



Case Nos.: T20197114; T20197138; T20190238

IN THE CROWN COURT AT SOUTHWARK

1 English Grounds, London, SE1 2HU

20 February 2023

BEFORE HIS HONOUR JUDGE BAUMGARTNER

BETWEEN:

REX

- v -

- (1) FREDERIC MARINO**
- (2) AURELIEN BESSOT**
- (3) YOSHIKI OHMURA**

SENTENCING REMARKS

**Julian Christopher KC with Michael Hick (instructed by CPS Specialist Fraud Division)
for the Prosecution**

**Mathew Sherratt KC with Vedrana Pehar (instructed by Blackfords LLP) for the First
Defendant**

**Jonathan Barnard KC (instructed by IBB Law LLP) for the Second Defendant
Adrian Waterman KC (instructed by Hodge Jones & Allen LLP) for the Third Defendant**

HIS HONOUR JUDGE BAUMGARTNER:

1. Aurelien Bessot, you may sit down for the moment. I shall now deliver a judgment on sentence, and I shall call on you to stand when I come to pass sentence.
2. Frederic Marino, Aurelien Bessot and Yoshiki Ohmura, I must sentence you today following your convictions of conspiring to commit fraud by abuse of position of trust, as set out in Count 1 of the Indictment. Marino and Ohmura were convicted at trial on 8 December 2022 by the jury's unanimous verdicts of guilty. Bessot, you were convicted following your guilty plea on 5 November 2020. At the close of the Prosecution's case at trial, I directed acquittals of fraudulent trading on Count 2 for Marino and Ohmura, and, before then, on 8 June 2021, the Prosecution did not seek a trial for either of them of the conspiracy to transfer criminal property on Count 3, and so I now order Count 3 to lie on file on the usual terms. The Prosecution did not seek a trial of Counts 2 and 3 against you, Bessot, following your guilty plea to Count 1, and so I also now order those Counts to lie on file on the usual terms.
3. Marino and Ohmura, I am bound by the verdicts returned by the jury on Count 1 for you, and I must give effect to those verdicts in passing the sentence of the Court which must inevitably follow, based upon the evidence which I left to the jury to consider in its deliberations. I must, insofar as I can, form a view about the facts upon which the jury reached its verdicts, and I shall do so.
4. Marino, just as at trial, today you failed to attend this adjourned sentencing hearing, despite being given ample opportunity to return to this jurisdiction voluntarily. I issued a warrant for your arrest on 12 September 2022, the sixth day of trial, after you failed to surrender to the Court in accordance with your conditions of bail on the first day of trial. So far as I am aware, you remain at liberty in Paris. You have offered no sustainable explanation or justification for your continued absence from these proceedings, despite the very lengthy period of time that has passed since you first claimed that you were too unwell to attend. Had you attended today, I would have told you directly that I do not punish you now for any of that in what must inevitably follow, but, in my judgment, and having listened the evidence unfold before me at trial, your failure to surrender serves to underscore your complete lack of insight into your offending and the jury's verdict, and you have shown absolutely no remorse whatsoever for what you have done. You are, in my judgment, a greedy, corrupt, and manipulative man, who thought very little if nothing of how your offending might affect others, including Bessot and Ohmura, and who would have gone on to continue offending had you not been caught out when you were.
5. Ohmura, on your conviction by the jury I was told of the trauma you had recently experienced in the cancer diagnosis and treatment of your brother-in-law. I took the merciful and exceptional course of granting you unconditional bail pending sentence so that you could return home to your family in Switzerland. You failed to attend when this matter was called on for sentence on 10 February; I was told by Mr Waterman KC that you were suffering a mental health crisis, and so I allowed a short adjournment until today for you to reflect and attend. You did not. Like Marino, you have failed to provide any evidence to justify your absence, and, like Marino, I do not punish you now for that.
6. I must sentence each of you for conspiracy to commit fraud by abuse of position of trust, contrary to s.1(1) of the Criminal Law Act 1977 and ss. 1 and 4 of the Fraud Act 2006. The factual basis of sentencing is different for Marino and Ohmura to that for you,

Bessot. Marino and Ohmura were convicted only on the Bank Julius Baer transactions. For the avoidance of any doubt, I sentence them only on that basis. You, Bessot, pleaded guilty on the full-facts basis set out by Mr Christopher KC and Mr Hick in the Prosecution's Opening Note dated 8 June 2021. That provides a useful starting point, and what follows is limited to your role, Bessot. I will make it plain where the facts differ for Marino and Ohmura, for the purposes of sentencing.

