

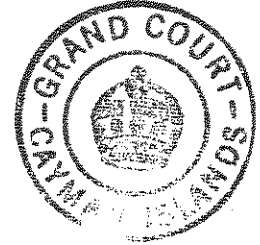
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CRIMINAL SIDE**

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5 **INDICTMENT NO: 0021/2013**

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8 **THE QUEEN**

9  
10 **V**

11 **PATRICIA GLASGOW**



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15 **Appearances:**

**Ms. Toyin Salako for the Crown**

16  
17 **Mr. Ben Tonner of Samson & McGrath for**  
18 **the Defendant**

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20 **Mr. James Stenning of Stenning &**  
21 **Associates for the Defendant's brother, Mr.**  
22 **William Bush**

23  
24 **Before:**

**The Hon. Mr. Justice Charles Quin**

25 **Submissions heard:**

26 **21<sup>st</sup> January, 3<sup>rd</sup> February, 20<sup>th</sup> February &**  
**17<sup>th</sup> March 2014**

27  
28 **SENTENCE RULING**  
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30 1. On the 12<sup>th</sup> July 2013 the Defendant pleaded not guilty to three counts - Theft,  
31 Obtaining a Money Transfer by Deception and Making Documents without  
32 Authority – laid by the DPP on the 17<sup>th</sup> day of April 2013. The trial was listed to  
33 commence on the 23<sup>rd</sup> June 2014.

34 2. On the 21<sup>st</sup> November 2013, upon a request to be re-arraigned, the Defendant  
35 pleaded guilty to all three counts on this Indictment.

1       3.     The particulars of Count 1 – the charge of Theft, contrary to s.241 of the Penal  
2           Code (2007 Revision) – are that the Defendant, between the 8<sup>th</sup> day of September  
3           2008 and the 24<sup>th</sup> day of August 2011, in the Cayman Islands, stole US\$437,300.00,  
4           being property belonging to Rochester Ltd.

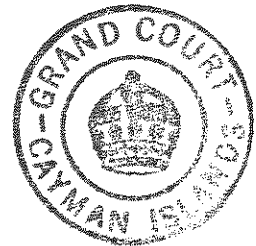
5       4.     The particulars of Count 2 – the charge of Obtaining a Money Transfer by  
6           Deception, contrary to s.251 of the Penal Code (2007 Revision) – are that the  
7           Defendant, between the 8<sup>th</sup> of September 2008 and the 24<sup>th</sup> August 2011, in the  
8           Cayman Islands, dishonestly obtained money transfers totalling US\$437,300.00  
9           from the accounts of Rochester Ltd. by a deception, namely that the transactions  
10          were properly authorised.

11      5.     The particulars of Count 3 – the charge of Making Documents Without Authority,  
12          contrary to s.293(a) of the Penal Code (2007 Revision) – are that the Defendant,  
13          over the aforementioned period of time, in the Cayman Islands, with intent to  
14          defraud or deceive and without lawful authority or excuse made documents in  
15          writing, namely funds transfer requests.

16      6.     Crown counsel has confirmed that the maximum penalty for theft and obtaining a  
17          money transfer by deception is 10 years' imprisonment, while the maximum  
18          penalty for making documents without authority is 7 years' imprisonment.

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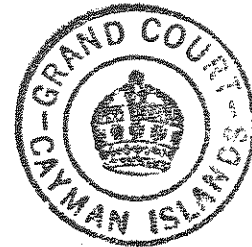
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1       7.       The Crown points out that the Court of Appeal and the Grand Court have followed  
2       the English cases of *R v. Barrick*<sup>1</sup> and *R v. Clark*<sup>2</sup>. The Crown submits that the total  
3       amount of funds misappropriated by the Defendant is US\$437,300.00, which the  
4       Crown submits converts to £265,397.37, bringing the case within the upper bracket  
5       of 5 to 9 years' imprisonment. In addition, on the 21<sup>st</sup> January 2014 the Crown  
6       applied for compensation for the full amount of the misappropriated funds pursuant  
7       to s.33 of the Penal Code.

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<sup>1</sup> *R v. Barrick* [1985] 81 Cr. App. R. R 78

<sup>2</sup> *R v. Clark* [1998] 2 Cr. App. R. R 137

*SUMMARY OF FACTS*

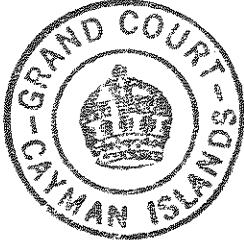
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8. Crown counsel indicated that as of 2002 the Defendant was employed at Bodden Corporate Services (“BCS”) as a Corporate Administrator and Assistant Office Manager. It is the Crown’s case that the Defendant had a history of problems with the Company as during her employment she had received salary advances without authorization. The Company did not dismiss her because she assured them that she would repay the money she had taken without authorization and, in keeping with this pledge, she was making payments of \$100.00 per month.

9. The Crown submits that when the Defendant was made redundant on the 1<sup>st</sup> September 2011 she still owed the company CI\$9,286.00.

10. The Defendant’s half-sister, Sharon Farrington, (“Ms. Farrington”) was a good friend of Chrissie Ann Hatcher (“Ms. Hatcher”) – the sole beneficiary owner of the company known as Rochester Ltd.

11. Upon Ms. Farrington’s recommendation, Ms. Hatcher agreed to have her company’s registered office transferred to BCS. A trust was also established under Cayman law – requiring two trustees. Ms. Farrington was one trustee and she recommended her sister, the Defendant, to stand as the second trustee. Accordingly, Ms. Hatcher appointed Sharon Farrington and the Defendant as the two trustees. Ms. Hatcher’s trust was primarily established to provide funds for animal protection and for the assistance of environmental groups.

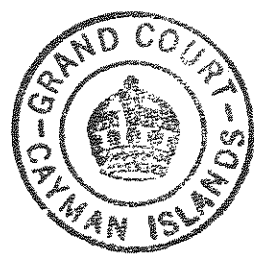


1 12. Every year Ms. Hatcher would receive approximately US\$10,000.00 to  
2 US\$11,000.00 and BCS had its legal and corporate fees paid out of the Company.

