

**IN THE DISTRICT COURT  
AT AUCKLAND**

**CRI-2010-004-8862**

**THE QUEEN**

**ON THE PROSECUTION OF THE SOLICITOR- GENERAL**

**v**

**MALCOLM DUNCAN MAYER**

Hearing: 29 August, 2013, 8-11, 15-17, 21-24, 29-31 October, 2013  
1,4-5, 7, 12 and 13 November, 2013

Appearances: J Dixon with Ms A Boberg for the Crown  
G Bradford and Ms S Buckley for the Accused

Verdict: 20 December 2013

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**REASONS FOR VERDICTS OF JUDGE B A GIBSON**  
**[A schedule of verdicts returned appears at the end of these written reasons]**

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**Schedule of Verdicts**

## **Introduction**

[1] Trustees Executors Limited ("TEL") is a finance company based in Wellington. It lends monies raised from investors by way of loans secured by mortgages over land. It is a second tier lending company, lending primarily to property developers and investors.

[2] The accused, Malcolm Mayer was, at the material times, an experienced property investor and developer who had been operating in the central Auckland property market for a number of years. He was interested principally in the acquisition of commercial properties and their redevelopment as residential units. The Crown allegations are that in 2003, and then again between 2006 and 2007, Mr Mayer forwarded loan applications to TEL, supported by false documentation, to enable funds in excess of those to which the applicant would be entitled to be advanced by way of mortgage for the acquisition of 26 properties in the Auckland area.

[3] The monies advanced were in excess of \$50 million, the majority of which have been recovered by TEL through the exercise of its power of sale under the terms of the mortgages secured over the properties or collaterally secured against other properties owned by Mr Mayer.

[4] There were some 26 properties involved in the transactions the subject of the indictment and for which TEL provided mortgage assistance for the purchase. The information provided to TEL by Mr Mayer, either himself or by Mr S L W Turnbull, who allegedly participated in a number of the frauds with Mr Mayer, included fake or 'dummy' agreements for sale and purchase of land using names that did not reflect the true vendor or purchaser of the properties. The Crown alleged the intention of providing these agreements was to give the impression to TEL that the transactions were arms length transactions rather than one's involving Mr Mayer or his co-accused Mr Turnbull. These agreements often showed purchase prices considerably higher than those for which the property had actually been purchased. This had the effect of enabling Mr Mayer and Mr Turnbull to borrow more monies than would have been lent to them by TEL had they known the true situation.



[5] Further, the Crown claimed the application forms submitted to TEL by Mr Mayer or Mr Turnbull falsely represented that the purchaser was contributing significant funds to the purchase, when in fact they were not. Assets were overstated in the application form and liabilities understated.

[6] The Crown also alleged that Mr Mayer and Mr Turnbull made false representations to TEL as to the use of the funds which enabled them to borrow more than was needed to settle the actual underlying purchase. Overall, the Crown's position was the transactions involved the use of false documentation, effectively sham documentation, which enabled Mr Mayer and Mr Turnbull to borrow considerably more monies than they would have been able to obtain had the true position been known to TEL.

[7] The classic definition of a sham was given by Diplock LJ in *Snook v London and West Riding Investments* [1967] 2 QB 786, 802 wherein he said:

“I apprehend that, if it has any meaning in law, it means acts done, or documents executed by the parties to the “sham” which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create.”

[8] Although jointly charged with Mr Mayer in 27 of the 36 counts, 10 being laid as alternatives, Mr Turnbull was not tried with him, he having left the jurisdiction some years ago and was last known to be residing in Singapore.

[9] Mr Mayer's defence essentially was that the transactions were *bona fide* transactions, or that if they were not, he honestly believed them to be and he had no reason to believe that the scheme was unlawful. He thought there was sufficient equity in the properties and other properties he owned to protect TEL's position as first mortgagee. He alleged he was entitled to utilise the 'equity' created when he was able to buy a property cheaply, as he saw it, and he said he believed using a second agreement created after the first agreement for a purchase enabled these properties to come back into his 'books' at a higher, and true value. He denied any dishonest use of the documents concerned and believed he was entitled to use them in the way they were used. Many documents were forwarded to TEL by Mr Turnbull or by relatives of his wife acting as purchasers, sometimes under cover of a letter signed by Mr Mayer, but insofar as the accompanying documents could be said to

contain false information he asserted that he had not read those documents and was unaware of their content.

### **Judge alone trial**

[10] This matter was tried by me as a Judge sitting without a jury. The nature of the verdict to be delivered at such a trial, especially a long and complex fraud trial, has been the subject of several Court of Appeal decisions, in particular *R v Connell* [1985] 2 NZLR 233, *Wenzel v R* [2010] NZCA 501 and *Eide v R* [2004] NZCA 215 where at para [21] of that decision William Young J, in delivering the judgment for the Court, and with reference to verdicts by Judge alone in fraud prosecutions, said:

“If the verdict is guilty, the Judge should explain clearly the features of the particular scheme which he or she finds to be dishonest. There is a legitimate public interest in having the details of such a scheme laid out in comprehensive form. Similar considerations apply if the verdict is not guilty. Further, some regard should be had to how the case will be addressed on appeal. A judgment which is so concise that some of the key facts in the case are required to be reconstructed by this Court on appeal is too concise ....all of this points to the need for a judgment to be able to read as a stand-alone document.”

### **The indictment**

[11] The indictment contained 36 counts, 10 counts being laid as alternatives. Mr Mayer was charged solely in respect of the first seven counts, these related to transactions involving TEL mortgages that were entered into from 2003 to late 2006. For counts 8 to 16 he was charged jointly with Mr S L W Turnbull in relation to a series of transactions involving loan advances obtained from TEL between September, 2006 and May 2007. Counts 17 to 36 were counts where he was jointly charged with Mr Turnbull over a series of transactions between February, 2007 and August, 2007 with each count of dishonestly using a document an alternative to a charge of using forged documents. The onus of proof and the standard of proof, to the required standard as in any criminal trial, rests on the Crown.

[12] The indictment contained two types of charge, one being of dishonestly using a document and the other, in the later counts of using forged documents and for which charges of dishonestly using a document were alternatives.

[13] Section 228(b) of the Crimes Act 1961 ('the Act') the using a document count, provides that:

"Everyone is liable to imprisonment who, with intent to obtain any property, service, pecuniary advantage, or valuable consideration – dishonestly and without claim of right, uses or attempt to use any document."

[14] What the Crown must prove, beyond reasonable doubt, in respect of each count of dishonestly using a document is that:

- (a) The accused used a document
- (b) with intent to obtain a pecuniary advantage for themselves or any other person;
- (c) dishonestly; and
- (d) without claim of right.

[15] Actual use of the document in the sense of physical possession or physically touching the document is not essential. In *R v Thompson* [2005] 3 NZLR 577 (CA) it was held that use need not be by the accused in person as where an offender deliberately uses an agent to perform the *actus reus* of the crime the offender will generally be treated as a principal in terms of s 66(1)(a) of the Act.

[16] Pecuniary advantage was defined by the Supreme Court in *Hayes v R* [2008] NZSC 3 at [16] as "anything that advances a person's financial position ... it is that enhancement which constitutes the element of advantage."

[17] "Dishonestly" is the subject of a statutory definition under s 217 of the Act, the definition reading:

"**Dishonestly**, in relation to an act or omission, means done or omitted without a belief that there was express or implied consent to, or authority for, the act or omission from a person entitled to give such consent or authority."

[18] The issue of belief as to whether an act or omission may be undertaken is, according to *Hayes v R* at para [34], not one that requires the Court to consider reasonableness. The existence of the belief is the subject of the enquiry, not whether the belief was reasonably held, with the Supreme Court saying at para [34]:

"There is no suggestion that the belief has to be reasonable based on reasonable grounds. It is existence of the belief that matters not its reasonableness."

Also at para [43] the Court added:

“The objective facts of the particular case may be such that the jury can properly infer that the accused had a dishonest mind unless he or she can raise a reasonable doubt in the basis of a relevant but mistaken belief.”

[19] The Crown must prove that Mr Mayer, in relation to the counts dealing with dishonestly using a document also acted without claim of right, that also being the subject of a statutory definition at s 2(1) of the Act which states:

“**Claim of right**, in relation to any act, means a belief at the time of the act that a proprietary or possessory right in property in relation to which the offence is alleged to have been committed, although that belief may be based on ignorance or mistake of fact or any matter of law other than the enactment against which the offence is alleged to have been committed.”

[20] As with the element of “dishonestly”, this also has a subjective standard as the qualifying belief does not need to be based on reasonable grounds or be reasonable in itself: see *R v Hayes* at para [35]. In *Adams on Criminal Law* the learned authors at CA 2.04.02 summarise the requirements as follows: first, the belief must be in a proprietary or possessory right in property; second, the belief must be about the property in relation to which the offence is alleged to have been committed; third, the belief must be held at the time of the conduct alleged to constitute the offence; finally, the belief must be actually held by the defendant.

[21] The defence, in relation to each count of dishonestly using a document argued, both through Mr Mayer in his evidence, and in submission that he honestly believed that the scheme which I am about to outline was one that he was entitled to undertake and that the complicated series of transactions set out to disguise the true parties and for the counts that were the subject of first and third category of charges the actual price the property was acquired for, were not undertaken with the intention of misleading TEL but for legitimate reasons.

[22] Counts 18, 20, 22, 24, 26, 28, 30, 32, 34 and 36 were counts of unlawfully using a document laid as alternatives to counts 17, 19, 21, 23, 25, 27, 29, 31, 33 and 35. These latter counts were counts of using forged documents pursuant to s 257(1)(a) of the Act which provides:

“**257 Using forged documents**

- (1) Everyone is liable to imprisonment for a term not exceeding 10 years who, knowing a document to be forged, -
  - (a) uses the document to obtain any property, privilege, service, pecuniary advantage, benefit, or valuable consideration; or
  - (b) uses, deal with, or acts upon the document as if it were genuine; or
  - (c) causes any other person to use, deal with, or act upon it as if it were genuine.”

[23] The Crown must prove, to the required standard of proof, the following elements, namely that the accused:

- (a) knowing the document to be forged;
- (b) used the documents;
- (c) to obtain property or a pecuniary advantage.

[24] A forged document is defined by s 256 of the Act as being a false document with those words the subject of a definition under s 255. The correlation between the three sections was explained in *Li v R* [2008] NZSC 114 at para [21] as follows:

“The introductory words of s 257 require the user to know that the document is forged. Although the definition of “false document” is not expressed in s 255 to apply to s 257 and there is no reference in s 257 to “false document” the structure of the Act is that forgery is defined by s 256. These provisions are necessarily read together. The meaning of false document is carried into s 257 with reference to “forged documents” in s 257. A false document is one that in itself purports to be something that it is not. It is inherently deceptive on its face. Therefore, reference to “forged document” in s 257 is synonymous with “false document”, defined at s 255 of the Act. Under s 255, a false document must include more than just false information. In *Walsh v R* [2007] 2 NZLR 109 the Supreme Court said:

“The lie must be one or more of the type specified in the s 263(1) definition which is concerned with falsity of authorship not falsity of content. With that significant caveat borne in mind, the expression may assist in an understanding of the distinction between false representations and fraudulent representations, and forgery.”

### **General background**

[25] At the time of his trial Mr Mayer was 57 years of age and unemployed, but had been, until the last few years, a property developer and investor. He said in his evidence that he acquired his first property at 20 years of age and had been involved in the acquisition, development and sale of property since that time including developing apartment complexes and the like. He specialised in properties in the central city, mostly in the Newton/Grafton area and preferred residential properties

because of the higher yield they provided, notwithstanding the more ‘hands-on’ management required. It is clear that for much of the time that he was involved in property development and investment he was assisted by his wife who attended to much of the clerical work needed. Mr Mayer acquired a reputation as a shrewd investor with a good eye for a property being sold at undervalue and became well known among real estate agents and other persons employed in the industry as such.

[26] He tended not to use valuers for the purpose of entering into a purchase preferring to undertake his own due diligence and rely on his own estimate of value, but did use valuers for mortgage applications. All of the transactions the subject of separate counts in the indictment involved lending on properties acquired by the borrower but where Mr Mayer or his co-accused, Mr Turnbull, had an underlying interest which was not disclosed to the lender, TEL. Valuations had to be obtained to support the mortgage applications in each instance. The Crown did not lead valuation evidence challenging the accuracy of the valuations but the relevance of the valuations to the prosecution was that the value assessed by the valuer was a factor in TEL’s decision as to how much would be lent on the subject property as its policy for commercial properties was to lend no more than 65% of the purchase price or the valuation, whichever was lower or 80% using the same formula if the property was for residential investment purposes. It also had a policy of not lending more than \$4 million in total to a borrower or any associated entity for the sensible reason of wanting to spread its risk in terms of possible mortgage defaults.

[27] The Crown alleged Mr Mayer was aware of TEL’s lending criteria and devised ways of circumventing it, by himself in relation to the first seven counts and with Mr Turnbull in respect of most of the remaining counts. Their *modus operandi* included the use of ‘dummy’ agreements for sale and purchase where an initial genuine agreement would be entered into to purchase a property by Mr Mayer and/or Mr Turnbull and by using someone such as a relative or employee as the purchaser or a separate entity they controlled. That person, or a company with the underlying ownership hidden, would then enter into an agreement for sale and purchase to sell the property to an entity controlled by Mr Mayer or Mr Turnbull or a relative purchasing in effect as their agent. Only the second agreement would be disclosed to TEL and would give the appearance of an ‘arms length’ transaction. The purchase price for the property would be different to that of the first agreement, except for some in the second category of transactions, the subject to counts 8 to 16 where for

some counts only one agreement was used. A valuation would be obtained. Other than in the second category transactions the valuation would be higher than the purchase price shown in the second agreement for sale and purchase. The first and second agreements would generally have the same possession date or settlement date.

[28] TEL would then advance 65% of either the lesser of the second agreement for sale or purchase, the 'dummy' transaction, or of the valuation for the property or up to 80% if the property was residential but was to be used for investment purposes. TEL was led to believe the mortgage advance was to be used to settle the second transaction but the monies were used to effect the purchase of the first "genuine" transaction, details of which were kept from TEL, and a surplus was often produced which was able to be utilised for other purposes by Mr Mayer, and by Mr Turnbull in respect of the counts for which he was jointly charged. The surplus or 'over-lending' was not disclosed to TEL.

[29] TEL believed the properties acquired were used for property investment and a number of leases were created with entities associated with Mr Mayer, or in the name of his wife's relatives, to show a notional income stream. Copies of these leases were then given to TEL or the valuer. The valuer would use the payments shown in the lease to calculate the market value of the property.

[30] Many of the second or 'dummy' agreements for sale and purchases contemplated the transfer or sale of properties by the purchaser, who would be fronting the transaction for Messrs Mayer and/or Turnbull and the contract would usually be expressed to be conditional on these transactions occurring as part of the overall consideration. However there was never any transfer of these properties and in many cases the properties were never owned by the person said to be purchasing the property which TEL was being asked to fund. Secondly, assets and liabilities in the mortgage application statement were incorrect. Assets were overstated. Liabilities were either understated or not revealed at all. Documents were created in an attempt to demonstrate to TEL that the borrower had the necessary income to help support the loan.

[31] The documents used, particularly in the creation of the agreements for sale and purchase forwarded to TEL and various leases, were often 'cut and paste'

documents where signatures were taken from other documents and pasted onto agreements or leases and then faxed as part of the documents supporting the application to TEL. These documents were found at Peace Tower, an office and apartment building in Symonds Street, Auckland at which Mr Mayer had offices on the 12<sup>th</sup> floor and Mr Turnbull had his offices on the 7<sup>th</sup> floor. Mr Turnbull allowed a Real Estate agent, Noel Rogers of Focus Real Estate to use part of the office. Many of the documents used in the prosecution were found on the 5<sup>th</sup> floor together with offer documents which clearly originated from Mr Turnbull.

