

SUPREME COURT OF QUEENSLAND

CITATION: *R v Quinn* [2002] QCA 338

PARTIES: **R**
v
QUINN, David Rupert Frederick
(appellant/applicant)

FILE NO/S: CA No 117 of 2002
DC No 1012 of 2002

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction and Sentence

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 6 September 2002

DELIVERED AT: Brisbane

HEARING DATE: 1 July 2002

JUDGES: Davies, Williams and Jerrard JJA
Separate reasons for judgment of each member of the Court,
each concurring as to the orders made

ORDER: **1. Dismiss appeal against conviction.**
2. Dismiss application for leave to appeal against sentence.

CATCHWORDS: CRIMINAL LAW - PARTICULAR OFFENCES -
PROPERTY OFFENCES - FALSE PRETENCES AND
OTHER FRAUDS AND IMPOSITIONS - FALSE
PRETENCES - FALSE PRETENCE OR PROMISE -
GENERALLY - where the appellant sold an aircraft -
whether the appellant falsely pretended that he and his wife
solely owned the aircraft - whether the appellant falsely
pretended that he owned the aircraft unencumbered by an
unregistered bill of sale

CRIMINAL LAW - APPEAL AND NEW TRIAL AND
INQUIRY AFTER CONVICTION - PARTICULAR
GROUNDS - UNREASONABLE OR INSUPPORTABLE
EVIDENCE - WHERE APPEAL DISMISSED - where the
appellant sold an aircraft - where argued at trial that the
appellant either falsely pretended that he and his wife solely
owned the aircraft or that he owned the aircraft
unencumbered - whether the jury's verdict was unreasonable
or cannot be supported by the evidence - whether the
directions of the learned trial judge were not entirely
appropriate or consistent directions to find one or other of the
representations

MORTGAGES - CHATTEL SECURITIES - BILLS OF SALE - CONSEQUENCES OF NON-REGISTRATION AND FAILURE TO RENEW - AVOIDANCE - QUEENSLAND - where aircraft owned by two co-owners - whether the aircraft was encumbered by an unregistered bill of sale over the aircraft by one of the co-owners

Bills of Sale and Other Instruments Act 1995 (Qld), s 18(1)

Criminal Code (Qld), s 427

Property Law Act 1974 (Qld), s 41

Bluecorp Pty Ltd (in liq) v ANZ Executors and Trustee Company Limited (1995) 18 ACSR 566, considered

Ex parte Dalgety Farmers Limited [1987] 2 QdR 481, considered

First National Securities Ltd v Hegerty [1985] QB 850, considered

Guthrie v ANZ Banking Group Ltd (1991) 23 NSWLR 672, considered

National Commercial Banking Corp of Australia Ltd v Hedley (1984) 3 BPR 9477, considered

COUNSEL: G P Long for appellant/applicant
C W Heaton for respondent

SOLICITORS: Legal Aid Queensland for appellant/applicant
Director of Public Prosecutions (Queensland) for respondent

- [1] **DAVIES JA:** By notice of appeal filed 17 April 2002 the appellant appealed against his conviction on 9 April 2002 of obtaining money by false pretences between 1 December 1995 and 16 March 1996 and seeks leave to appeal against the sentence imposed for that offence. His counsel indicated to this Court that he did not intend to pursue the application for leave to appeal against sentence and accordingly it should be dismissed.
- [2] The appellant was charged under former s 427 of the *Criminal Code*, the indictment being in the following form:
"That on a date or dates unknown between the first day of December, 1995 and the sixteenth day of March, 1996 at Gympie in the State of Queensland, David Rupert Frederick Quinn, by falsely pretending to Matthew James Robinson that a Hughes Light Wing Aircraft registered number 25-0230 was solely owned by the said David Rupert Frederick Quinn and Gloria Wilson-Quinn and that the said Aircraft was owned unencumbered obtained from the said Matthew James Robinson \$25,000, with intent thereby to defraud."
- [3] As appears from that indictment it was alleged that the appellant made two false pretences: the first that he and his wife solely owned the aircraft; and the second that the aircraft was owned unencumbered. Mr Long, for the appellant, conceded that the jury were entitled to find the appellant guilty of false pretences under the

above section in either of two events. The first was if they were entitled to conclude that, at the material time, a person other than the appellant and his wife was a part owner of the aircraft and the appellant represented to Mr Robinson that the aircraft was solely owned by him and Mrs Quinn. And the second was if, at the material time, the aircraft was encumbered and the appellant represented to Mr Robinson that it was owned unencumbered. He rightly conceded that either misrepresentation was sufficient. And he conceded that, on the facts of this case, if either of these misrepresentations was proved, it followed that the appellant had obtained the money from Mr Robinson with intent to defraud him.