3 13. The Defendant's dishonesty came to light as a result of a broker contacting BCS to  
4 inform that he had a buyer for land owned by Rochester Ltd. When Ms. Farrington<sup>3</sup>  
5 started to do some enquiries on behalf of the Trust she realised that Ms. Hatcher  
6 had not been in touch for some time, and, in fact, had passed away on the 25<sup>th</sup> July  
7 2010. Further enquiries revealed that corporate fees had not been paid since 2011.

8 14. Ms. Farrington then discovered that several requests had been made to the bank –  
9 requests which were not on the file. These were requests for cheques payable to the  
10 Company, Rochester Ltd, and deposited into Rochester Ltd. bank accounts or to  
11 BCS's bank. Thereafter it was discovered that it was the Defendant who withdrew  
12 the funds.

13 15. It was discovered that the bank withdrawal slips were always signed by the  
14 Defendant and, purportedly, her colleague, Ms. Carol Balls ("Ms. Balls"). Ms. Balls  
15 was the BCS office manager and the co-signatory on the Rochester account. There  
16 were 18 fax transmissions purportedly signed by Ms. Balls authorizing the cheques  
17 to Rochester. The police, in the course of their enquiries, discovered that Ms. Balls  
18 had not signed any of these documents and, in fact, the Defendant had cut and paste  
19 Ms. Balls' signature from other documents in order to demonstrate that Ms. Balls,  
20 the co-signatory, was in fact co-authorising the transactions.

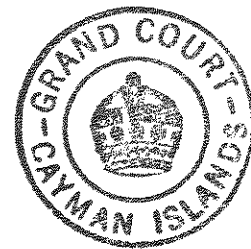


<sup>3</sup> Note: Ms. Farrington did not work for BCS.

1       16.     In an email, the Defendant informed Ms. Farrington that Ms. Hatcher had  
2             authorised her to have funds as a loan from the Trust. However, there was no  
3             documentation to support this assertion and, further, Ms. Farrington confirmed that  
4             Ms. Hatcher, at no time, had ever suggested or implied that she had agreed to  
5             provide the Defendant with any loan funds. Furthermore, it was BCS' policy at the  
6             time that any gifts or loans in excess of CI\$100.00 had to be authorised.

7       17.     The Defendant was arrested and interviewed on the 28<sup>th</sup> June 2012. She told the  
8             police that she was experiencing some financial difficulties as a single parent and,  
9             because of this difficulty she had called Ms. Hatcher to ask her for a loan.  
10            According to the Defendant she told the police that Ms. Hatcher said she can "take  
11            whatever she needs". The Defendant told the police that Ms. Hatcher had told her  
12            that the next time she was in Cayman she would provide her with a written  
13            authorization for the loan of the money from the Trust. The Defendant alleged that  
14            the conversation concerning the loan took place in 2008-9 and the conversation  
15            concerning authorization was a few months before she was made redundant.

16       18.     In addition, the Defendant told the police that she had been blackmailed by a man  
17             called Samuel Parsons ("Mr. Parsons") who had some explicit photos of her, and,  
18             as a result of the blackmail the Defendant paid Mr. Parsons, in cash, between  
19             CI\$3,000.00 and CI\$5,000.00 upon his direction.

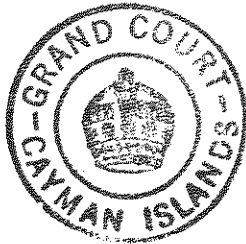


1 19. The Crown points out that when providing this information to the police the  
2 Defendant was unable to give the police any specific details as to the date she paid  
3 this money to Mr. Parsons, as to where she paid the money to Mr. Parsons and as to  
4 the regularity of the payments. The Defendant was unable to provide the police  
5 with any photographs that Mr. Parsons was alleged to have in his possession or how  
6 he came to be in possession of the photographs. The Defendant claimed that once  
7 Mr. Parsons returned to Jamaica he simply stopped contacting her. Furthermore, the  
8 Defendant stated that she had not told anybody about the blackmail. The Defendant  
9 also had a very close friend who was a police officer and had not told that friend  
10 about the blackmail. The Crown submits that the Defendant made no efforts  
11 whatsoever to alert anyone to the purported blackmail.

12 20. The Defendant stated that she used the money because she lost her motorcar in  
13 Hurricane Ivan (in 2004) and she purchased a new car in June 2012.

14 21. The Defendant told the police that the money she received from Ms. Hatcher was a  
15 loan and it was her intention to repay the money. However, when she was asked by  
16 the police how much she had taken she was unable to provide an answer.

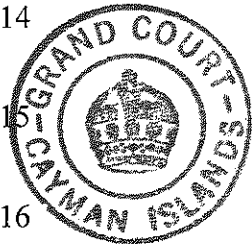
17 The Defendant was asked by the police if she had a record of how much money she  
18 had taken and the Defendant said she had no record. She was asked by the police: If  
19 her intention was to repay the money, how would she know what she took if she  
20 had no record. It was in response to this question that the Defendant told the police  
21 that she had bought a new car in June 2012.



1           22.    The Crown submits that the financial investigations into the Defendant's affairs  
2                    show that none of the stolen funds were used to make any unscheduled or unusual  
3                    loan repayments and, in fact, the Defendant left BCS owing the BCS CI\$9,286.00  
4                    and the evidence suggests that she has made no attempt to repay BCS.