[32] Mr Turnbull was an architect who with his wife Monica de Magalhaes had emigrated from South Africa. Ms de Magalhaes worked for a number of years for Mr Mayer as a property manager and dealt with tenants in some of his apartment buildings. Initially this was fulltime but in the last few years part-time. She and her husband had also become involved in property development, several of which projects had failed.

[33] The second category of transactions, the subject of counts 8 to count 16 were transactions where Mr Mayer sold properties to Mr Turnbull. He did so, he said, because he anticipated his marriage failing and he wanted to rationalise his property holdings and also retain some interest in the properties by sharing in the profit for the same when they were on-sold. It was anticipated that Mr Turnbull, after acquiring the properties, would develop them and increase their value. Consequently the same *modus operandi* was used with Mr Turnbull nominating relatives of his wife, who was of Portuguese descent, as the purchasers. Many of the purchasers were elderly or young persons in their 20s without any substantial assets, but they were able to borrow large sums of money from TEL as the transactions could be made to fit within TEL's mortgage criteria by a combination of the methods already referred to. The use of these purchasers, without any obvious link to Mr Turnbull, enabled the \$4,000,000 cap on lending to any one borrower or related entity to be exceeded. Mr Mayer, who had the confidence of TEL, would refer these purchasers to them, assisting Mr Turnbull in the obtaining of funds by deception.

[34] Mr Mayer would also enter into a separate deed with Mr Turnbull whereby he was to share in the profit in relation to each transaction, the agreement providing that a caveat was not to be registered and that Mr Mayer could call for a mortgage securing the money left in if he wished to do so. The existence of the agreement was



not disclosed to TEL by either Mr Mayer or Mr Turnbull but interest on the outstanding principal sum was required to be paid so that, the Crown alleged, yet another liability was not disclosed to TEL.

[35] The third category transactions as represented by counts 17 to 36 were transactions entered into by purchasers acting on behalf of Mr Turnbull, or on three occasions by Mr Mayer's nominated purchasers when Mr Turnbull had been unable to proceed with a transaction. It had been intended these properties would belong to Mr Turnbull, and Mr Mayer was to be paid a sum of money for finding the properties for him. The same method of keeping the first genuine agreement from TEL and then creating a subsequent agreement for sale and purchase in the name of a 'dummy' purchaser to disguise Mr Turnbull and/or Mr Mayer's interest was used, leases were constructed to demonstrate to the valuer an income stream which could be relied on for valuation purposes, the purchase price for the agreement was higher than the original purchase price and TEL lent without realising that the monies were to be used to settle the first agreement, or that there would be a surplus of funds, or that Mr Mayer or Mr Turnbull were the underlying purchasers.

[36] The scheme came unstuck as a result of the most recent global financial crisis. A number of tenants at the properties of both men vacated, replacement tenants could not be found, the buildings declined in value and eventually the mortgages were not paid. TEL then moved to sell the properties and was able to recover most of the monies advanced although some losses were suffered. Overall some \$50 million of TEL mortgage funds had been advanced on the security of the various properties.

### **Mr Mayer's interview**

[37] Mr Mayer instructed real estate agents to assist him in selling the mortgaged properties once it became apparent that he could no longer service them and that TEL was taking steps to recover its monies. He instructed a real estate agent, Dermott Nottingham, to act for him on the sale of the properties and also to assist him with the problems he was by then having with TEL. Members of Mr Nottingham's firm, Remax Realty later uplifted documents from the 5<sup>th</sup> floor at Peace Tower and eventually handed them to the Serious Fraud Office. Subsequently they accepted instructions from TEL to sell the properties.

[38] Mr Nottingham arranged for a reporter, Mr A B Wall, to interview Mr Mayer on 5 September, 2009. Mr Wall was a reporter for the Sunday Star-Times and a story about Mr Mayer based on the interview was published in that paper on 6 September, 2009. Mr Mayer accepted he was aware of the TEL limit of lending per entity and insofar as the use of ‘dummy’ purchasers identified as members of his wife’s family or staff members, or members of Ms de Magalhaes and her husband’s family, he said that TEL was aware there were family members and there was a linkage but they did not ask and he did not tell, saying “As Dermott has pointed out to me that I didn’t think at the time there was anything significantly wrong in that but as Dermott has pointed out to me as well, there was obviously poor judgement on my part.”

[39] Mr Mayer also said he was aware TEL held him in high regard and trusted his judgement. He also agreed the agreements for sale and purchase shown to TEL were entered into using persons who would not have a beneficial interest in the property but so they could borrow from TEL without its \$4 million cap not seen to be breached. He said he was guilty of omission in relation to the future settlement agreements with Mr Turnbull by not disclosing them to TEL and overall saw his actions as “crimes of omission” He accepted he had misled TEL but said that at the time he did not think it was significant or hurtful to anyone.

[40] He accepted that he represented to TEL that deposits were paid on the transactions for which agreements were disclosed but admitted knowing that they had not been and tacitly agreed with the comment that TEL would think the applicant was contributing cash to the purchase, when in fact that never occurred.

[41] Mr Wall rightly described the interview as unusual saying, when he gave his evidence, that it was not every day that someone was prepared to talk about their part in an alleged mortgage fraud.

[42] Following publication of the interview matters moved on and Mr Mayer was charged with the offences the subject of the indictment. By then Mr Turnbull had separated from his wife and left New Zealand.

**Evidence from TEL Witnesses**

[43] Three witnesses who were in the employ of TEL at the material times gave evidence. The first was Mr R P Russell, now the Executive Director of TEL, who joined the company at the end of 2006. Prior to that he had been the Chief Financial Officer of the New Zealand Stock Exchange and previously held positions as the Chief Accountant at New Zealand Post and at Westpac Banking Corporation.

[44] He became involved when the loans to, initially Turnbull, and then later Mayer went into default. In October 2007 his attention was drawn to the Turnbull loans by Vicki Lewis, the National Mortgage Manager who had been approached by Mr Mayer and by Ms de Magalhaes, the wife of Simon Turnbull, over the inability of the Turnbulls' to pay interest on some of the loans secured against some of the second and third category of properties the subject of Counts 8 to 16 in the indictment and 17 to 36 respectively. At that point TEL decided it had a significant problem and examined its mortgage loan book, finding that of its 450 loans, 29 loans were associated with Messrs Mayer and Turnbull, and Ms de Magalhaes. Thirteen of those loans had a direct association with Mr Mayer.

[45] The loans over Mr Mayer's properties began to move into default towards the end of 2008. Mr Russell said he had several discussions with Mr Mayer as to how the defaults could be cleared and was told that some of the properties would be sold so the mortgages could be repaid. For four or five months, he said, interest on the properties was paid in sporadic amounts, and then in March or April 2009 interest ceased being paid on any of Mr Mayer's properties.

[46] TEL initiated mortgagee sale processes for all of the properties with the bank generally suffering a loss on the sale of each of them. Subsequently TEL decided to complain to the Serious Fraud Office about Mr Mayer.

[47] Mr Russell gave evidence of TEL's lending requirements. TEL, in common with other lenders, required the borrower to have equity in the subject property and had specific loan to value ratios that applied depending on the nature of the transaction. For residential properties TEL would lend up to 80% of the value of the property ('the loan to value ratio') as ascertained from a valuation provided by a registered valuer, or the purchase price on an agreement for sale and purchase,

whichever was the lower. For commercial properties the figure was 65% and for rural properties the approach was identical save the percentage was different, the loan to value ratio being 50%.

[48] In terms of serviceability, TEL would not allow more than 30% of annual income from all sources to be exceeded in servicing mortgage outgoings with rental received from residential properties considered at 75% of its gross amount.

[49] Mr Russell also confirmed that the maximum loan to any one borrower or related entity was not to exceed 2.5% of the gross asset value of the lending fund, with the limit set at \$4,000,000 during the currency of the transactions the subject of the various counts. Further there was also a specification that initial borrowings were generally limited to 1 million dollars, unless the borrower had an established history, however evidence was given by Mr Leonard, who gave expert evidence on behalf of Mr Mayer, that this particular guideline was regularly exceeded, a position the Crown accepted.

[50] Mr Russell also went to level 5 of Peace Tower after TEL began its mortgagee sale process. At that time, it was using a number of real estate agents to assist with the process. Mr Russell observed, on one of his visits, that there were a large number of documents, including sale and purchase agreements and lease agreements that were at the floor.

[51] Ms Lauren Peebles also gave evidence. She was a mortgage analyst at TEL and between 2005 and 2008 was responsible for approving and processing new applications and managing existing loans. She said that although applications had earlier been submitted on Mr Mayer's behalf by brokers she received advice that she could accept loan instructions directly from Mr Mayer himself, both in respect of transactions in which he was interested and as a broker for other parties.

[52] By February 2007 she had become concerned with the number of transactions being generated by Mr Mayer, either as broker or on his own behalf or by way of referral, and, rightly as it transpired, believed that many of the transactions were not "at arm's length". She wrote to the National Mortgage Manager, Ms Lewis, by email on 27 February 2007 setting out her concerns, in particular that in the past months borrowers Mr Mayer had introducing to TEL were relatively new to New

Zealand and had minimal assets, other than the property the subject of the application. She said that she was concerned at the size and frequency of the applications and also that one or two dishonours had occurred on the deals and she provided a summary of the various transactions with the names of the borrowers and vendors.

[53] On the face of it, some of the lending was quite extraordinary. For instance, one mortgage advance of \$1,000,087.00 was made to Graca Zipfel an aunt of Ms de Magalhaes who had little in the way of assets, other than the property being purchased and whose only connection with New Zealand, she being Portuguese, appeared to be the transaction in which she was ostensibly the borrower. She was 70 years of age at the time of the loan application.

[54] Ms Lewis also gave evidence. She said she explained TEL's mortgage criteria to Mr Mayer when he made approaches to her about dealing directly with TEL and acting either as a broker or referer for other parties. Although Mr Mayer denied that, I accept Ms Lewis's evidence that she told Mr Mayer about the loan to value ratio and the cap, namely loans could not extend beyond \$4,000,000 to any borrower or related entity. There would be little point in acting as a broker or referer of lenders if the mortgagees criteria were not known and, further, not only was Mr Mayer clearly an intelligent man, a New Zealand Bridge representative, but he was also an experienced property investor, who took great pains to establish zoning details and planning requirements, even having a copy of the relevant scheme. It would be extraordinary for anyone as experienced and particular as he was to have approached the matter without a full knowledge of TEL's requirements. She said she did not have any dealings with Mr Turnbull, and only dealt with Ms de Magalhaes after the Turnbull loans went into default when she and Mr Mayer presented themselves at TEL's Wellington office to discuss the situation.

[55] Notwithstanding Ms Peebles' analysis and suspicion that all was not well lending continued to Messrs Mayer and Turnbull and their various nominated purchasers and TEL advanced a further 21 million dollars to them after February 2007.

**The Crown case in outline**

[56] The Crown's case was that Mr Mayer was at the centre of a systemic plan to extract money from TEL by obtaining mortgage advances in breach of TEL's mortgage lending criteria and which enabled him, and later Mr Turnbull, to acquire funds which they would otherwise not be entitled to.

[57] For most of the transactions the scheme involved the use of two or more agreements for sale and purchase. The first would be a genuine agreement for sale and purchase, usually prepared by a real estate agent, by which Mr Mayer would acquire a property in the name of a purchaser, usually a member or friend of his wife's family or sometimes an employee who would act as Mr Mayer's agent, Mr Mayer being the undisclosed principal, or under a form of trust with Mr Mayer the beneficiary. He would then create a second agreement for sale and purchase, whereby the purchaser of the first agreement, or a substituted purchaser, would sell to Mr Mayer's preferred entity, usually in the first category of transactions, a company owned or controlled by him, and for a significantly increased price. A valuation would be obtained close to the purchase price so that TEL would lend on either on the lower of the valuation or sale price, but not knowing that the second agreement was not a genuine transaction. Once Mr Turnbull became involved a similar scheme was followed.

[58] To be able to put the scheme into effect Mr Mayer had to represent that the difference between the mortgage advance and the purchase price shown on the agreement forwarded to TEL, the second or false agreement, was represented by cash or by the proceeds of sale or transfer of other property. The Crown says TEL were materially misled in that aspect as well.

[59] The solicitors involved in the transaction would then be told that the deposit on the second or false agreement had been paid, when it had not, and the condition relating to the transfer or sale of other property owned by the purchaser had been satisfied so that the vendor's solicitor, who would be instructed by Mr Mayer notwithstanding that the vendor was ostensibly a third party, would show a credit for those two items on the settlement statement.

[60] There were two other categories of transactions, both involving Mr Turnbull. Mr Mayer met Mr Turnbull and his wife Monica de Magalhaes after they arrived in New Zealand from South Africa. Mr Turnbull was an architect. He had offices at Peace Tower in Symonds Street, Auckland, and had attempted some property development of his own, albeit unsuccessfully. Ms de Magalhaes worked for Mr Mayer and the Crown submitted that at some point Mr Mayer and Mr Turnbull concocted a plan to extract further money to fund the renovation of a number of Mr Mayer's properties. These properties were sold to purchasers, usually members of Ms de Magalhaes's family in Portugal or who had come to New Zealand from there, but they were clearly the agents of Mr Turnbull, and he was an undisclosed principal in respect of those transactions. Mr Mayer's reason for selling the properties was that he believed his marriage was about to fail and he wanted to rationalise his property holdings but also retain an interest in them. Mr Mayer would not require the full settlement price but would enter into an agreement with Mr Turnbull for payment of the monies in three years time and interest would be charged. He was entitled to call for a mortgage to protect his position and agreed, under the terms of the agreement not to lodge a caveat.

[61] Again a fabricated agreement for sale and purchase would be disclosed to TEL to support a mortgage application by the 'dummy' purchaser. Deposits were included in the agreement, but these were never paid and the agreements would also be expressed as being conditional on either the sale or the transfer of property, in one case a yacht, but this would never occur. Assets were overstated and liabilities understated. The same device in relation to the solicitor's settlement statements was also used.

[62] This category involved nine properties. After payment of any mortgages secured against the properties a surplus would be produced from the balance of the proceeds of the mortgage advanced, unknown to TEL who were led to believe all mortgage monies had been utilised in the purchase. It was understood by Mr Mayer that these monies would largely be used to renovate the properties so the parties could ultimately share in the anticipated profit when the properties were resold.

[63] The last category of properties involved 10 properties acquired either by Mr Mayer or Mr Turnbull from genuine vendors and then on-sold to each other. The on sale would not be directly to Mr Mayer or Mr Turnbull but would again be to an

entity controlled by them, but which would appear to be an “arms length” transaction as far as TEL was concerned. The Crown submission is that the reason ‘dummy’ purchasers were used, rather than Mr Turnbull or Mr Mayer themselves or their known entities in all of the transactions was that Mr Mayer, and through him, Mr Turnbull, were aware that TEL would not allow one borrower or related entity to borrow more than \$4,000,000 in total and so ‘dummy’ purchasers had to be used to give the appearance to TEL that transactions were at “arms length” and did not involve a breach of its cap. As part of the scheme the Crown submitted Mr Mayer would introduce the purchasers to TEL and sometimes act as a broker having obtained TEL’s permission to do so.

[64] Again different agreements for sale and purchase were used in the third category transactions, a genuine one initially with a *bona fide* vendor and another one constructed by either Mr Turnbull or Mr Mayer which would be disclosed to TEL. That agreement would be for a significantly increased purchase price over and above the first agreement which would enable the ‘dummy’ purchaser to borrow in excess of what otherwise would be available had TEL known the true situation and would also disguise the breach of the cap.