Facts

7. You, Bessot, together with Marino and Ohmura, defrauded the Libya Africa Investment Portfolio (“LAP”), a sovereign wealth fund belonging to the people of Libya, although seen by some as falling within the direct sphere of control of Muammar Gaddafi (also known as Colonel Gaddafi) and his “Socialist People’s Libyan Arab Jamahiriya” which formed the *de facto* and *de jure* government of Libya for many, many years. You and Marino were entrusted to invest hundreds and hundreds of millions of US dollars belonging to LAP through a company called FM Capital Partners Limited (“FMCP”), a company incorporated in England and Wales and of which you both were directors. You secretly arranged for a proportion of the funds under investment to be paid to yourselves, via an offshore company, assisted by Ohmura, who initially worked at one of the banks through which the investments were made – Bank Julius Baer – and who subsequently set up his own company to act as an intermediary through which secret profits were paid to Marino and Bessot’s offshore company after deducting his own cut to facilitate the transaction.
8. The allegations against you, Bessot, involve a total of 12 transactions with four different investment banks between 2009 and 2011. The shared feature of those transactions were that, in addition to earning fees for FMCP, fees were also paid to an offshore company supposedly acting as the “introducer”, “arranger” or “distributor” of the financial products engineered by the banks that were offering them. The ultimate destination of those fees were companies controlled by you, and so for your own, personal benefit.
9. The fees involved must be staggering to ordinary people unaccustomed to the world of investment banking, if only because none of them were agreed to or permitted by the entities to which you were in a position of trust: FMCP and LAP. The first deal resulted in you and Marino receiving \$3.125M, from which you received \$300,000. \$625,000 was paid to Ohmura through Conquest Capital Ltd (a Caymanian company) in return for his part in bringing about this \$3.125M payment.
10. The TRAC trade which followed involved payment of fees to Ohmura’s other company, a Swiss company called Conquest Financial Partners AG (“CFP”), after which CFP paid most of the money on to a company set up in the Seychelles for that purpose by you, Bessot, at Marino’s instigation, a company called Ironfly International Ltd, which you and Marino jointly owned. You also set up two other offshore companies, one for you called Regent 121 Ltd, and one for Marino called Leopard Technology Ltd; all three companies had bank accounts in Monaco, and, after payments were made to Ironfly, they would be divvied up between you and Marino to Leopard and Regent 121. The use of these offshore companies by you and Marino was designed to hide the fact that you were receiving payments for investments which you pretended were managed by FMCP – hiding them, because, as you came to learn, you were not entitled to receive fees yourselves: any fees should have been earned by FMCP, a company in which LAP had a 55% share.

11. The total sum defrauded relating to the four Bank Julius Baer transactions and for which Marino and Ohmura fall to be sentenced is \$8,458,400. The total sum for the 12 transactions which you, Bessot, accept being party to was \$7,883,400 and €1,362,500. The total payments to your company Regent 121 were \$1.42M and €801,000.

Sentencing Guidelines

12. The Sentencing Council has issued guidelines for cases such as yours, and I have followed them.
13. The relevant offence guideline is the Definitive Guideline on Fraud, Bribery and Money Laundering. The relevant overarching guidelines are the General Guideline on Overarching Principles, and, in relation to your guilty plea Bessot, the Guideline for Reduction in Sentence for a Guilty Plea.
14. The maximum sentence for conspiracy to commit fraud by abuse of position of trust is 10 years' imprisonment.