5           23.    The Crown submits that the following aggravating factors should be taken into  
6                    account:

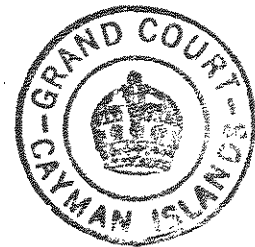
- 7                           (a) The Defendant breached the trust of her employer;
- 8                           (b) The Defendant breached the trust of those who put her forward as a  
9                           trustee, namely her sister, Ms. Farrington;
- 10                          (c) The Defendant breached the trust of the owner of the Company, Ms.  
11                          Hatcher;
- 12                          (d) By the Defendant's misappropriation of the funds, suspicion over both  
13                          Ms. Farrington and Ms. Balls was created. Both suffered as a result of  
14                          the Defendant's misappropriation;
- 15                          (e) The theft started in September 2008 and continued until August 2011;
- 16                          (f) There were seventy four<sup>74</sup> unauthorised transactions over a 3-year  
17                          period;
- 18                          (g) Although Ms. Hatcher is deceased it does not mean that there are not  
19                          any victims. The company is a victim and the charities to which the late  
20                          Ms. Hatcher left her money are also victims. The financial services  
21                          industry of the Cayman Islands is a victim.



1 (h) There has been no effort on the part of the Defendant to repay the  
2 money stolen and, effectively, the Defendant appropriated the funds to  
3 afford an extravagant lifestyle. It is the Crown's position that if the  
4 Defendant had showed any degree of remorse she would have, from the  
5 proceeds of the sale of her house, even as a gesture, tried to re-pay  
6 some of the money she stole.

7 (i) The Crown points to the fact that the Defendant sold her house for  
8 \$220,000.00 and then proceeded to make payments from that sum to  
9 the Cayman Islands Government "Save the Mortgage" Scheme to  
10 discharge the charge; money to CNB – CI\$113,000; CI\$6,000.00 to her  
11 brother for money she owed him; CI\$5,000.00 to her son; CI\$4,000.00  
12 for outstanding bills; and, CI\$75,000.00 to her brother William for  
13 investment and for monthly maintenance of her son.

14 24. The Crown submits that this offence falls into the band of £250,000.00 to  
15 £1,000,000.00 and therefore the sentence range is 5 to 9 years for two reasons.  
16 First, it is in excess of £250,000.00 and the Court has to have a figure and those  
17 who promulgate the guidelines also have to have a figure – which they set at  
18 £250,000.00. Second, the Crown submits it is in the 5 to 9-year bracket because of  
19 the nature and number of aggravating features.



1 *DEFENCE CASE*

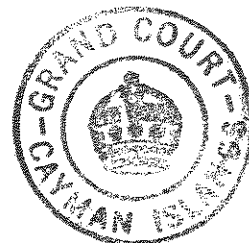
2 25. The Defence submits that this offence falls in the lower bracket because of the  
3 degree of inflation. Mr. Tonner submits that when one considers the cases of *Clark*  
4 and *Barrick*, one should consider the figure in this case to be the equivalent of  
5 £180,000.00 – which would bring the Defendant into the range of 3 to 4 years – as  
6 set down by the English Court of Appeal in the case of *Clark*.

7 26. Counsel for the Defendant relies on the Cayman Islands Court of Appeal (CICA)  
8 decision in *Schultz v. R*<sup>4</sup> who pleaded guilty to stealing US\$289,000.00 from the  
9 Chamber of Commerce Pension Fund Scheme. Mr. Tonner submits that  
10 US\$289,000.00 converted into £185,000.00, before accounting for inflation.  
11 Counsel for the Defendant states that the Cayman Islands Court of Appeal did not  
12 give a specific figure in relation to inflation, but simply said that, in general terms,  
13 it must be taken into account.

14 27. Defence counsel submits that there is no evidence that the Defendant's spending  
15 was extravagant. Counsel submits that, as there is not much evidence as to how the  
16 money was spent, we would be entering into the realms of speculation.

17 28. Defence counsel submits that the Defendant is a single mother and had a substantial  
18 list of overheads – living on an island where the cost of living is expensive.  
19 Defence counsel submits that the Defendant was supplementing her salary with the  
20 money that she stole.

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<sup>4</sup> *Schultz v. R* Criminal Appeal Number 27/2012 and Ind. 43/12

1       29.    The Defendant has an 84-year old mother who is not in good health and the  
2        Defendant submits that she concerned for her mother and her son. In fact, the  
3        Defendant's mother has written a letter imploring the Court to impose a lenient  
4        sentence.

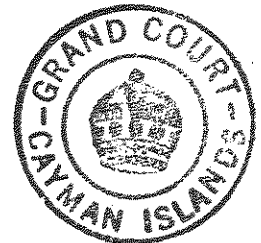
5       30.    On the 21<sup>st</sup> January 2014 the Defence submitted that the Court should not make any  
6        Order for compensation unless there is some evidential foundation that the  
7        Defendant still has the money. If that evidential foundation is not laid, then the  
8        Court would simply be increasing the sentence.

9       31.    In relation to the Defendant's house<sup>5</sup>, the Defence submitted that the Defendant's  
10       brother, Mr. William P. Ebanks ("Mr. Ebanks"), bought the house by taking out a  
11       mortgage on his own home in order to raise the funds; submitting that the Batabano  
12       house is a family home and Mr. Ebanks wanted to keep it within the family.

13      32.    On the 21<sup>st</sup> January 2014 Defence counsel submitted that the government assisted  
14       the Defendant to obtain her mortgage with the Bank. Counsel stated that there is a  
15       local scheme – the "Save-The-Mortgage Scheme" – through which the government  
16       assisted Caymanians to obtain bank mortgages. Counsel said the scheme supplied a  
17       sum of money which was paid directly on her behalf to the Cayman National Bank.

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<sup>5</sup> The Defendant's house – "the Batabano house" – West Bay, Block 9A Parcel 235 of West Bay North East, with the address 222 Batabano Road, West Bay, Grand Cayman, Cayman Islands

1 33. Counsel submitted that one should not view the failure to repay the funds as an  
2 aggravating factor and quotes the case *Schultz* where Mottley J.A. stated at  
3 paragraph 13:

4 *“On the other hand the Appellant’s failure to repay any of the money is not*  
5 *properly regarded as an aggravating factor, but rather an absence of*  
6 *mitigation.”*

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8 34. Defence counsel accepts that it is an unsavory situation but urges the Court to  
9 follow *Barrick* and the Cayman Islands Court of Appeal in *Schultz*.