[65] Overall the Crown submitted the documents sent to TEL with documents sometimes sent under a covering letter bearing Mr Mayer’s signature were misleading and led TEL to lend far more than it would otherwise have done, thereby obtaining a pecuniary advantage for Mr Mayer and Mr Turnbull through the entities they were using to obtain the mortgage monies.

### **The Defence case in outline**

[66] Mr Bradford argued that Mr Mayer had, until the most recent financial crash, been a successful property developer and who in August, 2006 had a net worth of approximately \$24,000,000. He had now lost all the equity he had in his property. Prior to entering into the transactions the subject of the various counts in the indictment he had never defaulted on a mortgage or missed a payment and had for many years worked with his wife, who attended to the administration, to develop a large property portfolio, was well-regarded by others in the property industry and suffered catastrophic losses himself once the properties, the acquisition of which had been funded by TEL, began to fail. Mr Bradford did not proffer this background as a



defence but submitted that it showed that it was unlikely that Mr Mayer, with all his experience, his history as an honest and successful property investor and developer, would risk everything by embarking on a dishonest scheme to deceive TEL, as the Crown alleged he had.

[67] Mr Mayer, he submitted, was unaware of the loan to value ratio applied by TEL in respect of mortgage applications, namely 65% of the valuation or price shown in the agreement for sale and purchase, whichever was lower, for commercial properties or 80% for residential investments. He submitted that brokers had acted for Mr Mayer on the first two transactions and they were hardly likely to have disclosed the mortgagee's criteria to him as they would not want the risk of him dealing directly with the mortgagee in the future, and in any event, neither broker gave evidence of having told Mr Mayer about the mortgagee's criteria.

[68] He said the only evidence that Mr Mayer knew of the mortgagee's criteria came from Ms Lewis of TEL and her evidence could be disregarded as she was not reliable or credible. It was further submitted that as she was resident and working in Wellington, and Mr Mayer in Auckland, the opportunities for her to have the discussions with Mr Mayer that she said had occurred were limited. He said there was no internal written record of any discussions between Ms Lewis and Mr Mayer concerning TEL's criteria and Ms Mayer could not give dates or times as to when those discussions were had. Given that it was nearly 10 years ago it is not possible to be satisfied from Ms Lewis's evidence that Mr Mayer understood TEL's lending policy, in particular the loan to value ratio. He accepted that Mr Mayer was aware of the \$4,000,000 cap but believed that only applied to an individual entity, not to an entity and any related party.

[69] He submitted the defendant was entitled to use the equity created in the properties by an advantageous acquisition and that equity generated by purchasing well, as he put it, was quantified by an independent valuation on each occasion. The defence, therefore, was that the defendant was not specifically aware of the loan to value criteria TEL applied and misunderstood the cap and further honestly believed that he was entitled to use the equity created, in effect by the valuation of the premises after purchase, by using the same as a contribution to the purchase.

[70] As far as the conditions in the second agreements that were not satisfied such as the transfer or sale of property, he submitted that Mr Mayer had an honest belief that would occur when he entered into the agreement, but that the transactions did not take place for conveyancing or mortgage reasons.

[71] TEL, it was submitted, were protected overall by the equity in these and other properties which would be available to them in the event of a default and they did not show any interest in following up the sale or transfer of various properties the subject of the conditions in the second agreements. It was submitted there was no evidence to suggest that those conditions were anything other than genuine at the time the agreements were entered into.

[72] Mr Bradford submitted that TEL often breached its own internal mortgage criteria and knew that a number of the parties involved in the transaction were related to the defendant. Although not proposing contributory negligence as a defence, which in the context of a criminal prosecution it clearly is not, Mr Bradford pointed to TEL being prepared to lend substantial sums of money to the Portuguese relatives of Ms de Magalhaes who varied in age between 20 and 70 and had few, if any, assets other than the properties being purchased as an example of TEL's overall laxness in dealing with mortgage applications. I accept the mortgagee was lax, but that is not a defence to a criminal charge.

[73] Mr Bradford said at the time the second category transactions were entered into the defendant was not distressed financially and there was no evidence to suggest that he could not have achieved sales on the open market at the same price that he sold the properties to Mr Turnbull. Much of the difficulty that Mr Mayer experienced, he said, was because Mr Turnbull failed to develop the properties sold to him as had been the intention and which would have enabled the properties to have been sold at a profit.

[74] He submitted that substantial sums of money were left in by Mr Mayer on these transactions by way of vendor finance, in one case \$11,090,000 and these monies were lost which was inconsistent with dishonest conduct on behalf of Mr Mayer. While accepting that many of the agreements and other supporting documents forwarded to TEL by Mr Turnbull on behalf of his 'dummy' purchasers were constructed through a 'cut and paste' method he submitted that Mr Turnbull did

this without reference to Mr Mayer, and there was no evidence to show Mr Mayer had any part in it. Mr Bradford submitted most of the documents were forwarded on Mr Turnbull's facsimile and although covering letters may, in some cases, have been signed by Mr Mayer, his evidence was to the effect that he did not read the supporting documents. Further, he submitted that on one occasion Mr Mayer directed Mr Turnbull to remove a property, which Mr Turnbull's parents were said to own, from a finance application because Mr Mayer was aware they did not, and so he submitted that if he knew the transactions were frauds he would not honestly attempt to correct the position.

[75] As far as the Category 3 properties were concerned, Mr Bradford's submission was that these properties were sourced by Mr Mayer for Mr Turnbull with the intention of selling them to Mr Turnbull, and that overall Mr Mayer did not believe he was acting dishonestly and believed he had a right to use the equity in the properties that he believed had been created by judicious purchasing on his part, and he was not obliged to reveal the full details of the transaction between himself and Mr Turnbull in respect of either the category 2 properties or category 3 properties. In any event as the Turnbull's agents were the borrowers the obligation to make disclosure, if it existed, was his and not Mr Mayer's. Consequently he submitted the Crown had not proved beyond reasonable doubt the essential elements in respect of each count.

#### **Expert evidence – the Crown's forensic accountant**

[76] Ms Tina Payne, a forensic accountant and electronic forensic investigator gave evidence for the Crown. From 2002 to 2010 she undertook the same role as an employee of the Serious Fraud Office. She was a chartered accountant and prior to her employment with the Serious Fraud Office had undertaken accountancy roles for a number of large organisations. She was assigned to the case and was part of the group who conducted the investigation of the allegations concerning the properties. She provided the evidence which linked the documents to the separate transactions the subject of the counts.

[77] She examined many of the documents obtained from Peace Tower. Her evidence was that often there were copies of the same agreements used in the transactions, clearly drafts, some identical or slightly different. Many of the

documents she found had been constructed using ‘cut and paste’ techniques. For instance, she gave evidence of an agreement for sale and purchase between Beauregard as vendor and the Salic Family Trust in respect of 29 Seafield Road, Grafton where the initial of Glemelda Domingo, Mrs Mayer’s sister and the director and shareholder of Beauregard, had been placed on a piece of paper and then glued to each page of the document with her full signature also on a piece of paper glued to the signature provision at the end of the agreement prior to it being photocopied. Similarly, she gave evidence of the signature of Glemelda Domingo being ‘cut and pasted’ in an identical way to an acceptance of a loan offer to Beauregard from TEL, the piece of paper on which the signature was placed beginning to come loose from the exhibit as it was handled in the Court. This loan offer had been faxed on 2 February, 2007 to Mr Mayer’s facsimile machine. There were several other documents, including leases, where Ms Tagnipez’s signature had been applied in a similar way. A page of signatures and initials for Ms Tagnipez was located at Peace Tower presumably allowing signatures and initials to be cut out as required and pasted onto documents. Ms Payne was able to say that Serious Fraud Office enquiries revealed that Ms Tagnipez was out of New Zealand from 14 February, 2006 until 25 December, 2009, the period when the majority of transactions that required her signature in some form were undertaken.

[78] There were many other documents which Ms Payne was able to identify, and which had been used as documents to support applications, or documents forwarded to valuers, where signatures had been changed or moved around. Some of the documents found at Peace Tower had been written out in pencil and were clearly drafts.

#### **Expert evidence – Defence expert witness**

[79] Mr J L Leonard, a forensic accountant was called to give evidence on Mr Mayer’s behalf. He is a chartered accountant and was previously employed for seven years as a forensic accountant at the Serious Fraud Office from 1990 onwards. He has had considerable experience in fraud investigation. He saw the issues, insofar as Mr Mayer was concerned, that had to be resolved as, whether in relation to the first category of transactions he was aware of TEL’s lending policy, and for the second whether the transactions were genuinely arms length and whether TEL’s policy was breached when applications were received from Mr Turnbull’s nominees

and in relation to the third category whether Mr Mayer was aware of the forgeries in relation to the leases and agreements used in many cases to support borrowings or valuations and also whether he was aware of TEL's lending policies in respect of the three properties in this category that he purchased. He accepted Mr Mayer was aware that there was a limit of \$4,000,000 per entity and accepted in his evidence before the Court that TEL's policy was a limit to any individual and self-evidently did not allow an individual to form companies or use other purchasers to circumvent the cap. He also accepted that Mr Mayer was aware that TEL would not advance the whole of the purchase price by way of mortgage.

[80] He said in his evidence there may be innocent explanations for the use of two agreements for sale and purchase but agreed that accounting entries for the equity on the properties would be the usual way to record this rather than the use of a second agreement for sale and purchase using 'dummy' purchasers. The same result could have, he accepted, been achieved by a capital revaluation reserve. He accepted there was no good reason for the use of the deposit device, namely recording the requirement for a deposit in an agreement which was not paid but credit being given for it at settlement, or transfers or sales of property which were never effected, but which indicated to TEL that a substantial equity was to be introduced to the purchase, or the use of bogus logos of real estate agencies not involved in the transaction. He accepted that TEL would have been misled if the purchaser did not have the contributions that were said to be had on the applications and agreed that the failure to disclose vendor mortgage and the settlements deeds for the second category of transactions rendered the loan application misleading as they ought to have been recorded in the mortgages owed section of the application. Further he accepted that the interest to be paid to Mr Mayer under these deeds was a factor that TEL needed to know so as to be able to take it into account in ascertaining whether the purchaser had the ability to service the loan.

### **Mr Mayer's evidence**

[81] Mr Mayer gave evidence. He explained his use of "middle people", as the Crown called them, in the first agreements for sale and purchase for the first category of transactions. He said he was well known as a "bargain hunter" among the property industry and he was concerned that if it became known he was personally interested in the property the price would be affected. He said he used a

second agreement because he considered that he was buying properties at “retail” price from what he considered his “wholesale” arm.

[82] He said this then created an equity which was, in effect, proved by the valuation process and he believed he had the right to utilise this equity by raising finance from TEL on the basis that there was now a substantial equity in the property brought about by his judicious purchasing. He did not let TEL know what he was doing or give them details of the price and the agreement at which he had purchased the property in the first instance as he believed they were well protected and how he constructed the transactions was irrelevant to them. He accepted he was the beneficial purchaser of all of the properties in this category.

[83] As for the second category of properties, he explained that he anticipated that his marriage would ultimately fail and, rather than sell the properties on the open market, he decided to sell them to Simon Turnbull. Mr Turnbull did not have the ability to purchase the properties outright and so a similar arrangement for obtaining funds from TEL was utilised whereby Turnbull’s nominees, principally relatives of his wife’s, would apply to TEL for mortgage funding based on an agreement that had been settled between the two of them. The double agreement for sale and purchase scheme was used for most of these properties but the reason for doing so concerned GST as before the properties could be sold to Mr Turnbull they had to be brought within the GST regime.

[84] Because Mr Turnbull could not pay the full price of the properties an arrangement was entered into between the two men whereby a substantial part of the sale price would be left in by the vendor, a Mayer controlled company or entity. These monies were to be repaid within three years and bore interest at 9% per annum. The settlement deed was entered into before each transaction was concluded which gave Mr Mayer or the Mayer controlled entity the right to call for a mortgage to support the loan. Further, the agreement provided that the lender would not lodge a caveat to protect its interest in the property. Mr Mayer accepted the settlement deeds were not disclosed to TEL and neither was the indebtedness disclosed by Mr Turnbull’s nominees who were applying to TEL for mortgage funds.

[85] Mr Mayer accepted that usually a surplus of funds arose as a result of this method, which he described as ‘over-borrowing’, and which Mr Turnbull was

supposed to use to develop the properties, the agreement providing that Mr Mayer or the Mayer controlled entity and Mr Turnbull would share in the profit that would arise.

[86] The third category of loans, counts 17 to 36, were loans that Mr Mayer said really only involved Mr Turnbull in that Mr Turnbull was trying to acquire properties of his own and Mr Mayer was locating them for him and then on-selling them to him. However three of the properties had to be acquired by Mr Mayer using funding from TEL because Mr Turnbull could or would not settle the transaction.

[87] Mr Mayer accepted that documents used to support the loan applications in this category of transaction were forged. They included the sale and purchase agreements and some of the leases. Many of the agreements and leases were created by cutting copies of signatures from other documents and pasting them onto the relevant document, photocopying them and then using them to support loan applications or providing copies to valuers for the purpose of obtaining favourable valuations. He said he had nothing to do with this and although accepting that this occurred, believed the forgeries had been constructed by Mr Turnbull without his knowledge or consent. He accepted that he had referred Mr Turnbull's nominees, who were purchasing properties and borrowing from TEL to TEL and on occasion signed the cover sheets forwarding the mortgage application and supporting documents but claimed never to have read those applications or documents.

[88] He accepted he was familiar with TEL's internal loan rules in relation to the \$4,000,000 cap which prevented a single borrower raising more than \$4,000,000 of mortgage finance from TEL but believed that only related to single borrowers and said he did not consider at the time that it prevented other purchasers being used, even though ultimately he or Mr Turnbull would be the beneficial owner of the property, saying he had been mistaken as to the application of this rule. He did not accept that he was aware of the loan to value ratio or that TEL's internal rules relating to lending had ever been explained to him, particularly by Ms Lewis, as she asserted in her evidence.

[89] Accordingly he denied that he knew the documents were being used dishonestly and believed that he was entitled to go about constructing transactions in

the way he did and to borrow from TEL using the equity he believed he had created by representing it as either a cash contribution or equity in the property.

[90] As will be seen from the reasons for these verdicts I have not accepted Mr Mayer's evidence that he was not acting dishonestly or that he believed he had a claim of right to use the documents in the way he did. Firstly he concealed the true purchaser from TEL. I am quite satisfied that he did this to circumvent TEL's internal requirements in relation to the cap. Accordingly he acted dishonestly and knew he was at the time. He admitted to Mr Wall that he misled TEL. He acted dishonestly in providing false agreement for sale and purchases to TEL and mortgage applications which were untrue. Although these were in the names of the nominated purchaser, and not Mr Mayer, for obvious reasons he was the facilitator of the applications and effectively managed them, both for himself and with Mr Turnbull. I do not accept his claim of right defence. That was based on his assertion that he had created an equity through judicious purchasing and could borrow against it. The flaw in that theory is the mortgagee was entitled to know about the matter and it was not for Mr Mayer to decide whether they should choose to lend on the valuation or the higher agreement for sale and purchase, when he had, contemporaneously, entered into agreements to purchase at a lower price. He knew that. That was the reason he disguised the purchasers and also the reason he only provided, what were false documents, namely fraudulent agreements for sale and purchase that were in effect shams. I am satisfied he did not misunderstand TEL's lending criteria, he knew them only too well, hence the success of the scheme and he knew he was obliged to deal with the mortgagee in good faith, but quite deliberately chose not to to be able to pursue the scheme. Therefore the defences of claim of right or not acting dishonestly fail in respect of each of the counts. He fully realised at the time that what he was doing was dishonest and that he had no proprietary or possessory right in the property, which were the documents, that allowed him to deliberately mislead TEL.

