

ROYAL COURT
(Samedi Division)

206.

14th November, 1997

Before: F.C.Hamon, Esq., Deputy Bailiff and Jurats
Le Ruez and Le Brocq

A.G.

-v-

Pinewood Home Furnishings, Limited
Colin Anthony Trenear

Pinewood Home Furnishings Limited

1 Count of contravening Article 36 (1) of the Social Security (Jersey) Law 1974, by failing as an employer, to pay Social Security contributions for which it was liable in respect of persons in its employ during contribution quarter A of 1997 (count 1).

Plea: Facts admitted.

Details of Offence:

D2 was director of D1. D2 had two employees, D2 and a third party - Schedule A of 1997 delivered 6 weeks late with no payment. Payment made 4 months late. Reminder letters ignored. D1 and D2 had been prosecuted in Magistrates Court in June 1997 for non delivery and non payment of Schedule D of 1996.

Details of Mitigation:

Only two employees, one D2. No deductions made from other employee's salary for contributions. Liable for rental of shop and flat above in which D2 lived. Dependent girlfriend and two month child. No savings or capital assets. Limited income [c.£250 after payment of rent] dependent on takings.

Previous Convictions:

D1 Social Security (Jersey) Law, 1974 Article 36(1).

Conclusions:

£1,000 fine ; £100 costs jointly and severally.

**Sentence and Observations
of the Court:**

£350 fine; £25 costs, jointly & severally.

Colin Anthony Trenear:

1 Count of Contravening Article 36 (1) of the Social Security (Jersey) Law 1994, by conniving at or consenting to the said company's failure or that the said failure was attributable to negligence by him, as a Director of the said company (count 2).

Plea: Facts admitted.

Details of Offence:

D2 was director of D1. D2 had two employees, D2 and a third party - Schedule A of 1997 delivered 6 weeks late with no payment. Payment made 4 months late. Reminder letters ignored. D1 and D2 had been prosecuted in Magistrates Court in June 1997 for non delivery and non payment of Schedule D of 1996.

Details of Mitigation:

Only two employees, one D2. No deductions made from other employee's salary for contributions. Liable for rental of shop and flat above in which D2 lived. Dependent girlfriend and two month child. No savings or capital assets. Limited income [c.£250 after payment of rent] dependent on takings.

Previous Convictions:

D2 Social Security (Jersey) Law, 1974 Article 36(1).
And numerous other convictions of no relevance.

Conclusions:

£500 fine or 2 months imprisonment in default of payment;
£100 costs, jointly and severally.

Sentence and Observations
of the Court:

£150 fine or 2 weeks imprisonment in default of payment; £25 costs, jointly and severally.

The Solicitor General.
Colin Anthony Trenear on his own behalf
and on behalf of the Defendant Company.

JUDGMENT

THE DEPUTY BAILIFF: Breach of the Social Security Law is rightly regarded as a serious offence. It can often mean that employees pay money which is retained by employers. That is not the case here. Mr. Trenear told us he only had one employee and did not deduct from his wages his Social Security contribution; in any event that employee has now left him and he now works alone.

Now, Mr. Trenear, we would say this: to be in business means to have responsibilities to society. We have heard from you that you have liabilities which, on the face of it, exceed your income and on 13th June, you were fined by the Magistrate for similar offences. It was a nominal fine and - perhaps surprisingly - we do not know the reasoning behind it. It is clear that we cannot impose a fine which is beyond the means of an accused to pay. The Social Security contribution is now paid up and we intend to impose a fine which is not compatible with the offence but is perhaps compatible with the means of the offender.

We are going to impose a fine of £350 on the company and £150 or two weeks imprisonment in default of payment on you and we are going to impose costs of £25. We assume you will need time to pay and we are going to order that you pay off the fine at the rate of £50 per week. If you cannot meet that commitment you must come back to Court. It is no good going to see the Viscount; it is no good hoping it will go away; if you cannot pay the fine you must come back to Court and I have to say this: if there is another breach the Court may take a different view of the matter.

Authorities

A.G. -v- Information Management Services (25th October, 1996) Jersey Unreported.
A.G. -v- Rowency Holdings Ltd. (21st February, 1997) Jersey Unreported.