Culpability

15. So far as culpability goes, I find that Marino played the leading role as part of a group activity: Marino and Bessot, you abused your positions of trust and responsibility, and you were assisted by Ohmura in so doing. The Guideline covers all the forms of the offence of fraud under s.1 of the Fraud Act 2006; there is plainly greater culpability when abuse of trust is involved. I accept, however, that Bessot and Ohmura's roles, for reasons which I shall mention shortly, properly fall within Category B, medium culpability. For Marino's part, this was, however, an extremely sophisticated offence which required significant planning and co-ordination, conducted over a sustained period of time. There are other factors which places Marino's offending within high culpability, Category A. I will turn to these shortly.

Harm

16. In assessing harm, I have regard to the value of the fraud on the basis for which each of you falls to be sentenced. Outside of the monetary value, I heard evidence as to the impact that the fraud had on FMCP and LAP, including the internal investigation at FMCP and the civil litigation which followed. It is evident to me that your offending had a serious detrimental impact upon LAP, FMCP's majority shareholder.
17. In my judgment, your offending clearly falls into Category 1, given the value of the losses exceeds £500,000.
18. The total sum defrauded relating to the Bank Julius Baer transactions for which Marino falls to be sentenced was \$8,458,400. Those were the secret commissions extracted from the two GAIN trades, the AMFC+ trade, and the TRAC trade. For Ohmura, it is the GAIN and TRAC trades, or \$6,708,400. I find that the total sum of which Bessot knew and participated in the taking of secret commissions was \$7,883,400 and €1,362,500.
19. Considerable resources were diverted away from the main businesses of FMCP and LAP to investigate what had taken place, and to pursue the civil proceedings against the three of you which followed (and which, for Marino and Ohmura, resulted in substantial judgments against you which, as I understand it, remain outstanding). Given the serious

detrimental effect your offending has had on FMCP and LAP, and about which I heard evidence at trial, I find that it had a high impact upon FMCP and LAP, the victims in this sorry affair.

Statutory purpose of sentencing: deterrence

20. Having said all that, I am mindful of the statutory purposes of sentencing set out in s.57 of the Sentencing Act 2020, which is incorporated in the General Guideline on Overarching Principles. I take each of them into account. One of those purposes is the reduction of crime, including its reduction by deterrence.
21. Aside from the breach of position of trust apparent from your convictions on Count 1, each of you occupied privileged positions of trust as regulated financial professionals, either in England or in Switzerland. London remains one of the world's preeminent financial markets, and I hold no doubt that offending such as yours serves only to bring its reputation into disrepute.
22. A striking feature of the way in which you went about your offending was the means deployed to evade or avoid detection of Marino and Bessot's conflicts through the employment of offshore companies where their interests were concealed, and with Ohmura's knowledge and complicity. This is an all-too-common feature of offending of this kind: the use of legitimate offshore vehicles like Conquest Capital and Ironshore as an impenetrable cloak to obtain illegitimate advantage. The use of off-shore vehicles for means such as this has to stop. One way of ensuring it does is to pass deterrent sentences, and I shall do so by factoring it in in reaching the provisional sentence for each of you.

Guideline Category

23. The starting point for Category 1A offending, based on a loss of £1 million, is 7 years' imprisonment. The category range is 5 to 8 years' imprisonment.
24. The starting point for Category 1B offending, based on a loss of £1 million, is 5 years' imprisonment. The category range is 3 to 6 years' imprisonment.
25. I have found that one or more "Harm B – High Impact" factors are present, and therefore move up the sentencing range.
26. I do not consider there are any statutory or other aggravating factors in this case.

Factors reducing seriousness or reflecting personal mitigation

27. None of you had convictions before this offending. You are all of previous good character; in fact, each of you were well-educated men at the prime of your professional careers who by your calling occupied privileged positions within society. How far you have fallen.
28. None of you have spent any time on remand in custody which would otherwise count against the sentence of imprisonment which must now inevitably follow.
29. I take into account the delay in these proceedings, much of which came about by the criminal investigation seemingly giving way to the civil proceedings. If that was the case, it is regrettable so far as the ends of the criminal justice system is concerned. The

COVID pandemic also extended the delay significantly. None of this was your fault, and I take it into account.