### **The first category charges**

#### **Count 1 – 6 Glenside Crescent, Grafton**

[91] This count represents a transaction that was the earliest in time in the sequence of loans secured from TEL which are the subject of various counts in the



indictment. On 15 August, 2003 Lou Martin entered into an agreement for sale and purchase to acquire the property from ST and Sons Limited for \$1,740,000 for settlement on 27 November 2003. Mr Martin was an agent of Mr Mayer but that relationship was not disclosed in the agreement and to all ostensible purposes he would have appeared as the actual purchaser.

[92] The first agreement was prepared by a real estate agent who deposed that Mr Mayer paid the deposit of \$130,000 in cash. The agreement allowed for another purchaser to be nominated to complete the transaction should the purchaser require. Mr Mayer said in his evidence, which I accept, that he had Mr Martin enter into a deed of trust in respect of this purchase and paid him \$1,000. Mr Martin was a resident of the Philippine Islands and his signature to the subsequent transfer which arose in relation to the second sale and purchase agreement involving this property was witnessed by a notary public in the Philippines.

[93] Consequently I do not accept the evidence of Ms Payne that Mr Martin did not exist. That theory was based on the inability of the Serious Fraud Office to locate any record of Mr Martin but the transfer registered at the Land Registry Office in respect of the second transaction was not searched, and had it been the SFO would have been able to satisfy themselves as to his existence.

[94] The second agreement for sale and purchase was entered into on 27 October, 2003 and was between Mr Martin and MDM Holdings Limited ('MDM') for a sale price of \$2,500,000 with settlement on 28 November, 2003. This was the agreement that was disclosed by Mr Mayer to TEL by facsimile on 4 December, 2009 in support of an application for mortgage funds. MDM was a company of which Mr Mayer was the sole director and all shares were held by him.

[95] There were several unusual features to the second agreement. Firstly the property was purportedly sold under the aegis of a real estate agent, Mr John Gelb of Brown and Taunt Real Estate Limited whose details were given on the front page of the agreement. Mr Gelb gave evidence to say that he had no involvement at all in the transaction, had not prepared the agreement but had given Mr Mayer copies of the 7<sup>th</sup> Edition REINZ/ADLS agreement for sale and purchase form. The agreement was expressed as being conditional on the purchaser undertaking due diligence yet Mr Mayer was effectively the vendor as Mr Martin had entered into the transaction

with ST and Sons Limited to acquire the property as agent for Mr Mayer who was an undisclosed principal. The agreement was also conditional on a contemporaneous settlement of MDM's properties at 15 Karaka Street, Newton, Auckland. Although the second agreement was purportedly settled there was no sale of these properties. The agreement was also purportedly signed by Mr Martin as vendor, although he was in the Philippine Islands. Finally it made provision for the purchaser to pay a deposit of \$100,000 to the vendor. The deposit was never paid, although credit was given for it on the vendor's solicitor's settlement statement on Mr Mayer's instructions.

[96] An application was lodged for mortgage funding with TEL to assist with the purchase shown in the second agreement. The application was lodged on behalf of Mr Mayer by Mr J Chapman, a mortgage broker in the employ of Strata Funding Limited. Supporting the application was a valuation obtained from Seagar and Partners and addressed to TEL's mortgagee. The valuation was for \$1,850,000. The amount requested was \$1,202,500 as an interest only mortgage for a term of two years. The purchase price in the loan application was shown as being \$2,500,000 to be funded by the purchaser introducing \$497,500 of its own funds and its equity in the Karaka Street property. Mr Mayer was to be the guarantor. Noted on the loan application was a statement by the broker that the requested advance equated to 65% of the valuation, clearly highlighting to TEL that the loan request was within its criteria.

[97] There were existing tenants at the premises, Guardall Alarms NZ Limited and Telecom but two new tenancies were to be put in place, both to North Star (AK) Limited. This company was effectively a Mayer company. The sole director and shareholder was Gorgonia Tagnipez, the defendant's mother-in-law and he and his wife held a power of attorney for the company.

[98] The loan was approved by letter dated 1 December, 2003 and the monies were advanced on 5 December, 2003 to enable the settlement of the first transaction to proceed on that date. MDM had paid \$420,549.75 cash to its solicitors on the same day the mortgage advance was received to enable the transaction with ST and Sons Limited to settle.

[99] The defendant in evidence said he utilised the nomination provision of the first agreement for sale and purchase to substitute MDM as the purchaser as he came to realise that the purchaser needed to be GST registered and, given Mr Martin's residence abroad, it was too difficult to attend to this through him. Consequently the company was nominated as the purchaser under that agreement but TEL never had that agreement disclosed to them. They assumed they were advancing funds to enable MDM to settle the second agreement, a copy of which they obtained by facsimile on 4 December, 2003 directly from Mr Mayer. The monies advanced by TEL however, were used to settle the first agreement.

[100] Mr Mayer's explanation for the use of Mr Martin as the 'dummy' purchaser was that he believed he was acquiring the property at substantially less than it was worth. He thought he was sufficiently well known for there to be a risk that if the agent disclosed to the vendor that he or one of his entities was interested in acquiring the property then the price the vendor was asking might be increased. Consequently he used Mr Martin to effect the purchase.

[101] The second agreement had provided for a deposit as I have already noted but this was never paid by MDM to Mr Martin, and Mr Mayer agreed under cross-examination, that it was never intended that it be paid. His reason for the property at Karaka Street, Newton, not being sold was that it became too difficult. I do not accept that. I do not believe it was ever Mr Mayer's intention to sell that property to support the agreement. His explanation in evidence was that the provision was included in the second agreement simply to ensure that the settlement statement produced by the solicitors balanced which illustrates the absence of any intention to give it actual effect. The whole second transaction was, I am satisfied, a sham. The agreement was prepared with the intention of misleading TEL. It was put to Mr Mayer in cross-examination that the inclusion of the provision for the payment of the deposit and the condition in relation to the sale of the property at 15 Karaka Street, Newton, was merely window dressing. He never answered the proposition directly but clearly had to attempt to evade the question because to admit that it would be to admit the true purpose of the second agreement.

[102] The second agreement was prepared before the valuation was obtained. Mr Mayer said that he was disappointed at the valuation attributed to the property by Seager and Partners, and I believe he was. He never used them again. However I

am satisfied that the purpose in preparing the second agreement was to enable Mr Mayer to borrow more monies from TEL than he would otherwise have been able to do so. Because of the valuation he may not have been able to have borrowed as much as he had initially hoped.

[103] I am satisfied that Mr Mayer was aware of TEL's lending policies at the time and knew for commercial lending it would advance by way of mortgage 65% of the valuation or of the purchase price of the agreement, whichever was the lesser. Mr Mayer was an experienced property investor who had operated in the Auckland property market for many years. He went to a mortgage broker to assist him in raising finance. The mortgage application itself discloses that the proposed borrowing does not exceed 65% of the valuation. Although Mr Chapman did not give any direct evidence of having told Mr Mayer the mortgagee's criteria I simply do not believe Mr Mayer when he said he was not aware. He was, as I have said, an experienced and successful property developer and investor. He struck me as someone who was careful and assiduous in the way he went about his property purchases. He was fully familiar with the District scheme and the various planning requirements. He was sufficiently confident in his own ability to be able to make an estimate of the market value of the property on his own without the need to engage valuers. He was regarded as a shrewd operator. He said in evidence that he was aware that mortgagees had various criteria. I cannot believe that a man who made property investment and development his occupation would not have been aware of the mortgage criteria applied in this instance by the mortgagee, especially given he had the assistance of a mortgage broker. He was a man, who in my assessment, left little to chance.

[104] The use of the second agreement, I am satisfied, was simply a device to be able to utilise TEL's lending policies. The inclusion of a provision for payment of a deposit, which he had no intention of paying, and which if it had been would, in effect, be paid to himself, the inclusion of the name of an agent who was not involved in the transaction and the various conditions, none of which needed to be satisfied or were ever going to be satisfied such as the sale of the Karaka Street property illustrates the point. The agreement was deliberately constructed, I am satisfied by Mr Mayer, with the intention of ensuring that whoever saw it and relied on it believed it was a genuine agreement.

[105] Mr Mayer represented to the mortgage funder TEL, both in the loan application and by the provision of the second agreement that he was settling on the second agreement and the funds were necessary for this purpose, but plainly he was not. The entity he used, MDM, was effectively settling the first agreement. I do not accept the submission by Mr Bradford that on this occasion and in the subsequent counts where ‘dummy’ second agreements were used there were binding legal obligations raised under those agreements for which Mr Mayer or the entity he was using could be sued in the event of a default. There was never any real intention of creating legal rights between the vendor and purchaser under the second agreement, the intention was merely to give the appearance of an agreement which created rights. Neither would have sued the other if there was a default. Consequently those agreements meet the definition of a sham given by Lord Diplock in *Snook v London and West Riding Investments* (supra). Diplock LJ said further, at pg 802, of his judgment:

“But one thing, I think, is clear in legal principle, morality and the authorities....that for acts or documents to be a “sham” with whatever consequences follow from this, all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations they give the appearance of creating.”

### **Conclusion – Count 1**

[106] Applying this analysis to the elements of the count that the Crown must prove to the required standard of proof, beyond reasonable doubt, I am sure that Mr Mayer used documents, the loan application document which referred to the detail of the second agreement, and the second agreement itself by forwarding them to TEL, either himself in the instance of the agreement, or through the broker. I am also sure that the intention was to obtain a pecuniary advantage for MDM and indirectly himself through the use of MDM, a company he wholly owned and controlled and to which MDM was not entitled. The advantage was that Mr Mayer was able to draw down from TEL through the advance to the purchaser an additional \$71,000 which, had the first agreement been revealed to TEL, he would not have been able to obtain as the application of the mortgagee’s lending criteria would have meant they would have lent to 65% of the first agreement, namely \$1,740,000 rather than 65% of the valuation, which was higher.

[107] I am sure that Mr Mayer used the documents dishonestly and knew at the time he was so doing. Though he maintained that he believed he was entitled to use the second agreement and the details of that transaction for these purposes, and that it was a real transaction, I am satisfied that it was not and Mr Mayer plainly knew it was not. The very fact that he went through such an elaborate scheme of deceiving TEL by not disclosing the first agreement and then creating the second agreement which had conditions which he, in the guise of MDM, had no intention of fulfilling, are a clear indication that he realised he was not entitled to use the document in that way and is also a plain indication that he was aware of TEL's lending policies, as otherwise there would have been no need to go through the complicated charade that he did.

[108] Any contention that Mr Mayer believed he was using these documents honestly is so remote from reality as to be within the realm of absurdity. The point can be illustrated by his contention that the second agreement arose because his company, MDM, was nominated as the purchaser, the original purchaser being Mr Martin, yet as the documents plainly show MDM did not take over the first agreement and disclose that to TEL. Mr Mayer created the entirely fictitious second agreement to be able to extract more monies from TEL. There is no issue of honest belief in this or in the other similar transactions the subject of the other counts. Secondly, his contention that he did not feel obliged to tell TEL of the 'two transactions' because he did not think it relevant as he was introducing significant funds, and so did not consider the documentary arrangements impacted on them is simply nonsense which I am quite satisfied he did not believe at the time but advances now for the sole purpose of trying to afford himself a defence. I do not accept, for the reasons I have given, his evidence of lack of knowledge of TEL's lending policy insofar as the ratio that would be applied to the agreement and valuation, and it was not for him to arrogate to himself decisions concerning the overall security position as far as TEL was concerned.

[109] As for claim of right, the remaining element of the count the Crown must prove beyond reasonable doubt, I am sure that Mr Mayer knew that he was not entitled to act in the way he did.

[110] The equity he said was created did not give him the right to use the documents set out in the particulars supporting the count to dishonestly obtain a

mortgage advance to which he, in the sense that he was the beneficial purchaser, would not have obtained or to the extent he did had TEL been aware of the true situation. The claim of right for this, and for other counts under this section of the Crimes Act must relate to the documents, not the 'equity'. There can be no issue of honest belief or ignorance or mistake of fact. Notwithstanding his denial of any wrongdoing and his assertion of a lack of knowledge of the basic dishonesty of what he was doing he was an experienced property investor who had been operating in the property market for 20 years and I am satisfied he was well aware that what he was doing was wrong. This was not a question of poor judgement as he asserted to Mr Wall the reporter, or a crime of omission. This was a crime of commission clearly thought out by Mr Mayer who would have been confident of its success.

[111] The Crown maintain that the lease agreements for North Star (AK) Limited were also false transactions as Ms Payne, for the Serious Fraud Office, gave evidence that there was no evidence the monthly lease payments were ever made. However I cannot exclude Mr Mayer's evidence on that point. Payments from tenants and lessees were administered on behalf of Mr Mayer and his various entities by his wife who tended to treat payments globally, but the issue makes no difference to the ultimate outcome as I am satisfied, beyond reasonable doubt, that the Crown has proved each element of Count 1 to the requisite standard of proof and I find Mr Mayer guilty on that count.

## **Count 2 – 7A/2 St Martins Lane, Grafton**

[112] This transaction took place in June, 2006 some years after the Glenside Crescent purchase. It involved the purchase of the 7<sup>th</sup> floor of the Peace Tower, an office and residential 13 storey tower block located in St Martins Lane off Symonds Street in Auckland. The first agreement, which was a genuine agreement for sale and purchase, was entered into on 4 May, 2006 using Nanita Santos as the purchaser. Ms Santos was a relative, Mr Mayer thought an aunt, of his wife and resided in the Philippine Islands. As with the agreement for Glenside Road there was provision for another purchaser to be nominated. The real estate agent who acted on the transaction gave evidence and said that he dealt, at all times, with Mr Mayer who also paid the deposit of \$60,000 with a bank cheque. The purchase price was \$703,125 and the agreement provided for settlement on 21 June, 2006.

[113] Mr Mayer followed the formula used in the Glenside Crescent purchase by then creating a second agreement providing for settlement on the same day, 21 June, 2006. By that agreement Ms Santos, in effect Mr Mayer's agent, purported to sell the property to MDM for \$940,000.

[114] I am satisfied the second agreement was prepared by Mr Mayer and not by any agent in the employ of Ponsonby Real Estate, that firm having a form of logo displayed on the lower right part of the first page of the second agreement. The logo looked as if it were part of a business card that had been glued or affixed to the agreement and then photocopied. Mr T Doherty, an agent at Ponsonby Real Estate gave evidence to the effect that he was not involved in this transaction but had received instructions on other occasions from Mr Mayer.

[115] The second agreement contained conditions intended to lead persons receiving a copy of it to believe it was a genuine agreement. A deposit was provided for, but that deposit was not paid, and Mr Mayer never, I am satisfied, had any intention of paying a deposit. He would in effect be paying it to himself if he or MDM had done so. The agreement was also conditional on due diligence, had a condition providing for access to the premises by the 'purchaser' to enable a refurbishment assessment and was also conditional on the transfer of two units at 15 Karaka Street, Newton to the vendor at an agreed value of \$320,000, neither of which were ever transferred to support the agreement as it was not a genuine or *bona fide* agreement. It was a sham. It did not genuinely create a legal relationship between the vendor and the purchaser. The sole purpose for its creation was to mislead TEL to secure funding in excess of that to which MDM could have obtained had the first agreement been disclosed.

[116] A funding application was lodged with TEL to secure the mortgage funds to enable the false second purchase to proceed. That application was prepared by Mr R McMillan, a mortgage broker at Mortgage People Limited who had assisted Mr Mayer in applying for loans since he first met him at the end of 1998. By 2006 he estimated that he had assisted Mr Mayer to obtain mortgage finance for purchases on at least one occasion every six months since 1998. A valuation was obtained from Mr R Parkinson of Richard Parkinson Valuation and Property Services, a name which features in the *dramatis personae* of this sorry saga. The valuation was for \$1 million.