[4] The appeal is brought on the ground that the jury's verdict is unreasonable or cannot be supported by the evidence. However Mr Long also relied, though not as a separate ground, on what he submitted were not entirely appropriate or consistent directions as to the need to find one or other of these representations.

[5] The factual basis of the appeal concerned a purported sale by the appellant and his wife of a one-half share of a light wing aircraft registered number 25-0230 to Matthew Robinson in late February or early March 1996. The agreement for the sale, which was oral, was recorded in a document, signed by those three parties on 15 March 1996 but incorrectly dated 15 March 1995,¹ described as "Receipt of Payment", the relevant part of which provided:

"Received this date from Matthew Robinson the Sum of \$25,000 being full payment for one-half share of Lightwing Aircraft Registration No 25-0230.

Confirmation of the completion of a partnership agreement between David Quinn, Matthew Robinson & Gloria Wilson-Quinn is Guaranteed to the mutual satisfaction of all parties in due course.

Confirmation of a lease agreement between Quinn Aviation and the partnership whereby Quinn Aviation is to be the sole operator of the Aircraft is also guaranteed to the mutual satisfaction of all parties in due course.

Bank Account and Keyman insurance as discussed is to be effected as soon as possible by the partnership."

[6] In about January that year, whilst Mr Robinson was taking flying lessons from the appellant, the appellant told him that he owned that aircraft and that he had been repairing it. From some time in February discussions took place between them about the prospect of Mr Robinson purchasing a half interest in the aircraft, from which, the appellant said, he would derive income from the aircraft being leased to the appellant for use in his flying school. From these discussions followed a meeting in late February or early March between the appellant, his wife, Mr Robinson and his mother at which the agreement was made. Mr Robinson's mother was present because his parents were to guarantee finance which he would obtain to enter into the transaction.

[7] At that meeting, according to both Mr Robinson and his mother, both Mr and Mrs Quinn stated that they owned the aircraft; that is, they answered the question

¹ Before this Court, and apparently at the trial, it was common ground that the meeting referred to [6] and [7] occurred in late February or early March 1996 and that the document referred to in [5] was executed in March 1996.

"who owns the plane", "we do". Initially in his evidence Mr Robinson said that they also said that it was unencumbered and that they owned it outright. However in cross-examination he expressed uncertainty about this, his mother did not refer to this matter and the trial proceeded on the basis that that representation was alleged to be implied from the question and answer which I have quoted.