Frederic Marino

30. Frederic Marino, you are 57 years old. You played a leading role in this scheme, and it has not been suggested otherwise by Mr Sherratt KC.
31. I return to the factors which place your culpability within Category A. It has been submitted on your behalf that this was not fraudulent activity from the start. I reject that submission outright. Having heard the evidence upon which the jury convicted you, I have no doubt that, from the very beginning, you sought to devise a scheme to unlawfully line your own pockets, thinking that you could get away with it. You sought to normalise the position through the April Mandate, but when you could not obtain that it did not matter. At trial you were described by work colleagues as being volatile on occasion, though I heard that this behaviour was not unusual in the financial markets in the City, deplorable as it is. You have been described by others as “*dictatorial*” and “*autocratic*”. It was said that you operated on a “*need to know*” basis, and that was for “*pretty much everything*” you did. I am sure you used this behaviour and lack of transparency as a basis for covering your tracks. And when others discovered what was going on, I am sure you paid them to keep quiet so that you could continue to criminally enrich yourself. LAP was a comparatively unsophisticated investor looking to improve the lives of and opportunities for young Libyan financial professionals as well as its own skills and knowledge base. You preyed upon that lack of sophistication to take the fees which you did, knowingly without permission from LAP or disclosure to FMCP, knowing that what you did was wrong from the very start. Your self-serving confession in the Charles Russell letter makes this plain.
32. It has also been submitted that there is no evidence of the targeting of a large number of victims. That submission is wholly misconceived. While on one view it might be said that there was only one victim in this case – LAP – LAP represented the sovereign wealth of the people of Libya, who had lived for many years under the Gaddafi regime and experienced the internal conflict and turmoil that resulted from it and the Arab Spring which followed. You targeted the collective wealth of the Libyan people as a group.
33. For those reasons I reject the submission that these Category A characteristics are absent. Those which I have identified amply show why your culpability falls squarely within Category A, and, in my judgment, towards the higher end of that category.
34. You have no previous convictions or cautions. You have teenage children who will lose their father to a period in custody – whenever that comes – at an important time in their young lives.
35. I accept that you have suffered from mental health conditions in the past as the medical notes provided to me at trial appear to show, but I think you now play upon this as a means of avoiding the consequences of your actions. I have seen no satisfactory evidence of your unfitness to stand trial, nor have I received any satisfactory explanation for you not being here today which is why I now sentence you in absentia.
36. Frederic Marino, you have shown no remorse. In my judgment, the confessions in the Charles Russell letter were calculated to save your own skin, and nothing more than that.

You maintained a not guilty plea to Count 1 throughout. I do not punish you for that, but it means there is no credit that a guilty plea before trial would have otherwise yielded.

37. I make a reduction of 6 months to reflect the delay in bringing you to justice.
38. The offence in Count 1 is so serious that only a custodial sentence can follow. The least possible sentence I can impose having regard to the seriousness of the offence is one of 7 years, 6 months' imprisonment.
39. You will serve up to half of your sentence in custody and then you will be released. You will serve the remainder on licence. You must keep to the terms of your licence and commit no further offence or you will be liable to be recalled and you may then serve the rest of your sentence in custody.
40. Your sentence will not begin to run until you are taken into lawful custody, whether that be of your own choice or otherwise.

Aurelien Bessot

41. Aurelien Bessot, stand up.
42. You are 47 years old.
43. Your culpability is lesser than Marino's and falls within Category B for a number of reasons. I accept that much of the planning for which you were responsible was legitimate at first, as was the sophisticated nature of the 12 transactions which followed. All of it was lawful and proper, despite your decision to take secret commissions when Marino decided to take that track. Your role in all of it was to carry out Marino's instructions, but he could not have defrauded LAP without you being part of the scheme from the very beginning of the fraud and you playing some role. You had to be "in on it" in order for the secret commissions to be paid, though I accept you were not fully aware of everything that Marino was doing, including some of the secret commissions which Marino took for himself.
44. I have read your letter to me. You are truly remorseful. I accept that it was your energetic enthusiasm for the legitimate business opportunity which FMCP offered which played the larger part in your motivations, and that the primary driver for you participating in these transactions was not personal financial gain. I have considered very carefully the character references offered on your part, and the devastating effect this offending has had on you, your career, your family, your personal life, your well-being and your character. It has robbed you of a career which is the dream of many. Your remorse has been demonstrated through agreeing to repay LAP \$2.8M in the civil proceedings, which is more than all of your part of the secret commissions wrongly taken.
45. You have no previous convictions or cautions and, before this offending, you were of exemplary character. You are married and have a young daughter. Your wife has stood by you throughout, and your daughter is the centrepiece of your life.
46. I make a reduction of 6 months to reflect the delay in bringing you to justice.
47. You entered into a s.73 agreement to assist the Prosecution, and you provided a witness statement and agreed to give King's Evidence at trial. You were not called to give