[117] A loan application was lodged by Mr McMillan on 14 June, 2006 seeking \$752,000, \$48,875 more than the purchase price to be paid under the first agreement, although I accept Mr McMillan was not aware of the existence of the first agreement. TEL were told in a letter written by Mr McMillan as part of the application, that the purpose of the acquisition was to convert the existing floor, which was used for offices, into multi-bedroom apartments, the work to be completed in early July and then returning an estimated \$1,800 per week. At the point of the application the amount requested was 75.2% of the valuation and 80% of the 'purchase price' of the second agreement but that would adjust to 65.39% of the valuation once the alterations were completed.

[118] Mr McMillan, of course, did not disclose a copy of the first agreement to TEL, a document which plainly would have been relevant to their assessment of the proposal, as he was unaware of its existence. Consequently on 14 June, 2006, thinking they were assisting with the provision of mortgage finance to enable MDM to acquire the property from Ms Santos, TEL approved a mortgage advance of \$752,000. Only the second agreement was disclosed which showed a purchase price of \$940,000. The loan application form signed by Mr Mayer requested an advance of \$658,000 but a higher amount was obtained as a result of Mr McMillan's letter, clearly written on Mr Mayer's instructions.

[119] That knowledge of the first agreement would have been relevant to TEL's analysis is not only common sense but was confirmed in evidence by Ms Peebles in relation to questions directed to a later purchase, 5/2 St Martins Lane, Grafton, Auckland wherein a second agreement was entered into approximately a month after the first genuine agreement was signed, but the second for a greater consideration. The purchase price in the second agreement was \$920,000, but in the first or true agreement only \$700,000. There was a valuation which supported the second agreement. Ms Peebles confirmed that had TEL known of the first agreement she doubted that they would have lent using either the valuation or the purchase price in the second agreement as too many issues would be created as to the true value of the property. Irrespective of that TEL was plainly entitled to know about the first agreement, and also to know that the funds being advanced on mortgage were not being used in the settlement of the second agreement, but rather were being used to settle the first agreement, of which they were unaware.

**Summary – Count 2**

[120] In terms of the elements the Crown is required to prove beyond reasonable doubt I am satisfied that Mr Mayer used the second agreement by forwarding it to TEL through his broker, Mr McMillan with the intention of obtaining valuable consideration for his company, MDM, namely a mortgage advance of \$720,000. Had he disclosed the first agreement then only \$457,031.25 could have been borrowed, it being the lesser of the two figures TEL would have used to calculate what they were prepared to advance on mortgage, namely the valuation figure of \$1 million and the actual purchase price of \$703,125. The difference between the mortgage advanced and what TEL would have advanced had they known the true position was the pecuniary advantage Mr Mayer obtained for MDM, and indirectly himself as he controlled the company, and it was his intention to use the document in the way he did to obtain that advantage. I am also satisfied that Mr Mayer was well aware what he was doing was dishonest.

[121] In my analysis of the Glenside Crescent transaction I rejected his contention that he was entitled to do what he did because he believed TEL was sufficiently protected. One of Mr Mayer's other 'arguments' for using the second agreement was so that he could bring properties into his company 'books' as he described them, at their true value, rather than at the value he had actually purchased under the first agreement, which he called "wholesale value". I am satisfied that this is not a term of art but merely flannel used by Mr Mayer to justify what he did. His own expert witness, Mr Leonard, confirmed that was not necessary for accounting purposes as a simple revaluation entry in his accounts could be undertaken by his accountant, Mr Bowker. Further, it does not explain why the second agreement had to be disclosed to TEL. The use of that agreement, in the way it was used by Mr Mayer, namely providing it to TEL, would have been irrelevant to entry of the value of the property in his company accounts. I am satisfied that Mr Mayer did not honestly believe he had any right to use the documents, namely the first and second agreements for sale and purchase in the way he did and by signing and returning the TEL approval letter sent to him on 3 July, 2006 he also used that document as part of his scheme to obtain more funding than his company was entitled to so as to effect the acquisition of 7A/2 St Martins Lane, Auckland. He cannot therefore maintain he had a claim of right. He knew he had no right to use the documents in the way he did.

[122] Consequently I am satisfied that the Crown has proved each of the elements in this count to the required standard of proof and Mr Mayer is accordingly guilty.

**Count 3 – 5A/2 St Martins Lane, Grafton**

[123] In May 2006 Sage Holdings (Auckland) Limited ('Sage Holdings'), a company controlled by Mr Mayer, entered into an agreement with Behrooz Kermani Limited to purchase another floor of Peace Tower at St Martins Lane, Grafton. The purchase price was \$700,000 with settlement to be effected on 11 July, 2006. A copy of the agreement was not found in the file of Ms Alexis Hart who acted for Mr Mayer on the majority of purchases the subject of the counts in the indictment but details of the transaction were able to be constructed from the vendor's solicitor's settlement statement, Ms Hart's ledger and the notice of change of ownership sent to the Auckland City Council. A deposit of \$60,000 was paid so the balance paid to the vendor's solicitors on settlement was \$636,419.35 after apportionments.

[124] Following the usual pattern, a second agreement for sale and purchase was entered into between Sage Holdings and Mr Mayer's other company entity, MDM on 14 June, 2006. The sale price was \$920,000 with settlement to be effected on 11 July, 2006. The agreement provided for a deposit of \$90,000 which, of course, was not paid, and had the usual conditions intended to leave TEL with the impression that this was a genuine agreement for sale and purchase. These conditions were the raising of finance, a due diligence clause and also a condition relating to the transfer of properties at 15 Karaka Street, Newton, to a value of \$300,000 which were to be credited to the purchase price. These transactions never took place but \$300,000 was credited to the purchase price as Mr Mayer advised Ms Hart, who acted on the sale of the property to MDM that the sum of \$300,000 had been satisfied and so that amount was credited to the purchaser's account in the settlement statement she prepared. The \$300,000 was never paid – if it had been Mr Mayer would simply have been making a payment from one of his entities to the other. The insertion of \$300,000 as the consideration for the transfer of various properties at 15 Karaka Street, Newton, was to ensure the transaction could balance. Mr Mayer made no secret of his attention to the financial implications of the agreement, saying in his evidence that the lawyers had to ensure this occurred when settlement statements were prepared. It also meant that TEL believed MDM was acquiring a property for

\$920,000 rather than the much lower true purchase price under the first agreement, and that MDM was contributing \$300,000 to the purchase.

[125] MDM's application was supported by a valuation of the property, the valuer again being Mr Parkinson of Richard Parkinson Valuation and Property Services. He valued the property at \$920,000 using as one of his comparable properties for the purpose of estimating the value 7A/2 St Martins Lane noting it was "a direct comparison with the subject", that property having been acquired by MDM in June, 2006 by Mr Mayer, again using the 'smoke and mirrors' scheme that led TEL to lend more than it would otherwise have done.

[126] TEL, believing MDM Properties was paying \$920,000 for the property, and not knowing the true purchase price in the first agreement, and believing the purchaser had paid a deposit of \$90,000 and was contributing \$300,000 through the transfer of properties at Karaka Street, Newton, approved a mortgage advance of \$598,000 to assist with the purchase. Sage Holdings itself, was a company where the sole directorship and shares were held by Maria Davidson, Mr Mayer's sister-in-law, who resided in the United States of America. At the time Mr Mayer, who had previously been a director of the company, and his wife had a power of attorney for Ms Davidson.

#### **Summary – 5A/2 St Martins Lane**

[127] The particulars given in support of this count allege that the application for finance dated 28 June, 2006, signed by Mr Mayer, the second or 'dummy' agreement for sale and purchase between Sage Holdings and MDM and the TEL approval letter dated 3 July, 2006 forwarded directly to MDM which contained the full terms and conditions of the loan agreement, constitute documents which misled TEL. Mr Mayer signed the TEL approval letter, acknowledging the terms of the loan, as a director of the purchaser company.

[128] I am satisfied to the required standard of proof that Mr Mayer used these documents. The application for mortgage funding was prepared by Mr Mayer on behalf of the purchaser and lodged directly with TEL. He had been able to prevail on TEL to accept applications directly from him for MDM and subsequently for other persons who he referred to TEL and in effect TEL came to accept Mr Mayer as

a broker, on occasions paying him brokerage fees in respect of successful applications for other parties, who invariably were being used by him or Mr Turnbull as their agents on purchases.

[129] The second agreement for sale and purchase was forwarded to TEL by Mr Mayer to support the application and I have already said that he signed the loan approval document which followed the successful application. Consequently he used the documents in the terms asserted by the Crown. His intention in using the documents, I am satisfied, was to obtain mortgage funds in excess of that which his company would have been entitled to obtain had the true or actual underlying agreement, namely the agreement between Behrooz Kermani Limited and Sage Holdings for \$700,000 being disclosed. The second agreement and the valuation for the property produced identical figures against which TEL could be persuaded to lend. The loan of \$598,000 equated to 65% of the valuation and purchase price shown in the second agreement. Had the true purchase price been disclosed then Mr Mayer would only have been able to secure \$455,000 as a mortgage advance having regard to TEL's criteria, which I am satisfied were clearly known to Mr Mayer, not only for the reasons already given but because the amount sought equated to the maximum of the value of a commercial property (or the purchase price) against which TEL was prepared to lend, itself a strong inference pointing to Mr Mayer's knowledge of TEL's criteria. This was an advantage to Mr Mayer through his company MDM of \$143,000 being the additional mortgage funds obtained under the scheme and he knew this was an advantage he obtained dishonestly for MDM. I am satisfied to the required standard he knew he acting dishonestly and without any claim of right as he well knew he was not entitled to act in the way he did.

[130] Consequently I find the Crown has proved each of the elements required to support a conviction against Mr Mayer in this count to the required standard, beyond reasonable doubt and I find Mr Mayer guilty.

#### **Count 4 – 4B, 4C and 10B/2 St Martins Lane, Grafton**

[131] On 19 May, 2006, as part of his sweep through Peace Tower, the defendant signed an agreement with St Martins Development No.4 Limited to purchase floor or Level 4, 2 St Martins Lane and part Level 10 at the same address. The purchase price was \$1,600,000, the transaction was to be settled within 42 days of the date the

agreement became unconditional and a deposit of \$100,000 was payable. The purchaser was shown as Esperanza Ezarbal or her nominee. Ms Ezarbal was another resident of the Philippine Islands and was a friend of Mr Mayer's wife's family. As with the other Philipinas used in the various transactions she was paid \$1,000 for lending her name to the purchase. Mr Mayer negotiated the terms of the agreement and accepted that Ms Ezarbal was his agent, although he never spoke to her about the transaction.

[132] Following the pattern, by now familiar to any reader of this narrative, a second or 'dummy' agreement was constructed by Mr Mayer. That agreement was dated 5 June, 2006 and was for settlement on or before 18 July, 2006, on which date the first agreement was also to be settled.

[133] Similar conditions to the other second agreements seen in the earlier counts were drafted by Mr Mayer and with the others were never given effect, namely a deposit of \$100,000, never paid and with properties at 15 Karaka Street, Newton, again being used to settle part of the purchase price, this time a value of \$640,000 being given to the four properties that were to be transferred, but they never were as this was a sham agreement. The agreement also had a due diligence clause and had the logo of Ponsonby Real Estate emblazoned on the first page of the agreement, that firm not acting as agents on the "transaction" and the logo itself of a size and get-up which indicated it had probably been taken from either a business card or letterhead and affixed to the agreement.

[134] The purchase price was \$2,260,000. To give additional plausibility to the agreement the provision for the payment of deposit originally had \$200,000 typed in but was crossed out with \$100,000 handwritten above it so as to give the appearance, no doubt to TEL, that this was a genuine agreement with the purchaser having negotiated with the vendor over the amount of the deposit. While Mr Mayer would not accept that proposition under cross-examination there is no other plausible explanation. It might, as far as Mr Mayer is concerned, be said to represent a further step in the fraudster's art.

[135] Mr Mayer accepted under cross-examination that the properties at Karaka Street, Newton were never transferred saying "the only people interested in such a thing are the lawyers for their balancing." As far as he was concerned, as long as

there were sufficient assets overall held by the purchaser, in this case MDM, to enable the mortgagee's position to be protected that was sufficient.

[136] Valuations were obtained, again from Mr Parkinson, showing a valuation for the three properties of \$2,230,000, as they were at inspection but with an additional value ascribed to the proposed refurbishment which would give the properties an overall value of \$2,450,000. The loan sought by Mr Mayer on behalf of MDM, \$1,677,500, was exactly 65% of the loan to value ratio, TEL's maximum for commercial properties, again another indication that Mr Mayer was clearly aware of this limitation.

[137] Consequently TEL advanced \$1,677,000 by way of mortgage to MDM, \$77,500 more than Mr Mayer needed to settle the first purchase. TEL believed it was advancing the monies to enable Mr Mayer to effect the purchase, through his company MDM, from Ms Ezarbal, unaware that Ms Ezarbal was, in reality, Mr Mayer, she simply being his agent. They were also unaware of the terms of the first agreement, including importantly the purchase price, as Mr Mayer would have had no interest in disclosing that to TEL given it would have affected the amount that could be borrowed.

[138] In submissions Mr Bradford said that TEL could have discovered the true situation by searching the title to the property. The title search was attached to the valuation, as is usual. That search indicated the registered proprietor of the property was St Martin Developments No.4 Limited. However TEL could not compel the production of a copy of an agreement between Ezarbal and St Martins Development No. 4 Limited as they were unaware of the relationship between Mr Mayer and Ms Ezarbal, namely she was acting as Mr Mayer's agent in purchasing from St Martins Development. They had no reason to suspect that Ms Ezarbal would have been anything other than a true purchaser on-selling the property to MDM Holdings Limited.

[139] The mortgage meant that MDM's borrowings from TEL exceeded \$4,000,000. The application was considered by TEL in the knowledge that the total exposure from TEL to MDM would be \$4,229,855.52. The increase over the cap generated some email correspondence between Lauren Peebles and Vicki Lewis, mortgage managers at TEL. In an email dated 13 July, 2006 Ms Peebles asked Ms

Lewis about a discussion she had recently had with Mr Mayer in which Ms Lewis had indicated a loan that allowed \$200,000 in excess of the cap would be all right. Ms Lewis's response was this was not so and Mr Mayer was aware that the limit of borrowings for any one entity or related entities was \$4,000,000 but the transaction was able to proceed because TEL decided to remove North Star Limited from its assessment of the overall indebtedness of Mr Mayer's various entities. In reality North Star was another Mayer entity. Shares were held by Mr Mayer's mother-in-law Gorgonia Tagnipez.

[140] The significance, of the email correspondence however, is that it illustrates that Mr Mayer was aware of TEL's policy of not allowing more than \$4,000,000 to be lent to its borrowers or to related entities, a point of significance in the way subsequent borrowings were constructed.

[141] The calculation of the purchase price for the second agreement was plainly designed to allow Mr Mayer to borrow the entire purchase monies for the property with \$77,500 to spare.

[142] Mr Mayer dealt directly with TEL on this application and forwarded it to Ms Lewis on July 13, 2007 representing that the purchaser had equity of \$570,000 to contribute as only part of the monies necessary to fund the purchase was to be raised by mortgage from TEL. Mr Mayer was aware that TEL would not consent to a second mortgage unless prior permission had been sought from it, and permission was not sought, so TEL was entitled to regard the difference between the funds advanced by it and the purchase price as the mortgagor's equity. In actual fact nothing was contributed by MDM or Mr Mayer as more was borrowed than was necessary to settle the purchase.

[143] The overall effect of Mr Mayer's scam was that MDM was able to borrow \$397,500 than it could otherwise have done had TEL known the true purchase price under the first agreement.