- [8] There was also some further discussion at that meeting about matters later recorded in the second and third paragraphs in the written receipt referred to in [5], the partnership and the lease of the aircraft, and about the likely profits which Mr Robinson would earn from his share of the lease payments. It was in the context of the proposed sale to Mr Robinson of a one-half share in the aircraft and of an intended partnership between the appellant, his wife and Mr Robinson for the purpose of leasing the aircraft to the appellant for reward that the appellant made the representation that he and his wife owned the aircraft.
- [9] There was some evidence that in February and March 1996, there were two other part owners of the aircraft, Mr Church and Mr Thomas. However it was not entirely clear whether, at the time of this meeting, Mr Church was still a part owner.
- [10] There does not appear to be any similar doubt that, at that time, Mr Thomas was the owner of a one-seventh interest in that plane, an interest which he had purchased from the appellant, or from the appellant and his wife, for the sum of \$5,000 by two instalments on 11 and 13 August 1994. That purchase was evidenced by a document in writing dated 13 August 1994 purporting to be an agreement for sale of that interest in the plane from "Gympie Airsport Flying School" to Mr Thomas. It was signed by Mr Thomas, on the one hand, and on the other by the appellant "for the Gympie Airsport Flying School". There was no evidence in the case as to whether that was the name of a partnership between the appellant and his wife or whether it was simply a name then assumed by the appellant for the purpose of carrying on his business of a flying school.
- [11] There was also evidence that there was an unregistered bill of sale dated 25 November 1994 between the appellant and AVCO Financial Services Ltd by which the appellant purported to assign to AVCO the property consisting of the aircraft and that that bill of sale remained in force in February and March 1996. A copy of such a bill of sale over the aircraft, signed by the appellant as grantor, was in evidence.
- [12] The conclusion from the evidence referred to in [9] and [10] that, in February and March 1996, Mr Thomas had a one-seventh interest in the aircraft was not disputed by the appellant in this Court. The conclusion from the evidence referred to in [11] that the aircraft was encumbered was disputed in this Court. However the question upon which contradictory evidence was given on this question at the trial by the appellant, on the one hand, and officers of AVCO, on the other, as to whether, as those officers said, the bill of sale was given by the appellant to AVCO to secure a loan by AVCO to the appellant or whether, as the appellant said, it was executed in anticipation of being used for a purpose for which it was never used and so did not ever purport to be a security given by the appellant for a loan, was plainly resolved

by the jury against the appellant² and the contrary was not seriously argued in this Court. Nor was it contended that at any material time that loan had been discharged.

- [13] The question whether the aircraft was encumbered by the unregistered bill of sale then depends on the effect in law of a purported bill of sale over a chattel by one of two co-owners. A conveyance or mortgage purporting to be one of the entirety by one co-owner is treated as a conveyance or mortgage of that co-owner's share³ and a bill of sale by one of two co-owners has the effect of such a conveyance notwithstanding that it is unregistered.⁴ Consequently, as against the appellant, AVCO had all the rights of a grantee under a bill of sale of the appellant's undivided share in the aircraft. It was, as against the appellant, the legal owner of the share which the appellant then owned, subject to the appellant's equity of redemption. It was therefore, to the extent of that undivided share, as against the appellant an encumbrance of the aircraft.
- [14] It is true that AVCO's unregistered security interest over the aircraft had no effect against Mr Robinson,⁵ but that meant only that AVCO's interest could not have affected the share acquired by Mr Robinson or, for that matter, the share, if any, still held by Mrs Quinn.⁶ That is, it could not have affected either of their interests as co-owners. However, because by the bill of sale AVCO became the owner of the appellant's undivided interest, as against other co-owners AVCO had all the rights of a co-owner of a chattel including a right to apply to the court for an order for its sale and distribution of the proceeds.⁷ In a very relevant sense, then, the aircraft was, in February and March 1996, encumbered by a bill of sale to AVCO.
- [15] Mr Long's principal argument in the appeal started with the propositions that, because the purported sale of an interest in the aircraft to Mr Thomas and the purported encumbrance over the aircraft to AVCO were, in each case, given by the appellant alone,⁸ they did not bind Mrs Quinn or affect her interest in the aircraft. From that he submitted that, as Mrs Quinn at all relevant times retained a one-half interest in the aircraft, unencumbered, the appellant and Mrs Quinn between them were capable of transferring an unencumbered one-half interest in the aircraft to Mr Robinson and that therefore he was not defrauded. Mr Long put these submissions in terms of context; that the representation by the appellant that he and

² The jury gave a special verdict to the effect that they found the appellant guilty on the basis of a misrepresentation that the aircraft was unencumbered. It follows that they must have found that the appellant intended to encumber it by the bill of sale.

³ *First National Securities Ltd v Hegerty* [1985] QB 850 at 863; *Guthrie v ANZ Banking Group Ltd* (1991) 23 NSWLR 672 at 679; *National Commercial Banking Corp of Australia Ltd v Hedley* (1984) 3 BPR 9477 at 9482 - 9483.

⁴ *Bluecorp Pty Ltd (in liq) v ANZ Executors and Trustee Company Limited* (1995) 18 ACSR 566 at 577; *Ex parte Dalgety Farmers Limited* [1987] 2 QdR 481 at 493.

⁵ Section 18(1) of the *Bills of Sale and Other Instruments Act* 1955 (Qld).