evidence, but were willing to do so: you agreed to waive legal professional privilege (“LPP”) in relation to your dealings with FMCP in the civil proceedings; FMCP, however, and quite properly, continued to assert LPP which prevented the Prosecution from obtaining and disclosing material which might have enabled a renewed application to call you as a witness. In the circumstances, the Prosecution accept that, after having pleaded guilty, you did all that you could to assist in the prosecution of this case. I accept the Prosecution position. I make a two-thirds reduction to your sentence accordingly.

48. You pleaded “not guilty” at the Plea and Trial Preparation Hearing on 18 November 2019, and the case was first set down for trial in September 2020. You were re-arraigned and pleaded guilty to Count 1 on 5 November 2020. There is a maximum discount of a quarter for a guilty plea entered at this stage, reducing to a maximum of a tenth on the day of trial. The pandemic, of course, intervened in this time. I give you the maximum quarter discount available.
49. The offence in Count 1 is so serious that only a custodial sentence can follow. The least possible sentence I can impose having regard to the seriousness of the offence is one of 15 months’ imprisonment.
50. I have weighed all the relevant factors in considering whether this sentence of imprisonment should result in immediate custody, or whether it is possible to suspend the sentence. I consider it is possible to suspend the sentence for the reasons identified by Mr Barnard KC in his submissions, which I accept. There is no realistic prospect that you will ever offend again. You entered into a s.73 agreement, paid back more than you gained by, and you are deeply remorseful. Your wife and daughter live in France: even regular visiting for them would be difficult if not impossible if you were incarcerated. You present no risk to the public. You have no history of non-compliance with court orders: you have always turned up, even now. Your case falls very significantly short of those where appropriate punishment can only be achieved through immediate imprisonment.
51. It follows that for you, Bessot, there will be a suspended sentence order of two years’ duration. There will be a custodial term of 15 months which will be suspended for two years. If in the next two years you commit any offence, whether or not it is of the same type for which I am sentencing you today, you will be brought back to court and it is likely that this sentence will be brought into operation either in full or in part. I do not do this just to impose any requirements, in all the circumstances of the case, and given the reasons I have found for suspending your sentence.
52. You may sit down.

Yoshiki Ohmura

53. Yoshiki Ohmura, you will 48 years old in a matter of days.
54. Your culpability is different to that of Marino and Bessot. You were not directly involved in any of the structured trades, but I am satisfied such that I am sure your role was, first, for the GAIN trades, to bring about the arrangements in which Ironfly was paid \$3.125M and \$1.1834M, and, second, for the TRAC trade after you had left the Bank Julius Baer group, to interpose CFP, a Swiss company, between Bank Julius Baer, and Ironfly, a Seychelles company, so as to avoid any awkward questions being asked about fees being

paid to an offshore company such as Ironfly. The interposing of CFP in this way served no other purpose. To that extent, I am sure that, without your involvement, it is unlikely that these trades and the payment of the secret commissions to Marino and Bessot via Ironfly and their respective companies would not have stood up to proper scrutiny within Bank Julius Baer. For those reasons I adjudge your culpability as Category B, medium, as Mr Waterman KC submitted.