[144] As well as maintaining that he did not need to disclose the terms of the first agreement to TEL, because their position was protected by the overall equity position of MDM, and that he was entitled to use Ms Ezarbal and organise a second agreement to enable the value of the property to be put into the accounts for MDM at



its true value, although again not explaining why that agreement rather than the first agreement was shown to TEL, Mr Mayer maintained he had in effect created an equity in the property by purchasing it at a value less than its true market value, and that he was entitled to use the same. The second agreement he argued simply reflected the equity he had been able to create through judicious buying.

[145] There are of course a number of obvious fallacies in this argument. Firstly TEL was entitled to know the true situation and as Ms Lewis, giving evidence under her more recent surname of Meagher, said had they known of it they may well have placed less reliance on the valuation and would want to have been satisfied as to the true market value of the property. Secondly the fact that the first agreement was concealed from TEL meant Mr Mayer was knowingly using the subsequent agreement and mortgage application to obtain a pecuniary advantage for MDM, and was doing so dishonestly. He was well aware that he had no right to conceal the true nature of the transaction or mislead TEL over the mortgagors equity in the transaction knowing, as I am satisfied he did, that the mortgagee required an equity from the purchaser so as to be able to protect its own position. He cannot therefore rely on a claim of right defence or honest belief. Clearly the documents were knowingly used dishonestly at the time by Mr Mayer and to obtain a pecuniary advantage for MDM, namely a mortgage advance more than it was entitled to. For this count the Crown has proved each of the elements it must prove to the required standard of proof and Mr Mayer is guilty of the same.

#### **Count 5 – 1A/2 St Martins Lane**

[146] This was a further purchase of a floor at Peace Tower, St Martins Lane in which Mr Mayer again used two agreements to obtain ownership in the name of Beauregard Properties Limited (“Beauregard”), a company in which his sister-in-law Glemelda Domingo was a sole director and shareholder at the time. Mr Mayer was a signatory to the company’s bank account from 1997 onwards and he accepted in his evidence that he controlled the company.

[147] On 31 May, 2006, an agreement for sale and purchase was entered into between Hyo Seung Lee and Jong Myung Yun as vendors and Luk Siu Ming for a sale price of \$650,000 and for settlement within 30 days of the agreement becoming unconditional.

[148] The relationship between the nominal purchaser and Mr Mayer was different to the other transactions already described. Ms Ming was not related to Mr Mayer or to his wife but was the mother of an employee of MDM, Theresa Chu. The agreement itself was signed by Ms Chu on her mother's behalf. Mr Mayer did not speak to Mrs Ming about the transaction nor did he pay her any monies for entering into it but he did assist her financially in travelling from China, where she lived, to New Zealand.

[149] Although the first agreement was in the name of Luk Siu Ming as purchaser the second agreement disclosed to TEL was between Carlos Frederico Lucas Araujo Macedo as vendor and Beauregard as purchaser. That agreement dated 25 June, 2005, provided for a purchase price of \$940,000 and was for settlement on 25 July, 2006, which for obvious reasons became the date on which the first agreement was settled.

[150] The agreement provided for a deposit of \$90,000 but it was never paid and the agreement was also conditional on a purchaser's due diligence investigation and on the purchaser's access to the property.

[151] The explanation for the purported transfer to Beauregard being effected by Mr Macedo, a relative of Ms Monica de Magalhaes, Simon Turnbull's wife rather than Ms Ming was that it became apparent to Mr Mayer that it was too difficult to have Ms Ming sign the necessary transfer document in China and so a new vendor was substituted. The obvious reason for not again using MDM as the ultimate purchaser was that this would mean TEL's cap of \$4,000,000 per entity or related entity would be exceeded.

[152] Mr Mayer said in evidence Beauregard was used as both the first and second agreements were transactions, if the second agreement could be described in that way, involving a sale inclusive of GST and so it was preferable to use a new company that was not GST registered. I do not accept that explanation. MDM, which was GST registered, purchased the three floors in Peace Tower the subject of count 4 using agreements where the purchase price was inclusive of GST. The obvious and more compelling reason was that Mr Mayer realised that MDM was rapidly closing in on the borrowing cap set by TEL for individual or related entities by TEL and so a new purchaser would be required. I am satisfied that he knew of

the cap at a very early point, Ms Lewis, or Meagher as she was at the time of trial, saying in her evidence that she explained TEL's requirements and conditions to him when he expressed an interest in dealing directly with TEL. Clearly he would need to know the mortgagee's lending criteria to be able to either broker transactions, or introduce the purchaser he and later Mr Turnbull were using as their agents and so his protestations that he was not told of them by Ms Lewis or that he believed the cap related solely to an individual entity leaving him free to create different entities is, in the context of an experienced property developer and investor dealing directly with a mortgagee, simply not believable.

[153] Mr Mayer, on behalf of Beauregard, sought finance of \$658,000, \$8,000 more than the purchase price under the first agreement. Mr Parkinson again valued the property well in excess of the purchase price under the first agreement and ascribed a current market value of \$930,000 to the property. Several of the comparables used to establish the current market value were other floors in the building that had been purchased by Mr Mayer using the same double agreement technique.

[154] The requested loan of \$658,000 was 71% of the current market value of \$930,000 but only 58% of the anticipated market value referred to in the valuation report of \$1,140,000 once work on the premises had been completed with it being converted from a commercial office to a multi-bedroom apartment. That meant the proposal fitted within TEL's criteria and so was approved.

[155] The second agreement for sale and purchase, the approval letter and the application for finance were all particulars referred to in support of the count. The second agreement for sale and purchase was plainly a sham as the agreement was produced to be able to support an application for funding in excess of the true purchase price of \$650,000, TEL were led to believe that the whole mortgage advance was for use in the purchase yet unknown to it a surplus was produced which Mr Mayer was able to utilise for other purposes. A deposit of \$90,000 was shown as having been paid in the application for finance, when in fact it had not, and Mr Mayer would have known that, and the difference between the purchase price and the mortgage advanced would have undoubtedly, for TEL's purposes, represented a contribution of equity of \$282,000, but there was no contribution of equity as Mr Mayer was able to ensure that Beauregard borrowed more than was needed for the

purchase. Consequently the documents were used dishonestly and with the intent of obtaining a valuable consideration, namely a mortgage advance more than TEL would have advanced had they known the true situation, and produced a surplus of funds for Mr Mayer to use. Mr Mayer could not have been under any misapprehension that there was any right to use the documents in this way. The fact that he concealed the true nature of the transaction from TEL clearly illustrates that he was fully aware of not only the dishonest nature of the transaction but of the absence of any claim of right on his part in their use.

[156] Consequently I am satisfied that the Crown has proved each of the required elements in this count to the required standard of proof against Mr Mayer and I find him guilty.

#### **Count 6 - 8C/2 St Martins Lane**

[157] In this transaction, again at Peace Tower, namely the purchase of a two bedroom apartment occupying half the eighth floor in the building the same *modus operandi* was used. The first, and true transaction, was an agreement for sale and purchase between the trustees of the Lai and Poon Family Trust as vendors and Luk Siu Ming as purchaser. The agreement was dated 9 June, 2006 and was for a purchase price of \$525,000 inclusive of GST, settlement to be effected 60 days after the agreement became unconditional.

[158] The 'dummy' agreement, as with the earlier agreements was clearly prepared by Mr Mayer and was between Hau Yi Jiang and Beauregard. It was for a purchase price of \$760,000 inclusive of GST with a deposit of \$70,000. The settlement date was 28 August, 2006 which became the settlement date for the first agreement. The contract contained the usual false agent's details, in this case Ponsonby Real Estate, with its logo emblazoned on the front page together with conditions allowing access to the property and a due diligence clause.

[159] Again I am satisfied this agreement was constructed to mislead TEL and allow Mr Mayer to obtain for Beauregard, his entity in effect, more monies than would otherwise have been able to be obtained on mortgage had they known of the existence of the first agreement, which in reality was the one that was settled, and

also to obtain funds in excess of the purchase price which Mr Mayer was able to utilise for other purposes.

[160] Mr Mayer negotiated the sale with the Lai and Poon Family Trust, Mrs Ming, the nominal purchaser, was not involved as she resided in China and her daughter, Theresa Chu again signed an agreement on behalf of her mother.

[161] Because of Mrs Ming's presence in China and the difficulty in having her sign the memorandum of transfer another vendor, Hau Yi Jiang, was substituted. Mr Jiang played no part in the second agreement, other than being the nominal vendor, and Mr Mayer in his evidence confirmed he did not know who he was, it never being intended that Mr Jiang would own the property, the intention being that Beauregard would acquire it with Mr Mayer effectively being the beneficial owner. None of this was revealed to TEL.

[162] The application to TEL was made by Mr Mayer on behalf of Beauregard and without revealing his interest in Beauregard. He represented that a deposit of \$90,000 as shown in the second agreement had been paid, when it had not. He also represented that Beauregard was contributing the difference between the loan advance and the purchase price, a sum of \$272,000, to the acquisition of the property. TEL would have accepted that as the company's equity. In fact as Mr Mayer knew and intended it contributed nothing at all and a surplus was produced on the transaction.

[163] A valuation was, once again, obtained from Mr Parkinson. He valued the property at \$750,000. TEL, not knowing the true details of the overall transaction, advanced \$560,000 on the assumption that the difference between the purchase price, as it believed it to be, and the mortgage advance, was being contributed by Beauregard, and that the whole of the mortgage advance would be utilised in the purchase. It was not, and Mr Mayer never had any intention that it would be.

[164] Ms Hart, who features often as a solicitor in many of these transactions, acted on the supposed sale from Mr Hu to Beauregard. Mr Smith of Smith Mackie acted on the purchase. Ms Hart's settlement statement followed the usual pattern with the purchase price being shown as \$760,000, a deposit of \$70,000 shown as having been paid, when in fact it was not, and a further credit of \$210,000 being recorded as

having been satisfied on advice from her client. Her instructions came from Mr Mayer and he gave her this advice. The balance of the purchase price, \$483,393.21 after adjustments was able to be paid from the monies advanced from TEL.

[165] Overall I am satisfied that TEL was misled by Mr Mayer who failed to disclose his interest in Beauregard, effectively represented that there was a substantial cash contribution by Beauregard to the purchase, failed to disclose the agreement between the Lai and Poon Family Trust and Ming, failed to disclose that he was in reality the purchaser under both agreements, and failed to disclose that not all of the proceeds of the mortgage advanced would be used in the purchase of the property, a surplus of \$75,500.54 arising from the mortgage monies which was paid to Beauregard as a deposit of \$50,000 had earlier been paid by Mr Mayer using Sage Holdings, another company he controlled, on the original purchase from the Lai and Poon Family Trust.

[166] Consequently I am satisfied the Crown has proved that Mr Mayer used the documents specified as particulars for the count, namely the application for finance which he signed on behalf of Beauregard, the second agreement for sale and purchase which he created to mislead TEL over the sale price and the approval letter issued by TEL prepared on the basis of the misleading application which he signed. He accepted the conditions on behalf of Beauregard so as to be able to obtain the loan. In doing so he obtained a pecuniary advantage for Beauregard, effectively in any event himself, to which it was not entitled, namely an advance of more than TEL would have lent had they known the true purchase price under the first agreement. In so doing he used the documents dishonestly and could not possibly have had any belief that he was entitled to use the documents in this way, by concealing the true nature of the transaction, effectively the defence of claim of right which I reject.

[167] I find the Crown has proved each element of the count to the required standard against Mr Mayer and I find him guilty.

#### **Count 7 – 6C/2 St Martins Lane**

[168] This count represents the last of the first category of transactions involving Mr Mayer. Two agreements were used, the first, being the genuine agreement, was entered into between the parties, Leanne Hanham as vendor and Chu Kong as

purchaser on 19 July, 2006 for \$565,000, inclusive of GST. The transaction was to be settled 40 working days after it became unconditional and the agreement was conditional on finance of \$400,000 being obtained by 28 July, 2006.

[169] The second agreement, the only one in the transaction disclosed to TEL, was dated 16 August, 2006 and was between Mr Kong and Beauregard. The purchase price was \$770,000 inclusive of GST and the agreement was conditional on finance of \$520,000 being obtained by 30 August, 2006, the settlement date being 25 September, 2006. As with the earlier agreements this became the settlement date for the first agreement for this property.

[170] The agreement had the logo of Ponsonby Real Estate emblazoned on the front, clearly not part of the original agreement for sale and purchase agreement, but affixed to the agreement by Mr Mayer and with the agreement itself subsequently copied to TEL. Ponsonby Real Estate did not act on the second agreement, that agreement being a sham.

[171] Mr Kong was the brother of Theresa Chu, Mr Mayer's associate at MDM. Ms Chu, clearly familiar with the scheme, recommended him to Mr Mayer as the purchaser but Mr Mayer never spoke to Mr Kong about either transaction and negotiated the terms of the first transaction himself.

[172] Again a loan application was forwarded by Mr Mayer directly to TEL. He represented to TEL that a deposit of \$75,000, shown on the second agreement, had been paid when it had not been paid and given the difference between the purchase price under the second agreement and the amount being applied for by way of mortgage, the sum of \$520,000, Mr Mayer falsely represented that Beauregard was contributing \$250,000.

[173] A valuation was obtained from Mr Parkinson, the valuation being \$800,000 and on the basis that the loan applied for was only slightly over TEL's loan to value ratio of 65% TEL approved the loan. The approval of this loan meant that Beauregard's total exposure to Beauregard was now \$2,437,956.69. This was noted in TEL's internal workings concerning the approval of the loan and shows how TEL were careful to ensure there was no significant breach of either the loan to value ratio of 65% or the cap of \$4,000,000 to any one entity or group or associated borrower.

TEL was not, at this point, aware of Mr Mayer's underlying interest in Beauregard, Ms Domingo the shareholder and director merely being an agent of Mr Mayer and his wife.

[174] The loan offer duly issued through an approval letter dated 22 September, 2006 addressed to Beauregard but care of Mr Mayer. The offer was signed and accepted by Ms Domingo and returned to Beauregard. The offer was clearly made in the belief that the actual purchase price was \$770,000 rather than the \$565,000 under the first agreement.

[175] A deposit of \$50,000 was paid by Mr Mayer to the vendor pursuant to the first agreement. The usual solicitors acted on the transaction, Ms Hart for Mr Kong on both the purchase and sale and Mr Smith for Beauregard on the purchase. Ms Hart's settlement statement showed a deposit of \$75,000 having been paid by Beauregard, which was not in fact true, and advice from her client of satisfaction of \$175,000 of the purchase price. Mr Mayer was advising both solicitors, Mr Smith on behalf of Beauregard and Ms Hart on behalf of Mr Kong who at all times was resident abroad, in China.

[176] As with the other transactions, Mr Mayer accepted that he was in effect selling to himself and dealing with all aspects of the transaction, both with the mortgagee and the solicitors. As with the other transactions the Crown submitted that the use of the second agreement with the logo of a real estate agent, who was not involved in the transaction, was merely 'window dressing' to persuade TEL that it was dealing with a genuine arms length transaction when it was not.

[177] Again Mr Mayer's stratagem enabled Beauregard, in effect him, to borrow more than it would otherwise have been entitled to had the true purchase price for \$565,000 for the property under the first agreement being disclosed to TEL. Effectively he funded the entire purchase through borrowing although TEL would, no doubt, have believed that Beauregard had contributed an equity of approximately \$250,000 to the transaction.

[178] Overall I am satisfied that Mr Mayer used the document specified in the particulars given in support of the count, namely the application for finance, the second sale and purchase agreement between Kong and Beauregard and the approval



letter to obtain a pecuniary advantage for Beauregard, and indirectly himself, and to which he knew Beauregard would not be entitled had the true purchase price and the first agreement been disclosed to TEL. He concealed that document for the sole reason that had he not done so he would have not obtained the funds he needed to meet the entire purchase price under the first agreement. Consequently he did so dishonestly and could not have had any genuine belief that he had a claim of right to do so. It follows therefore that the Crown has proved each element of count 7 against Mr Mayer to the required standard of proof and so he is guilty in respect of the same.