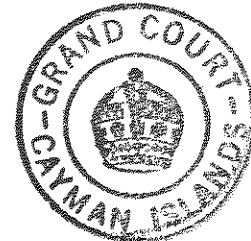
10 35. The SIR prepared by Bharti Veja reveals that the Defendant is 45 years of age and  
11 is a single mother of a son who is currently employed in the financial services  
12 industry. The Defendant was married to a man 10 years her senior who suffered  
13 from multiple sclerosis. The Defendant has had a long employment history and she  
14 remained with one local law firm as a corporate administrator for 18 years. She left  
15 that firm in 2003 to take up a similar post with BCS. The Defendant states that she  
16 had, prior to this offence, never experienced any problems within her place of  
17 employment, nor had she ever been subject to any disciplinary action. The  
18 Defendant states that she is aware that, as result of this case, her future employment  
19 opportunities will be limited.

20 36. Defence counsel points to the fact that the Defendant has no previous convictions  
21 and is therefore of previous good character.

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*SUBMISSIONS ON COMPENSATION*

37. On the 21<sup>st</sup> January 2014, based on the submissions of Defence counsel and on the SIR, it appeared that, although the Defendant had no outstanding debts, she had no savings and no income, and thus is now without any funds. On that date, the Crown applied for a compensation Order in the sum of CI\$75,000.00 pursuant to s.33 of the Penal Code which reads:

*“A person who is convicted of an offence may be adjudged to make compensation to any person injured by his or her offence.”*

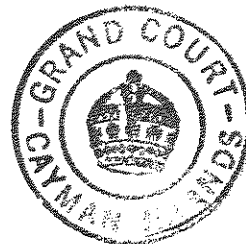
38. On the hearing before this Court on the 21<sup>st</sup> January 2014 the Crown submitted that it was very sceptical of the Defendant’s claim of lack of funds. The Defence submitted that the problem faced is the absence of evidence and documentation as to how the money was spent and about the Defendant’s current financial position.

39. It was only after a passing reference to the affidavit sworn by the Defendant in the civil proceedings *Rochester v. Glasgow et al*<sup>6</sup> had been made by Defence counsel towards the end of the hearing on the 21<sup>st</sup> January 2014 that the Court was made aware of the existence of the Defendant’s affidavit and requested a copy of it. This affidavit set out the payments the Defendant made after the sale of her house. As a result of the inadequacy of the information provided in the affidavit, the Court ordered an inquiry into the Defendant’s means following the principles laid down by the Privy Council in *R v. Randall*<sup>7</sup> and, in particular, the fifth holding which reflects Lord Bingham’s judgment that:

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<sup>6</sup> *Rochester v. Glasgow et al* Cause Number 150/2013

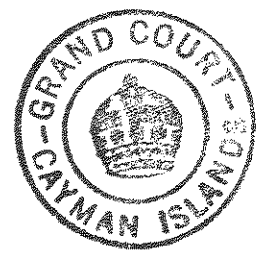
<sup>7</sup> *R v. Randall* [2002] CILR 254-7



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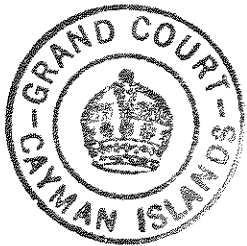
*“A Compensation Order should not be made without an inquiry into the means available to [the Defendant] to pay such an Order.”*

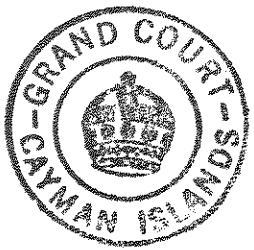
40. As a result of this inquiry on the 3<sup>rd</sup> February 2014 the Defendant’s brother, Mr. Ebanks, supplied a sworn affidavit in which he stated that the Defendant had informed him that she had deposited C\$75,000.00 into Mr. Ebanks’ account for “rent in advance.” I now set out a relevant Chronology which includes facts relating to the compensation inquiry into the Defendant’s means, which were not known to the Court on the 21<sup>st</sup> January 2014:



## CHRONOLOGY

	DATES	MONEY INVOLVED	ACTIVITY
1.	8 <sup>th</sup> Sept 2008 - 24 <sup>th</sup> Aug. 2011	US\$437,300.00	Defendant steals this amount
2.	4 <sup>th</sup> December 2012		Defendant appears in the Summary Court
3.	January, February, March 2013		Mentions in the Summary Court
4.	12 <sup>th</sup> March 2013		Defendant elects Grand Court trial
	3 <sup>rd</sup> April 2013	CI\$220,000.00	Defendant enters into a sale and purchase agreement in this sum with William Ebanks and Madeline Ebanks in respect of West Bay, Block 9A Parcel 235 of West Bay North East, with the address 222 Batabano Road, West Bay, Grand Cayman, Cayman Islands ("the property")
5.	10 <sup>th</sup> April 2013		Defendant consents to a Short Form PI and is committed to the Grand Court.
6.	19 <sup>th</sup> April 2013		Defendant appears before the Grand Court and the Indictment dated the 17 <sup>th</sup> April 2013 is served.
7.	10 <sup>th</sup> May 2013		Defendant appears before the Grand Court and requests more time to calculate the figures involves.
8.	20 <sup>th</sup> May 2013		Date of the injunction in the case of <i>Rochester v. Patricia Glasgow &amp; BCS</i> Cause G150 of 2013 against the Defendant which prohibits her from disposing of assets. (See #18. Below)
9.	31 <sup>st</sup> May 2013		Defence requests more time to work out the final figures
10.	3 <sup>rd</sup> June 2013	CI\$220,000.00	Defendant receives a bank draft in this sum from William and Madeline Ebanks.
11.	3 <sup>rd</sup> June 2013		On the same date the foregoing sum was received, the Defendant made a number of payments as follows:
12.	3 <sup>rd</sup> June 2013	CI\$10,149.00	Defendant makes this payment to CI Government to discharge the charge put on the land by the CI Government through the Save-the-Mortgage Scheme.