55. I cannot, however, accept Mr Waterman KC's submission that the level of harm in your case should be reduced based purely on a financial analysis. The guidelines on harm require an assessment of detrimental effect on any victim, whether financial or otherwise. This was a conspiracy, and one which you played an active part. It was as a result of your actions that FMCP embarked on what must, on any view, have been costly and time-consuming civil proceedings against you, Marino and Bessot in an effort to claw back the money that was wrongfully taken. In my judgment, for all those reasons the harm you caused falls squarely within Category 1.
56. There are considerable mitigating factors in your case. I accept that it cannot be said that you were not doing legitimate work in relation to the GAIN and TRAC transactions. But you were looking to set up business on your own outside of Bank Julius Baer, and I am sure your complicity in the transactions which form the basis of your conviction on Count 1 played some part in you seeking to develop business outside of your former employer for your own gain, even where you did legitimate work.
57. You have no previous convictions or cautions and, before this offending, you were of exemplary character. But your reputation now is in ruin, and it is likely you will never be trusted to work in a position of great responsibility again. I have read with great care the character references offered by your father and your sister, and I bear in mind the character references of two of your long-standing friends which were read out at trial. They speak to your honesty, your integrity, your trustworthiness, your devotion to work, the sacrifices made to achieve professional success, and your steadfastness as a friend, a brother, and a son. You are very highly thought of, and this conviction must have come as a great shock to them.
58. I balance that all against the complete lack of insight into your offending, which not even the adverse civil judgment moved, and the lack of remorse which is evident by your absence today. I am sure you knew precisely what was happening with the payment of secret commissions, and that you played your part to ensure that happened, e.g. by channelling the secret commission made on the TRAC trade through CFP.
59. I make a reduction of 6 months to reflect the delay in bringing you to justice.
60. The offence in Count 1 is so serious that only a custodial sentence can follow. The least possible sentence I can impose having regard to the seriousness of the offence is one of 3 years, 6 months' imprisonment.
61. You will serve up to half of your sentence in custody and then you will be released. You will serve the remainder on licence. You must keep to the terms of your licence and commit no further offence or you will be liable to be recalled and you may then serve the rest of your sentence in custody.

62. Your sentence will not begin to run until you are taken into lawful custody, whether that be of your own choice or otherwise.

Ancillary orders

63. There are applications that the Court consider making director disqualification orders against each of you. I grant those applications.
64. The offending in Count 1 is connected with the “promotion, formation and management of a company” as required by s.2 of the Company Directors Disqualification Act 1986, which sets out the relevant nexus. The use of offshore companies of which you were directors to facilitate the taking of the secret fees is precisely the sort of harm that the 1986 Act seeks to protect against. Your offending relates to the conduct of investment business in a highly regulated financial sector, but insofar as the secret fees were concerned, this was not part of the proper, day-to-day function of the companies which with you were connected.
65. Adopting the culpability reasons which I have identified as a basis, I direct that you each be disqualified from acting as a director of any company. For Marino, the period of disqualification is 12 years. For you, Bessot and Ohmura, the period is 5 years each. This means that you must not, without the court’s permission, be a company director or act in the promotion, formation, management or liquidation of any company during this period.

Confiscation proceedings

66. Both Marino and Ohmura are absconders within the meaning of s.27 of the Proceeds of Crime Act 2002. The Prosecution’s application is to proceed under s.27, and I believe it is appropriate to do so. Accordingly, I direct the Prosecution provide a statement under s.16 of the 2002 Act by 21 August 2023.
67. The Prosecution seeks postponement of confiscation proceedings against Bessot under s.14 of the 2002 Act, together with any application for compensation. That application is out of time. There is nothing in the passage of the two years between Bessot’s conviction on 5 November 2020 and the jury’s verdicts on 8 December 2022 which amounts to exceptional circumstances. I do not consider there is any good reason for this Court to exercise its discretion to postpone proceedings against Bessot. I refuse the Prosecution’s application.
68. Bessot, you will pay the applicable Statutory Surcharge.

Reporting restrictions

69. I revoke the previous reporting restrictions imposed in this matter.

Disposals

70. Frederic Marino and Yoshiki Ohmura, warrants remain unexecuted for your arrest. In the usual course, extradition proceedings should be instigated for you to be brought back to England for you to serve your sentences of imprisonment.
71. Aurelien Bessot, you may leave the dock.