### **Second category properties – transactions involving Turnbull and Mayer**

[179] This category of transactions involve the sale of Mayer Properties, some nine in number, to Turnbull controlled entities or persons. Properties involving counts 8, 10, 11, 12 and 15 involved a double agreement procedure, firstly a sale from the registered proprietor, a Mayer controlled entity or person to another Mayer controlled entity or person. That entity or person would then enter into a second agreement to sell to a Turnbull controlled entity or person, usually at a lesser sale price than that recorded in the first agreement. Mr Mayer in his evidence said the reason for that was to shift the property from a non-GST registered entity or person to a GST registered entity or person, hence the need to sell initially to a Mayer controlled entity which was GST registered and for that entity to be able to complete the sale process by selling to a GST registered entity of Turnbull's so the property could be sold as going concern.

[180] The other four counts, counts 9, 13, 14 and 16 were sales from a Mayer-controlled entity to a Turnbull controlled entity, as going concerns and for these counts only one agreement for sale and purchase was used.

[181] These transactions arose out of an agreement reached at some unspecified point by Messrs Mayer and Turnbull for Mr Mayer's properties to be sold to Turnbull controlled entities, the properties to be developed and then sold with any profit arising divided between them. TEL was to be used to raise sufficient monies that would enable existing mortgagees to be repaid and the excess to be applied in the development of the properties. In his interview with Mr Wall, the newspaper reporter, Mr Mayer referred to these monies as being monies that were "over-

borrowed”. Mr Mayer would not insist on payment in full but would leave in money in the form of a loan with interest to be paid and with the properties to be sold in three years time for an anticipated capital gain. The agreements were recorded in various deeds of settlement. Mr Mayer accepted a deed of settlement was prepared for each property in this category. The deeds were not disclosed to TEL. The deeds specifically provided that Mr Mayer would not register a caveat to protect his interest but could call for a mortgage. The reason for not registering a caveat, as Mr Mayer candidly admitted, was that such might attract the interest of TEL who, by the terms of their mortgage document, specifically forbade the encumbering of properties on which they had advanced monies by way of a first mortgage without their prior knowledge and consent.

### **Monica de Magalhaes**

[182] The evidence of Ms de Magalhaes was important in the context of the evidence supporting counts 9 to 16. She said she came to New Zealand, having trained as an architect in South Africa, with her husband Simon Turnbull in 1995 and shortly after arriving secured employment with Mr Mayer, initially to assist with property development he was undertaking, as his project manager and she later became a property manager for him. She worked for him for several years, initially fulltime. In 2005, after her husband, Simon Turnbull’s property development at Gulf Harbour had failed she returned to work for Mr Mayer. She said in her evidence that her husband, Mr Simon Turnbull, and Mr Mayer became involved in property transactions in May, 2006, when her husband began purchasing properties from Mr Mayer. She said the properties were rundown residential properties, needed development and there was an understanding that Mr Turnbull would buy them, undertake their development and he and Mr Mayer would share the profit. She also said that it was intended that her family in Portugal would become involved as her understanding was that a funding facility through TEL was available which would allow individuals to purchase properties up to \$4,000,000. She said in her evidence that this meant her family members in Portugal, who had few prospects there, would be able to obtain future work on the properties and the expectation was that “everyone could benefit.”

[183] She said in her evidence that she overheard her husband and Mr Mayer discussing the TEL lending policy to the effect that an individual could borrow up to

\$4,000,000. Her husband would prepare the applications in pencil and she would overwrite them in pen. Clearly they decided to use individual purchasers, in the form of Ms de Magalhaes' relatives so that no single individual would exceed the cap.

#### **Count 8 – 21 St Benedict's Street**

[184] This property was owned in the name of Glemelda Domingo, who was holding the property on trust for Mr Mayer and his wife Rosalie Mayer, née Domingo. Glemelda Domingo was Mr Mayer's sister-in-law. On 9 August, 2006 she entered into an agreement to sell the property to North Star Holdings Limited for \$1,775,000. The purchase price was inclusive of GST. The settlement date was 9 October, 2006.

[185] The second agreement was between North Star Holdings Limited and Victoria Property Holdings Limited ('VPH') and was dated 24 August, 2006 with a sale price of \$1,600,000 plus GST. North Star Holdings Limited was a Mayer entity with Mr Mayer being the sole director of the company and the shares owned by North Star (Ak) Limited, the shares in that company being held by Mr Mayer's mother-in-law. VPH was a Turnbull entity. Mr Turnbull and his wife, Ms de Magalhaes were directors and equal shareholders in the company.

[186] The application for finance was not prepared by Mr Mayer but he referred the transaction to TEL. TEL had considerable confidence in Mr Mayer and accepted him as a broker or referer of borrowers. TEL's internal analysis for the transaction notes that the application had been referred to it by Mr Mayer, and Mr Mayer in his evidence said that he was recognised as the pathway to TEL, not as a broker in this instance, but as the introducer of the client. The loan offer, when issued, was sent to VPH care of Mr Mayer and his company MDM. Mr Mayer signed the first agreement as purchaser and the second agreement as vendor on behalf of North Star Holdings. He, therefore, was well aware that there were two agreements for the property. It was established in the evidence that if documents were sent from Mr Turnbull's facsimile machine then they were often marked by a line in the top of the document to its bottom, but no such line appeared on documents sent from Mr Mayer's machine. It seems likely that the application to TEL for mortgage finance for VPH was faxed from Mr Mayer's machine as it did not have the markings which

indicated it had originated from Mr Turnbull's. The application was in the same form used by Mr Mayer in some of his transactions under the first category. Mr Mayer accepted that it was likely that Mr Turnbull was using a form of application that he provided. Plainly this illustrates the degree of assistance Mr Mayer provided to Mr Turnbull.

[187] The transaction recorded in the second agreement was supported by a valuation for \$1,570,000. VPH was said to be contributing \$320,000 and to have other funds of \$150,000, a deposit, which Mr Mayer knew had not been paid although the vendor's solicitor's settlement statement noted that it had. Mr Mayer gave instructions to her on the sale. Similarly the settlement statement recorded that a further deposit had been satisfied, \$290,000, when it had not. Again instructions for that came from Mr Mayer.

[188] Overall VPH contributed no funds for the purchase, TEL lent \$1,256,000 of the mortgage advance and Mr Mayer left in \$450,000 as a vendor loan under the deed of settlement which was not disclosed by Mr Turnbull to TEL.

[189] Two agreements were used, the first between Domingo and North Star Holdings Limited had no reference to a real estate agent but the second had a logo attributed to Focus Real Estate, who were not involved, on the front page of the agreement, no doubt intended to lead TEL to believe that the transaction was an "arms length" transaction. Mr Mayer knew that no agent was involved as he signed the agreement for the vendor and knew the second agreement only would be disclosed to TEL.

[190] Given the similarity to the first transactions, Mr Mayer's involvement in the two agreements, the fact that he introduced VPH to TEL and that he entered into a deed with Mr Turnbull recorded a debt by Turnbull to him of \$450,000 I am satisfied that he would have been fully aware of the sum that was being sought from TEL by VPH, and that the settlement deed, entered into by the parties before the application, would not be disclosed to TEL, in particular because it would reveal the role Mr Mayer was playing in orchestrating the transaction, and the lack of equity on the part of the purchaser.

[191] I accept Ms de Magalhaes' evidence which is supported by the documentary evidence that Messrs Mayer and Turnbull were involved in a plan to borrow money from TEL and misrepresent to TEL the true nature of the transactions. It is a matter of inescapable inference that for the plan to succeed the parties, Messrs Mayer and Turnbull would have had to have discussed the application in some detail, in particular the size of the loan to be applied for as it effected the monies to be left in by Mr Mayer. Consequently I am satisfied that the loan application was used dishonestly by both men in that it was represented in the application that the mortgage monies would be applied towards the purchase of the property, with VPH contributing \$470,000 of its own money, when, in fact, no monies were contributed and part of the monies advanced by way of mortgage were distributed to bank accounts associated with Mr Turnbull, it being the intention of the parties that those monies would be used to develop the property.

[192] On that analysis the application for finance was used to obtain a pecuniary advantage, as the monies were not used wholly for the purpose they were advanced for, and the agreement for sale and purchase between North Star and VPH was misleading because that agreement and the application itself led TEL to believe that the borrower, VPH would be contributing significantly in the form of monies to be used in the purchase, when it was not.

[193] I am satisfied that Mr Mayer knew what was proposed, the settlement deed leads overwhelmingly to the inference that he did. The similarities to his own earlier transactions represented by counts 1 to 7 and the discussion between the two men that Ms Magalhaes overheard clearly illustrates what was intended. His entry into the second agreement on the part of North Star clearly aided Mr Turnbull in committing the offence as well as his acknowledgement that TEL would be misled in the content of the applications. He well knew the settlement deed would not be disclosed and cannot lay the blame for that solely at Mr Turnbull's feet. He knew the documents would be used dishonestly and assisted to the extent outlined in ensuring that they were. He could not have had any claim of right, because of the dishonesty involved, and the giving of assistance to Mr Turnbull to mislead TEL in this way. He is, therefore, guilty of this count in the indictment.

**Count 9 – 74/76 Upper Queen Street**

[194] This transaction involved a sale of 74/76 Upper Queen Street to Mr Turnbull's father, Joseph Turnbull, at a sale price of \$5.5 million. The agreement provided for a deposit of \$300,000 to be paid by Mr Turnbull and for Mr Turnbull to transfer to the vendor a property at 365 West Coast Road, Glen Eden, for \$1,200,000 as part payment of the purchase price for the Upper Queen street properties. The agreement was signed for the vendor, North Star, by Gorgonia Tagnipez, Mr Mayer's mother-in-law at a time when she was out of New Zealand. Ms Payne in her evidence noted that Ms Tagnipez left New Zealand on 14 February, 2006 and returned on 25 December, 2009.

[195] Mr J L W Turnbull, the father of Simon Turnbull said, in his evidence, that he did not have \$300,000 for the deposit, never having had that much money in his life and did not own a property at West Coast Road. He said he signed the agreement at Ms Hart's premises and that Mr Mayer was there. He said he thought he was taken there by his son, Simon Turnbull.

[196] The mortgage application signed by Mr Turnbull and his wife, sought \$4,000,000. It represented that \$1.2 million was being contributed by the Turnbulls to the purchase and in the assets column on the application represented that they owned a property at 55 Cochrane Street worth \$755,000. In his evidence Mr Turnbull said that in 2010 the property was only worth approximately \$380,000 and there was a mortgage of \$134,000 owing in respect of it, the mortgage liability not being shown in the application.

[197] The application was prepared by Mr Simon Turnbull in consultation with Mr Mayer. On 17 October, 2006, two days after a settlement deed, that was to be kept hidden from TEL, was signed between North Star, Mr and Mrs J L W Turnbull and their son. Simon Turnbull sent a facsimile letter to Mr Mayer indicating that he had placed a property at Remuera Road on the application to give more weight to it but was told not to by Mr Mayer as the property had been sold to Simon Turnbull, not to his parents.

[198] Mr Bradford submitted that this demonstrates Mr Mayer's honesty in dealing with the applications. This is one inference that can be drawn but another inference

is that it was removed because it was not needed to make the transaction work. On its own this may have been of some assistance to Mr Mayer but given the weight of evidence supporting the Crown's proposition that the men were engaged in a scheme to secure mortgage monies from TEL in breach of its lending requirements and without disclosing relevant information to it, it does not convince me that the inferences are equal and the more likely inference is that it was removed because Mr Mayer, on looking at the application overall, realised it was unnecessary to include it.

[199] On 18 October, 2006 Mr Mayer signed a letter to TEL in relation to the Turnbull funding application, which letter was said to include the application form, a current market valuation and the agreement for sale and purchase. In his evidence he admitted signing the letter but said that he did not look at the documents that were forwarded with it. He had already seen the application when it included the Remuera Road property, as it had been sent to him by Mr Turnbull the day previously with the query as to whether Remuera Road needed to be included. He would have known what the valuation was as he needed to know what the loan would be so as to calculate the equity to be left in under the undisclosed settlement deed which contained an agreement to mortgage. He had signed the agreement for sale and purchase himself. I do not accept that Mr Mayer can disassociate himself from the enclosures simply by saying that he did not review the documents with it and that had he done so he would have seen his mother-in-law's signature on the agreement and that, he said, would have alerted him to something "seriously untoward" as his mother-in-law was out of New Zealand.

[200] I do not accept that evidence. Firstly Mr Joseph Turnbull said he signed the agreement at Mrs Hart's office, a solicitor who invariably acted for Mr Mayer, and Mr Mayer was present. He therefore knew that the vendor would be North Star Holdings Limited. As it happened Ms Tagnipez's signature would not have been required for the vendor as Mr Mayer could have signed the agreement for it, he being the sole director of that company.

[201] Whatever the reason for including the facsimile of Ms Tagnipez's signature on the agreement I am satisfied that Mr Mayer was knowingly a party to the deception of TEL. He knew that the settlement deed which he signed with Mr Turnbull before the application was lodged, would not be disclosed, as if it had TEL

would inevitably have declined the loan given the size of the debt to be secured to Mr Mayer's company, \$1,700,000 and which bore interest at 9%. He knew this had not been included in the draft application for Mr Joseph Turnbull which Mr Simon Turnbull showed him the day prior to the application being lodged as part of his query as to whether Remuera Road should be included as an asset. He had advised Mr Turnbull that only \$4,000,000, rather than \$4.13 million as was initially proposed could be applied for because of the TEL cap. He was intimately involved in the application. I accept the agreement was probably prepared by Mr Simon Turnbull.

[202] It defies credibility for Mr Mayer to suggest he did not know of the contents of the documents sent to TEL. He knew that an application would be forwarded to TEL without material particulars disclosed or the settlement agreement. He knew it would contain a representation that the Turnbull Seniors were contributing significant cash, when they were contributing nothing and he was leaving in substantial monies and with Simon Turnbull receiving \$174,000 from the mortgage advance, and that none of this would be disclosed to TEL. He knew therefore that the documents would be used dishonestly and for the purpose of obtaining a pecuniary advantage for Simon Turnbull, and there could be no claim of right. This is not even a case of wilful blindness where it could be said that Mr Mayer did not read the documents in order to deny knowledge of the content; refer *Millar v Ministry of Transport* [1986] 1 NZLR 660 (CA).

[203] I am satisfied Mr Mayer was well aware of the content of the documents. He needed to know the price nominated in the agreement for sale and purchase to be able to enter into the settlement deed with Mr Turnbull. I am quite sure that he was aware that the whole procedure was dishonest and that there was no issue of claim of right and that, in forwarding the application and supporting documents, advising Mr Turnbull on the content of the application, entering into the settlement deed and the knowledge it would never be disclosed to TEL and forwarding other material to TEL, such as the bank statements for Mr and Mrs Joseph Turnbull, that he not only committed the offence himself but also aided Simon Turnbull in the commission of the offence by him.

[204] Accordingly I find Mr Mayer guilty of this count.



**Count 10 – 327 Karangahape Road**

[205] In this transaction two agreements for sale and purchase were used, the first dated 2 October, 2006 from Beauregard to Artizanz Limited for \$2,780,000 inclusive of GST. Both companies were controlled by Mr Mayer.

[206] The second agreement, the agreement disclosed to TEL, was undated and was from Artizanz Limited to Alexandra de Magalhaes with a sale price of \$2,500,000 plus GST, but zero rated. Ms de Magalhaes was Monica de Magalhaes's sister.