13.	3 <sup>rd</sup> June 2013	CI\$113,010.00	Defendant makes this payment to CNB to repay the outstanding mortgage on the property.
14.	3 <sup>rd</sup> June 2013	CI\$75,000.00	Defendant pays this amount to her brother Mr. Ebanks for investment and monthly maintenance for her son.
15.	3 <sup>rd</sup> June 2013	CI\$6,000.00	Defendant pays this amount to her brother Mr. Ebanks to repay money she owed to him.
16.	3 <sup>rd</sup> June 2013	CI\$5,000.00	Defendant pays this amount to her son, Joseph Powell.
17.	3 <sup>rd</sup> June 2013	CI\$4,000.00	Defendant pays this towards her outstanding bills.
18.	12 <sup>th</sup> June 2013		Defendant was served with the injunction dated the 20 <sup>th</sup> May 2013. Defendant avers that by the time she was served she was unable to comply with the Order that she should pay the balance of the property into Court as she had already disposed of the proceeds.
19.	14 <sup>th</sup> June 2013		Defendant changes attorneys from Mr. John Furniss to Samson & McGrath.
20.	5 <sup>th</sup> July 2013		Case adjourned.
21.	12 <sup>th</sup> July 2013		Defendant pleads NOT GUILTY to all 3 counts on the Indictment and a 5-day trial is set for the 23 <sup>rd</sup> June 2014.
22.	11 <sup>th</sup> October 2013		Defendant indicates that she wishes to change her plea to one of GUILTY on all counts.
23.	21 <sup>st</sup> November 2013		Defendant is re-arraigned and pleads guilty to all 3 counts on the Indictment.

1

2           41.     On the 3<sup>rd</sup> February 2014 it was clear to the Court that Mr. Ebanks required legal  
3                    advice and, accordingly, the inquiry in to the Defendant's means was adjourned to  
4                    allow Mr. Ebanks to retain legal counsel.

1 42. On the 20<sup>th</sup> February 2014 Mr. James Stenning appeared on behalf Mr. Ebanks. Mr.  
2 Stenning applied for an adjournment in order to take further and full instructions  
3 and this application for an adjournment, which was unopposed by the Crown was  
4 granted.

5 43. On the 17<sup>th</sup> March 2014 the inquiry continued and as a result of (verifiable)  
6 payments made by the Defendant for rent, utilities and legal fees, the Crown  
7 formally asked the Court for a Compensation Order in the sum of CI\$57,100.00.  
8 The Crown arrived at this sum by deducting from its original claim of \$75,000.00  
9 money paid by the Defendant to her brother to honour sums owed to him:

Rent	\$16,500.00
Utility bills	\$200.00
Legal fees	\$1,200.00
Total deducted	\$17,900.00

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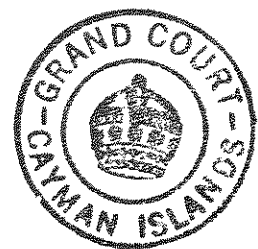
11 44. Counsel for Mr. Ebanks has said that Mr. Ebanks can pay back to the Trust the sum  
12 of CI\$44,600.00, by paying immediately into Court CI\$30,000.00, with the balance  
13 of \$14,600.00 being paid in three months or less.

14 45. On the 17<sup>th</sup> March 2014 Mr. Tonner on behalf of the Defendant asked the Court to  
15 make a Compensation Order in the sum of CI\$44,600.00 as, of the CI\$75,000.00  
16 initially requested by the Crown, the Defendant has paid out the following:

Down payment on a property	\$6,500.00
Paid to a friend	\$5,500.00
Paid to her son's account	\$500.00
Total	\$12,500.00

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1 46. Some four days later, on the 21<sup>st</sup> March 2014, a Notice of Motion in the civil  
2 proceedings *Rochester v. Glasgow et al* came before me. When I read the file I  
3 came upon a second affidavit sworn by the Defendant on the 14<sup>th</sup> November 2013. I  
4 provided copies of this second affidavit to Crown counsel, Toyin Salako, and  
5 Defence counsel, Ben Tonner – both of whom had not seen it before. The  
6 Defendant refers to her first affidavit and states that, in her bank accounts with the  
7 Cayman National Bank and Butterfield Bank, she has less than one hundred dollars.  
8 In addition, she has a pension with Silver Thatch and she has no other assets; she  
9 only has personal effects such as clothes and other belongings of negligible value.

10 47. I have now reviewed the Defendant’s affidavits in the civil proceedings, her letters  
11 to the Court dated the 17<sup>th</sup> January 2014 and the 28<sup>th</sup> January 2014, and, the  
12 affidavit of the Defendant’s brother, Mr. Ebanks, dated the 3<sup>rd</sup> February 2014.

13 48. In *R v. Bradburn*<sup>8</sup>, Lord Widgery (the then LCJ) sitting in the English Court of  
14 Appeal held:

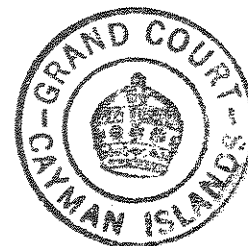
15 *“... when making a compensation order the court is not solely concerned with*  
16 *the injury to the victim or the amount which he requires to be compensated but*  
17 *has to have regard also to the means of the Defendant who will be made the*  
18 *subject of the Order. It must be borne in mind, of course, that an order under*  
19 *this section does not deprive the injured person of his civil rights and he can*  
20 *always sue in the civil court if wants to.”*

21  
22 49. In *R v. Innwood (Roland Joseph)*<sup>9</sup> [1974] 60 Crim App R 70, Lord Justice  
23 Scarman, (as he then was) sitting in the Court of Appeal stated at page 73 that  
24 Compensation Orders should not be used:

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<sup>8</sup> *R v. Bradburn* [1973] 57 Crim App R. 948

<sup>9</sup> *R v. Innwood (Roland Joseph)* [1974] 60 Crim App R 70



1                   “...when there is a real doubt as to whether the convicted man (or woman) can  
2                   find the compensation.”

