your counsel, Mr Terence McDonald QC, has explained that the imposition of a custodial sentence, even in a suspended form, might result in your being precluded from obtaining contracts in England and has urged me to consider another form of disposal that will not risk jeopardising your fledging business which already employs 18 staff. Because of that circumstance and because you are in the lowest level of culpability arising from these offences I intend to accede to Mr McDonald's submission and instead impose upon you a conditional discharge for a period of two years. You indicated both to the probation officer and to this court through Mr McDonald that you would be willing to hand over the profit of £5,000 that you made on one of your two transactions to a charity and Mr McDonald indicated that you are proceeding to do that. While I consider that to be wholly appropriate step to take and one which does you credit I emphasise that it has not affected the sentence which I have determined as being appropriate to the circumstances of your offence and of you as an offender.

[16] Lastly I deal with you, William Larmour. There is in your case a written agreed basis of plea to the one count that you face, that of failure to disclose money laundering between 1 November 2007 and 30 April 2008. The prosecution has accepted your pleas of not guilty to all the other offences with which you were charged and which allegedly related to your involvement as the mortgage broker who obtained loans in connection with this fraud. The prosecution has thereby accepted your denial that you knew that the amounts of the purchase prices had been dishonestly overstated when you sought the mortgage advances on behalf of your clients. However you have accepted that you were in possession of information from John Gaile that you knew was incomplete and after 1 November 2007, as a result of rule changes by the Financial Services Authority, it became your duty to disclose it, there being reasonable grounds for you to suspect that John Gaile was engaged in money laundering. You did not benefit financially from this failure

as John Gaile in fact made no applications after 1 November 2007 but it is accepted that you failed to apply your mind to the material information you possessed about John Gaile and to disclose it when you became obliged to do so. I accept that your involvement in this matter as reflected in the single charge that you face is minor and I take account of the fact that you have now ceased to work in the financial services industry and have built a new career in a quite different area where money is not involved. Accordingly, having considered the circumstances of the offence and of you as offender, I have decided to treat you in the same way as Mr Kieran Gaile and impose upon you a conditional discharge for a period of two years. I note that you have generously given to the NSPCC the sum of £5,000 as an expression of remorse for your failure in this matter and, while that gift has played no part in the sentence I have determined to be appropriate, that significant practical token of regret is much to your credit.

[17] The sentence that I have imposed on each of you will, where you have pleaded guilty to more than one count, be the same for each such count and will each be concurrent.

[18] Finally I must make it plain to each of you that if you commit no further offence during the suspended period or the period of conditional discharge you will hear no more about these matters. If however you were to commit a further offence during such a period the court that dealt with you for that further offence would also have power to put into operation or otherwise deal with these suspended sentences and conditional discharges.