⁶ As to which see [10] and [16].

⁷ *Property Law Act* 1974 s 41. Albeit that, as between it and the appellant it could exercise those rights only in the event of default under the bill of sale.

⁸ See, however, [10].

his wife owned the aircraft was made in a context in which, between them, they could sell and transfer a one-half interest in it to Mr Robinson.

- [16] Whilst it may be true that the appellant and his wife, between them, could have conveyed a one-half interest in the aircraft to Mr Robinson because, whatever the appellant may have done with his interest, Mrs Quinn owned a one-half interest which could have been transferred to Mr Robinson, that was plainly not the context in which the representation by the appellant was made. On the contrary, as the receipt document later evidenced, it was made in the context of a proposed partnership between the appellant, Mrs Quinn and Mr Robinson to lease the aircraft to the appellant for use in his flying school business; and it is plain that the partnership agreement could have been entered into only if the appellant, his wife and Mr Robinson were the only owners of the aircraft. It is also plain that the existence of a bill of sale over the appellant's undivided share, with the powers which AVCO had thereunder on default by the appellant, would plainly have been a material fact which, if known by him, would have inhibited any decision by Mr Robinson to enter into this agreement.
- [17] It follows that to say, as the appellant in effect did, that he and his wife owned the aircraft was, in the context in which it was made, a false pretence in both respects alleged in the indictment because it deliberately omitted two facts which falsified what was said. Those facts were that there was at least one other co-owner whose ownership would have effectively prevented the making of the proposed partnership and lease agreements; and that the appellant had granted a bill of sale over his undivided share with the further risk which that posed for the proposed agreements.
- [18] I mentioned earlier that Mr Long also relied, in support of the ground that the verdict was, in effect, unsafe and unsatisfactory, upon what he submitted were not entirely appropriate or consistent directions given to the jury by the learned trial judge. Mr Long submitted that, by these directions, the learned trial judge failed to clearly bring home to the jury the need to find, in the representation made, implicit representations that the appellant and his wife were the sole owners of the aircraft and that there was no encumbrance over it.
- [19] In the first place he pointed to statements in the directions to the effect that the appellant said that he owned the plane whereas the representation relied on was that it was he and Mrs Quinn who together owned the plane. It is true that, on some occasions in his summing up, the learned trial judge referred to the representation as being a representation by the appellant that he owned the aircraft. However I do not think that this would have misled or confused the jury. The relevant questions were whether anyone other than the appellant and his wife had an interest in the aircraft as owner or encumbrancee and, if so, whether the appellant's statement that he and his wife owned it was a false pretence that they were the sole owners or that there were no encumbrances. It did not matter greatly, in referring to these questions, whether the learned trial judge referred to the ownership of the appellant or the ownership of the appellant and his wife.
- [20] Mr Long's second criticism of his Honour's summing up was directed to what he submitted was a failure to sufficiently explain to the jury the need to find implicit in the statement by the appellant that he and Mrs Quinn were the owners of the aircraft, that they were the sole owners, and that no interest in the aircraft was encumbered. In my opinion his Honour plainly did both. He explained to the jury

that silence may distort a positive assertion and that it may be a false pretence not to give a complete answer where that might convey only a half truth. He then explained to them that they could conclude that, in the circumstances of this case, the representation by the appellant that he and Mrs Quinn owned the aircraft conveyed a false impression, as understood by Mr Robinson, that it was owned solely by them and that there was no bill of sale over the aircraft or over his interest in the aircraft.

- [21] In my opinion there was nothing in his Honour's summing up which assisted Mr Long's submission that the verdict was unsafe and unsatisfactory and it follows from what I have already said that, on the evidence which the jury were entitled to accept, the case against the appellant was proved beyond reasonable doubt. I would therefore dismiss the appeal.

Orders

1. Dismiss the appeal against conviction.
2. Dismiss the application for leave to appeal against sentence.

- [22] **WILLIAMS JA:** I have read the reasons for judgment of Davies JA and there is nothing I wish to add. I agree with the orders proposed.

- [23] **JERRARD JA:** I have read and respectfully agreed with the reasons for judgment and proposed orders of Davies JA.