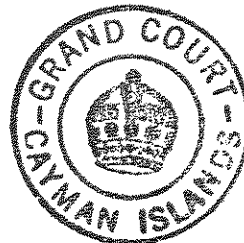
3  
4           50.     In *R v. Panayioutou*<sup>10</sup> the English Court of Appeal held that:

5                   “Where an offender is sentenced to an immediate term of imprisonment or other  
6                   custodial sentence a compensation order should not be made if its effect will be  
7                   to subject him on his discharge from custody to a financial burden which he  
8                   will not be able to meet from his available resources.”

9           51.     The learned Chief Justice of the Cayman Islands stated in *York, Tater and Dubash*  
10           *v. Attorney General*<sup>11</sup>:

11                   “*It is wrong in principle to make an order for compensation when the offender*  
12                   *lacks the means to meet it, since such an order is intended to compel an*  
13                   *offender to restore the proceeds of his offence. It is not its purpose to operate*  
14                   *inevitably as an additional term of imprisonment which would follow in the*  
15                   *event of non-payment.*”

16  
17           52.     I have taken the Defendant’s evidence and her brother’s evidence into  
18                   consideration. I have listened to and reviewed the submissions of both counsel.  
19                   When I review this material and apply the principles set out above by the English  
20                   Courts and the Courts of the Cayman Islands, I order compensation in the sum of  
21                   CI\$44,600.00. The payments to Rochester Ltd. are to be made through the Court  
22                   Funds Office (CFO) as follows: CI\$30,000.00 is to be paid within seven (7) days  
23                   from today’s date, and the balance of CI\$14,600.00 is to be paid within three (3)  
24                   months from today’s date. On the evidence before me I am satisfied that the  
25                   Defendant does not have any other means, or relaisable assets, from which to  
26                   increase the Order for compensation.



27  

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<sup>10</sup> *R v. Panayioutou* [1989] 11 Crim App R. (S) 535

<sup>11</sup> *York, Tater and Dubash v. Attorney General* [1994-95] CILR Note 19.

1 *SENTENCE*

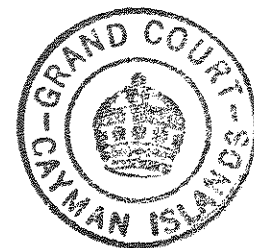
2 53. Defence submits that the starting point for this case is between 3 and 4 years and  
3 the Court must then take into account any aggravating and mitigating factors.

4 54. The Defence argues that the quality of the trust reposed in the Defendant was not  
5 particularly remarkable.

6 55. In relation to the Crown's submission that the Defendant had an extravagant  
7 lifestyle, the Defence states that there is little evidence as to how the stolen money  
8 was spent, and therefore we would be entering into the realms of speculation.  
9 Defence counsel states that the Defendant is a single mother and there are  
10 substantial overheads living in the Cayman Islands, where cost of living is high.  
11 The Defendant was therefore supplementing her salary with the money she had  
12 taken.

13 56. The Defence asks the Court to accept that US\$437,000.00 is equal to £265,000.00.  
14 Mr. Tonner relies on the Court of Appeal cases of *Schultz* and *Thomas*<sup>12</sup> and states  
15 that implicit in these two CICA decisions is that the Court must take inflation into  
16 account.

17 57. The Defence has not presented any evidence in relation to currency conversion or  
18 inflation, but submits that if one uses various search engines available on the  
19 internet, and amends the sum of £265,000.00 to allow for inflation, in broad terms,  
20 the equivalent is approximately £180,000.00 today.



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<sup>12</sup> *R v. Thomas* CICA 4/2013

1        58.     Defence submits that the Court of Appeal in *Schultz* never gave any specific figure  
2            in relation to inflation, but simply said that, in general terms, inflation must be  
3            taken into account. It is noted that the value of the theft was significantly less in  
4            *Schultz* than in this case. In addition, Defence counsel cautions the Court to ensure  
5            that it does not indulge in double accounting. Mr. Tonner states that the offence is a  
6            breach of trust case and the Court should be wary of allowing the breach of trust  
7            factor to be added as an additional aggravating feature.

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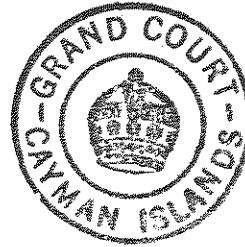
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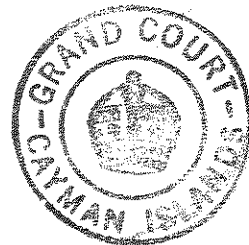
*CONCLUSION*

59. I accept that the cases of *Barrick* and *Clark* as reviewed by the Court of Appeal, in *Schultz* are breach of trust cases, and the Guidelines followed incorporate an element of breach of trust in them. However, the English Court of Appeal in *Barrick* and the Cayman Islands Court of Appeal in *Schultz* says that the degree of the breach remains a factor to which courts can and will have regard.

60. The Defendant was in a trusted position in relation to the administration of Rochester Limited on behalf of the late Ms. Hatcher. This position of trust enabled her to perpetuate the theft and provides an explanation as how she was able to continue undetected for such a significant period of time. The Defendant stole from someone she personally knew and somebody whom she regarded as a friend.

61. The three charges on the Indictment span September 2008 to August 2011 and involve seventy-four (74) separate transactions. This sustained dishonest criminal conduct elevates the seriousness of the offending.

62. Although the beneficial owner of the Trust is now deceased, there is a consequential damaging effect on the beneficiaries of the Trust, namely the charities. It was the intention of the late settlor, Ms. Hatcher that these charities would benefit from her trust fund. The Court also takes into account that BCS, which had been a good employer, is also a victim of the Defendant's actions.



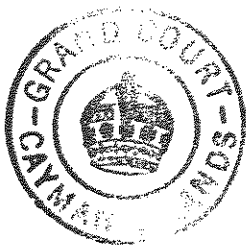
1 63. Furthermore the Defendant's co-trustee, Ms. Farrington, and the Manager of BCS,  
2 Ms. Balls, were also victims of the Defendant's crime – as suspicion fell on them  
3 owing to the fact that Ms. Farrington was a co-trustee and the Defendant forged Ms.  
4 Balls' signature to complete the cheques.

5  
6 64. The Courts of the Cayman Islands have relied upon the Chief Justice's statement on  
7 Tariffs and Guidelines for Sentencing issued on the 16<sup>th</sup> January 2002. In the  
8 section headed "Offences of Dishonesty" there is the following statement:

9 *"For offences of theft or related offences, depending on the value of the*  
10 *property stolen and any other aggravating factors, particularly where there is a*  
11 *breach of trust in the context of a relationship of employment, an immediate*  
12 *term of imprisonment ranging from 1 to 4 years for a first offence and an order*  
13 *for repayment will likely be imposed. The tariff could be higher still, depending*  
14 *on the seriousness of the offence."*

15  
16 In the Cayman Islands the Legislative Assembly has retained the period of 10  
17 years' imprisonment as the maximum penalty for offences of theft.

18 65. As has often been said: This type of offence has the potential to affect public  
19 confidence in Cayman Islands companies and our financial regulations which form  
20 an essential part of the financial services industry. In other words, the reputation of  
21 our financial services industry on which our economy depends is damaged every  
22 time this type of breach of trust criminal offence is committed. Should others  
23 contemplate embarking on this type of dishonest behaviour they must realise that, if  
24 they are apprehended and subsequently convicted, a long term of imprisonment will  
25 be imposed.



1           66.     As the Court of Appeal stated in *Fyne v. R*<sup>13</sup>, in cases of theft involving employees  
2                     who abused a position of trust, the then President, Zacca P stated at paragraph 12:

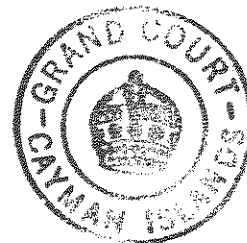
3                             *“In light of the economy of the Cayman Islands the sentence imposed by the*  
4                             *Court in cases involving breach of trust should be one which would act as an*  
5                             *effective deterrent.”*

6  
7           67.     The Defendant has no previous convictions. The Defendant has a good work record  
8                     from the perspective that she has worked in the financial services industry for well  
9                     over 20 years.

10          68.     The Court observes that it is obvious that the earlier stolen money is repaid to the  
11                     victims and the larger the amount repaid, are mitigating factors. It is regrettable that  
12                     these factors and any consequential remorse on the part of the Defendant appear to  
13                     be absent in this case.

14          69.     The Defendant has not repaid any money. The Court notes that the Defendant was  
15                     the beneficiary of the Government’s Save the Mortgage Scheme and is also on legal  
16                     aid. Although there is little by way of concrete evidence as to where the funds have  
17                     gone, it would appear that the money has been spent. What is an aggravating  
18                     feature is that, some three months after electing to be tried in the Grand Court, the  
19                     Defendant, rather than repay monies to the victim from the proceeds of the sale of  
20                     her house, chose to steer the money to her brother to pay for her rent which had not  
21                     yet become due.

22



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<sup>13</sup> *Fyne v. R* [2007] CILR 176

1 70. Traditionally our Courts have followed the Guidelines in *Barrick*, as revised by  
2 *Clark*.

3 71. The sum of money stolen is US\$437,300.00. Crown counsel submits that this  
4 converts to approximately £265,000.00.

5 72. The Court of Appeal recently reviewed *Barrick* and *Clark* in *Robert Schultz v. R*  
6 and set out the revised bands in paragraph 4 of their judgment.

AMOUNT STOLEN £	TERM OF IMPRISONMENT
'not small' up to £17,500.00	Very short up to 18 months
£17,500.00 - £100,000.00	2 – 3 years
£100,000.00 - £250,000.00	3 – 4 years
£250,000.00 - £ 1 million	5 – 9 years
£ 1 million or more	10 years or more

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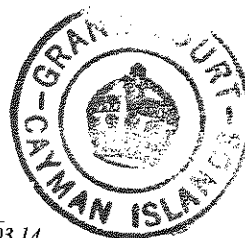
8 73. Crown counsel submits that, as the figure is in excess of £250,000.00, the bands  
9 should be between 5 and 9 years.

10 74. Defence counsel states that, in broad terms, with inflation, the sum equates to  
11 £180,000.00 and therefore should come within the 3 to 4-year band.

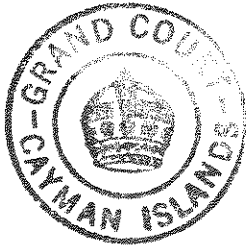
12 75. In *R v. Thomas* the learned President, Sir John Chadwick, in discussing the  
13 brackets in *Clark*, and the questions of inflation and currency exchange, stated at  
14 paragraph 11:

15 *“Those factors were discussed by this Court in its judgment in R v. Schultz*  
16 *CICA 27/2012 where it was pointed out that although no precise calculations*  
17 *are appropriate it is relevant to have in mind that Clarke was decided some*  
18 *fifteen years or more ago and the monetary bands in Clarke are of course in*  
19 *pounds sterling.”*

20



1           76.    In *Schultz* the Court of Appeal reduced the Grand Court sentence of 5 years to one  
2                   of 4 years and stated:



3                   “9.        ....*We do understand and accept that a precise currency conversion*  
4                   *may not be a very helpful exercise in such cases, but some sort of*  
5                   *conversion process has to be undertaken in order to apply the **Barrick***  
6                   *and **Clark** guidelines. We have not had the benefit of evidence or*  
7                   *detailed argument as to what that broad approach should be and so we*  
8                   *are not going to venture a rate. We simply observe that the disparity in*  
9                   *the cost of living between Cayman and the United Kingdom argues*  
10                   *against parity because the CI dollar does not have anything like the*  
11                   *same buying power in Cayman as the pound sterling does in the United*  
12                   *Kingdom. Similarly a straightforward exchange rate conversion is not*  
13                   *going to give a true picture for these purposes where what matters is*  
14                   *the value of what has been stolen in real everyday terms.*

15                   10.        *However, even without a detailed currency conversion or a precise*  
16                   *figure for inflation, it seems to us quite clear that this sum was properly*  
17                   *within the 3 to 4-year starting range and not the higher one.”*

18  
19                   In *Schultz* the learned Judges of the Court of Appeal did not accept that the Court,  
20                   for the purpose of sentencing, should give parity of value between the Cayman  
21                   Islands dollar and the UK pound, but said that in *Schultz*, the sum of  
22                   US\$289,660.00, being CI\$241,383.00:

23                   “...*would still push it into the lower bracket (even without allowing for*  
24                   *inflation) because it was always near the borderline.”*

25  
26                   77.        That being the case, this Court is left with the question: In which bracket does the  
27                   figure of US\$437,300.00 fall? The Defendant is guilty of stealing US\$150,000.00  
28                   more than the Defendant in *Schultz*, which would tend to suggest that this figure  
29                   pushes the offence above the borderline and into the 5 to 9-year bracket. Crown  
30                   counsel submits that it is £265,397.37, which consequently brings it over the  
31                   £250,000.00 figure and into the higher bracket.

1 78. In the Cayman Islands the Particulars of the breach of trust theft cases are usually  
2 set out in either CI dollars or US dollars and occasionally in other currencies. As  
3 matters stand, when applying the guidelines in *Barrick* and *Clark*, attorneys, judges  
4 and magistrates have to wrestle with currency conversion rates, inflation  
5 calculations, and comparisons between the cost of living in the United Kingdom  
6 and the Cayman Islands, invariably, without the benefit of expert evidence.

7 79. I agree with the learned Justices of the Court of Appeal in both *Thomas* and  
8 *Schultz* that precise calculations may not be appropriate and a precise currency  
9 conversion may not be a very helpful exercise. On any view, the sum of money  
10 which the Defendant peculated is a substantial sum. Currency exchange rates vary  
11 from day to day and the Court cannot be expected to engage in a mathematically  
12 precise conversion. As the Court of Appeal stated in *Schultz*:

13 *“What matters is the value of what has been stolen in real everyday terms”*  
14

15 and, consequently, in my view, what is important is the figure and not the currency.  
16 They are all stable currencies, and, on any view, the figure of 437,300.00 in pounds  
17 sterling, or in US dollars or in CI dollars, is a large one.



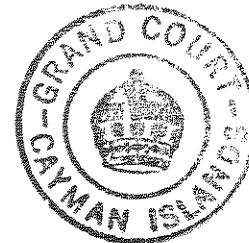
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1       80.     In *Schultz* the Court of Appeal did not provide any specific figure for inflation but  
2             stated that, in general terms, it must be taken into account. In this case the Court  
3             does not have the benefit of any expert evidence as to inflation figures in either the  
4             UK or the Cayman Islands. Furthermore, there is no expert evidence on the  
5             comparative cost of living in the United Kingdom and the Cayman Islands. In any  
6             event such evidence on inflation and cost of living could be expensive to obtain and  
7             it present a heavy burden on the RCIPS or the DPP or the Legal Aid Fund to have  
8             to pay for such expert analysis and evidence. The money regardless of which  
9             budget it comes from to fund such expert analysis and evidence would inevitably  
10            have to come from the public purse.

11       81.     If the Court of Appeal accepted in *Schultz* that US\$289,660.00 is “*just into the*  
12            *lower 3-4 year bracket, but near the borderline*”, then it must follow that the figure  
13            of C\$437,300.00 is just into the higher bracket of 5 to 9 years.

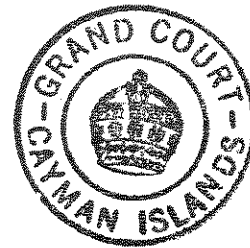
14       82.     For all the above reasons I find that C\$437,300.00 should be placed at the lower  
15            end of the higher bracket.

16       83.     I take into the fact that the Defendant has no previous convictions. However, I also  
17            take into account the seriousness of the breach of trust, the effect it had on the  
18            victims as set out above and, also the sustained nature of the Defendant’s criminal  
19            conduct. When I consider these factors together, I find the appropriate sentence in  
20            this case is a sentence of 5 years’ imprisonment.

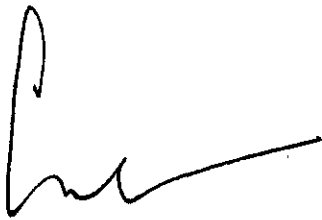


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1        84.     However, when I consider the strength of the case against the Defendant and her  
2                    belated guilty plea, I consider that the appropriate reduction for her guilty plea is  
3                    20%. Accordingly, on Count 1 I impose a sentence of 4 years' imprisonment. Count  
4                    2 is subsumed in Count 1, and I impose another sentence of 4 years' imprisonment  
5                    to run concurrently. On count 3, I impose 12 months – also to run concurrent with  
6                    the 4 years' for Count 1. On this total sentence of 4 years' imprisonment, time  
7                    spent in custody is to be deducted.



8  
9  
10     **Dated this the 25<sup>th</sup> March 2014**

11  
12       
13  
14     \_\_\_\_\_

15     **Honourable Mr. Justice Charles Quin**  
16     **Judge of the Grand Court**