[207] The second agreement for sale and purchase had all of the usual rig up designed to make it look as if it were a genuine arms length transaction. A Ponsonby Real Estate logo was emblazoned on the front of the agreement. Again it had the appearance of a real estate's card or part of a letterhead having been pasted onto the agreement. Ponsonby Real Estate did not act on the transaction. The agreement provided for a deposit of \$100,000 which was never paid and, rather than real estate being transferred as part of the purchase price, the purchaser agreed to transfer a "luxury ocean going cruising yacht "Will" for \$800,000, the balance of the settlement price to be paid in cash on settlement.

[208] Ms Monica de Magalhaes gave evidence that her sister did not own a yacht, had few assets of her own and unsurprisingly no trace of the yacht was found by the Serious Fraud Office in their investigation although photographs of yachts were found at the offices at Peace Tower when Mr Russell inspected them, no doubt providing inspiration for this part of the sham document. Mr Mayer's evidence was that he was aware that Ms de Magalhaes was unlikely to own a yacht but assumed that Simon Turnbull owned it.

[209] The yacht, if it existed, was never intended to be transferred. It was used, patently, in the same way that the properties at Karaka Street, Newton, were always going to be transferred as part-payments for some of the agreements in the first category of transactions, but never were. Its inclusion was simply a device needed to balance the transaction, as Mr Mayer put it in relation to other transactions, so that the lawyers could be advised this part of the agreement had been satisfied and a credit could then be shown on a settlement statement.

[210] As far as the loan application was concerned it disclosed that Ms de Magalhaes was a 47 year old Portuguese woman who had been living in New Zealand for approximately two months and was self-employed as a psychologist. The purchase price was shown as \$2,500,000, her contribution being \$800,000, being the yacht to be transferred, the deposit of \$100,000 and an additional \$100,000 so that a mortgage advance of \$1,750,000 was required. The only asset in the nature of real estate disclosed in the assets column of the application was the property being purchased, shown at its full price. There was a double counting of the deposit as that was shown separately as an asset in the form but I accept the form of the application was slightly misleading in that respect. The mortgage said to be owed was \$1,600,000 yet \$1,750,000 was applied for. The applicant, Ms Magalhaes did not disclose any income and had credit card debts of \$5,000.

[211] I am satisfied Mr Mayer knew the yacht was not going to be transferred. The misleading nature of its inclusion in the agreement for sale and purchase and the indirect reference to it in the assets column of the application is illustrated by the provision of the settlement deed dated 24 October, 2006 which provided that \$1,345,000 would be left in the property by Artizanz, a Mayer entity as an unregistered second mortgage to bear interest at 9%. No allowance was made for the supposed transfer of the yacht at \$800,000. Mr Mayer signed the agreement on behalf of Artizanz the vendor.

[212] The mortgage application was successful and \$1,760,000 was advanced of which Mr Mayer, through Artizanz received \$1,155,688.29 of which all but \$5,000, taken for fees by Mrs Hart, the vendor's solicitors, was transferred to Beauregard.

[213] Mrs Hart's settlement statement showed a deposit of \$100,000 as having been satisfied, when it had not been, and a further deposit of \$600,000 as being satisfied, again that had not occurred. Mrs Hart was instructed by Mr Mayer on these entries. The settlement statement did record a vendor advance of \$645,000 notwithstanding TEL was unaware of this. The loan offer was sent to Ms de Magalhaes on 6 November, 2006, by TEL writing to her care of Mr Mayer.

[214] Mr Turnbull received \$582,128.21 from the loan from TEL.

[215] The need to conceal the settlement deed from TEL was obvious. Had that been disclosed then rather than Ms de Magalhaes having net assets after purchase of \$1.8 million, which TEL's approval sheet showed they believed to be the position, it would have been seen was indebted to Mr Mayer's company Artizanz for \$1,345,000, the amount left in by the unregistered second mortgage.

[216] The Crown, as well as relying on the application for finance and the agreement for sale and purchase between Artizanz and Ms de Magalhaes and the approval letter also relied on a deed of lease which was forwarded to the valuer and which they submitted influenced his valuation. That lease showed North Star Holdings Limited as a tenant of the property and was a factor in TEL approving the loan, TEL's internal loan approval form noting that the servicing of the debt was fully met from the lease income and that it was guaranteed by Mr Mayer. No rental was ever paid under the lease but as the reports of Roberts McEwan, the valuers, indicated the lease was a significant factor in the valuation of \$2,475,000 being ascribed to the property. At the time of the valuation the lease had not been executed but it indicated that a rental of \$156,000 per annum plus GST was to be paid. The lease came to be dated 20 November, 2006 and was signed by Mr Mayer on behalf of North Star Holdings Limited. Mr Mayer's defence was that he had nothing to do with the application, the application itself being forwarded by Ms de Magalhaes, presumably after Mr Mayer had advised TEL that it was to be forthcoming. However the extent of his involvement in the matter is shown through an internal email from TEL where an employee asked Vicki Lewis to discuss Ms de Magalhae's residency status with Mr Mayer. He could not recall that discussion but said had that occurred he would have passed the query on to Simon Turnbull or his wife.

[217] Mr Mayer was aware that an application was to be lodged by Monica de Magalhaes's sister. He knew that the agreement contained provision for the transfer of a yacht as part of the consideration and that TEL would be told that. He knew that would not occur because he entered into a settlement deed which quantified the amount of monies left in by him through his company on an undisclosed mortgage and he therefore knew no monies had been introduced by the purchaser. He knew that position would not be disclosed to TEL.

[218] The money that was received from TEL was distributed in part to Simon Turnbull who was not a purchaser and Mr Mayer knew that the nature of the

application meant that TEL believed that, not only that Ms de Magalhaes had \$1.8 million worth of assets, when Mr Mayer well knew that she had not, but that all of the mortgage advance would be applied to effect the purchase of the property. He knew that it was not, not only because of the provisions of the settlement deed but because he instructed Mrs Hart, the vendor's solicitors, that the monies to be introduced into the transaction by Ms Magalhaes had been satisfied, when he knew they had not. Consequently Mr Mayer was as involved in this transaction as Mr Turnbull. He signed the deed of lease which affected the valuation and monies were never paid under that deed. He knew the documents would be used to support the application and that they were forwarded to TEL. The loan offer was sent to Ms de Magalhaes care of his address. He knew the documents were being used dishonestly. He knew the intention was to obtain a pecuniary advantage to which Ms de Magalhaes would not be entitled had TEL known the true structure of the transaction. The dishonestly and concealment involved means that he cannot rely on a claim of right defence. He was clearly aware of the dishonesty involved at the time. He clearly aided the offending through his role in it and is accordingly guilty of the count.

#### **Count 11 - 129 Grafton Road, Grafton**

[219] Count 11 again involves two sale and purchase agreements. The first agreement is dated 10 November, 2006 between North Star (Ak) Limited and North Star Holdings Limited with a purchase price of \$3,994,000 inclusive of GST. The second, which predated the first, was between North Star Holdings and Maria Alexandra de Magalhaes, Monica de Magalanes's sister with a purchase price of \$3,550,000. The agreement was zero rated and Mr Mayer's evidence was that the two transactions were used for GST reasons.

[220] A loan application was sent to TEL on 30 November, 2006. It was signed by the applicant herself and represented that she was contributing \$950,000 and another \$250,000 by way of a deposit. The requested loan was \$2,350,000 and assets of \$800,000 was said to be held, presumably this is again the yacht. Two properties were shown in the list of real estate owned by the applicant, one 327 Karangahape Road, the subject of count 10 in the indictment, and the other, 129 Grafton Road, Grafton, the property being purchased.

[221] A settlement deed was entered into between North Star Holdings Limited, the vendor, Ms Maria Alexandra de Magalhaes as the purchaser and Simon Turnbull as the developer and provided for \$2,405,000 to be left in for three years by way of unregistered second mortgage with interest at 9%. This was not disclosed to TEL which, in its internal mortgage assessment document noted that Ms de Magalhaes had been referred to TEL by Mr Mayer and that her net assets after purchase of the two properties, 327 Karangahape Road and 129 Grafton Road, would be \$3.2 million without realising the extent of the indebtedness shown in the settlement deeds. Consequently TEL were misled and issued the conditional approval letter on the basis of the deliberately misleading document submitted to them.

[222] Contrary to what TEL believed, Ms de Magalhaes did not contribute funds to the purchase, TEL lent \$2,250,000 on the application thinking it would all be used to fund the purchase. The loan was \$100,000 less than sought as Mr Mayer came up against the cap TEL writing to him on 15 November, 2006 to say the requested amount would take Ms de Magalhaes over the \$4,000,000 limit. Mr Turnbull received \$1,074,639.90 of the monies and Mr Mayer \$1,145,433.39 and also secured a mortgage back to his vendor company for \$2,405,000.

[223] The usual false details were shown on the agreement for sale and purchase, the second agreement sent to TEL, namely Focus Real Estate being typed in as the name of the agent, when it did not act in the transaction, a deposit of \$250,000 which was never paid but with Mr Mayer advising Ms Hart, who prepared the settlement statement, that the deposit had been paid. Consequently I am satisfied that both Mr Mayer and Mr Turnbull, as with the other counts already discussed in which they are jointly charged, dishonestly used the loan application and the company documents sent to TEL, and the acceptance of TEL's loan offer, by representing to TEL that Ms de Magalhaes was a genuine buyer and that the transaction was an arms length transaction when in fact the property was always to be owned by Simon Turnbull, and that a cash contribution would be made by Ms de Magalhaes when it was not, and that all monies advanced by TEL would be applied to the purchase of the property when they were not.

[224] Therefore, the documents were used dishonestly and with the intent of obtaining a pecuniary advantage to which the applicant, and Messrs Turnbull and Mayer and their entities were not entitled. Both men knew the documents were

being used dishonestly, and no claim of right defence arises. The whole nature of the subterfuge indicates knowledge of an absence of a claim of right. Mr Mayer plainly assisted Mr Turnbull in this offence and is accordingly guilty of this count.

**Count 12 – 31 Shaddock Street, Eden Terrace**

[225] Count 12 in the indictment concerns a purchase from North Star Holdings Limited by Danae Farinha. Three agreements for sale and purchases used for the property. The first was dated 22 November, 2006 between Marilou Domingo, Mr Mayer's sister-in-law and North Star Holdings Limited with a purchase price of \$1,000,000. The agreement provided for a deposit of \$100,000 and no conditions were attached. The second agreement dated 19 December, 2006 was between North Star Holdings Limited and Danae Farinha, Monica de Magalhaes's niece. That agreement provided for a purchase price of \$950,000 with a deposit of \$80,000 and was on what Mr Dixon, counsel for the Crown described as a branded form, in other words the words Focus Real Estate had been inserted on the form when the firm did not act, plainly with the intention of persuading TEL that this was an arms length transaction.

[226] The third agreement appeared to be a copy of the second agreement but with the purchase price of \$950,000 altered by hand to record a price of \$900,000 and with the words "zero rated" handwritten alongside. This was the agreement forwarded to TEL.

[227] The loan application was forwarded to TEL by Danae Farinha and represented to TEL that she was contributing \$180,000, had further assets of \$800,000 and was also contributing a further \$100,000 through payment of a deposit, notwithstanding that the third agreement only provided for a deposit of \$80,000. A lease with MDM as tenant was used to support the application. The valuation report prepared by Robert McEwan showed gross rental income of \$1,170 per week from the property, an old residential building let by the room, together with three car parks.

[228] Ms Farinha had only been in New Zealand for three months prior to the application and was a 25 year old single woman who did not own assets in her own right notwithstanding the sums the loan application represented she had. Her income

was disclosed as being \$30,000, that being a result of an offer of employment from MDM which was forwarded to TEL. That letter, signed by Mr Mayer, and dated 1 November, 2006 offered Ms Farinha employment for two years from January 8, 2007.

[229] The loan application was approved with the approval letter faxed to Ms Farinha care of Mr Mayer. TEL believed that the monies advanced by way of mortgage were to be used for the property purchase.

[230] A settlement deed, typical of this category of transaction was prepared. It was between Mr Simon Turnbull, North Star Holdings Limited and Ms Farinha and was dated 19 December, 2006. It provided that the vendor would leave in an unregistered mortgage for \$190,000 for three years with interest to be paid at 9%. Mr Mayer signed the deed on behalf of North Star Holdings Limited. The deed, of course, was not disclosed to TEL but Mr Mayer, before entering into the deed, needed to know the amount applied for so he could calculate the amount to be left in.

[231] The usual scheme unfolded. No contribution was made by Ms Farinha, TEL lent \$720,000 thinking it was to be used entirely in the purchase and that there was a substantial cash contribution from Ms Farinha as purchaser. Mr Mayer received \$680,000 of the loan and the vendor mortgage and Mr Turnbull \$27,485.85.

[232] The forms submitted followed the usual format. Although the loan application was submitted by Ms Farinha, on one of the pages of the loan application an address was written in Mr Mayer's handwriting. His explanation for this was, somewhat lamely, that someone must have cut and pasted his handwriting onto the document. What plainly occurred is that an address was wrong on the printed application and was seen by Mr Mayer who twinkled the incorrect address out and handwrote the words "31 Shaddock Street" on the tape and wrote "Eden Terrace" after those words.

[233] The internal assessment by TEL noted that Ms Farinha had been referred by Mr Mayer and would have net assets after the purchase of \$1,104,000. In fact after the purchase Ms Farinha was indebted in the sum of \$190,000 by the terms of the settlement deed and contributed nothing to the purchase although TEL, on its internal assessment, noted she was contributing 20% or \$180,000. The advance was

treated as an advance within the residential loan value ratio so that 80% could be lent rather than the 65% that applied to commercial transactions.

[234] The Crown's case was that the offer of employment was fabricated by Mr Mayer to support the application. There was no evidence that she was ever paid by MDM, certainly none was found by Mrs Payne, the forensic investigator employed by the Serious Fraud Office and in a later transaction, 44 St Benedict's Street, Ms Farinha disclosed that she was self-employed. Again the Crown submits that the lease document was simply to give comfort to TEL and to lead them to believe that the property was self-supporting.

[235] Again Ms Hart acted for North Star Holdings on the sale to Ms Farinha. Her settlement statement shows that her client advised the sum of \$210,000 of the purchase price of \$950,000 had been paid by the purchaser. That advice came from Mr Mayer. He would only have given that advice if he was involved in the transaction and knew the full extent of the deceit being perpetrated on TEL.

[236] Overall I am satisfied that Mr Mayer was fully aware of this application and was involved in it. As with the other counts under the second category of properties he needed to be involved so as to be able to calculate the amount he would leave in by way of mortgage. He knew that document would not be disclosed to TEL and would know it was relevant to their enquiry as it disclosed indebtedness on the part of the borrower which they would want to take into account as well as the fact that the property could potentially be encumbered by a second mortgagee and that TEL was being misled over the equity position.

[237] Therefore I accept that Mr Mayer, together with Mr Turnbull, dishonestly used the loan application and the acceptance that followed and did so with the intention of obtaining a pecuniary advantage, ultimately for themselves, which was never disclosed to TEL. Mr Mayer well knew that Simon Turnbull was the beneficial owner of the property and \$171,465.85 was distributed into bank accounts associated with Mr Turnbull and Mr Mayer. Consequently there is no question of Mr Mayer, or for that matter Mr Turnbull, acting honestly on this transaction or claim of right. Both, I am satisfied, were fully aware of what was to occur notwithstanding that the application was made by Ms Farinha herself. The count has been proved to



the required standard by the Crown and Mr Mayer is accordingly guilty in respect of it.

### **Count 13 – 44 St Benedicts Street**

[238] This transaction was one of the last four counts of the second category of transactions in which only one agreement for sale and purchase was used. That agreement for sale and purchase was between Ortem Developments Limited (“Ortem”) as vendor and Danae Farinha, the purchaser and was for a purchase price of \$4,057,000. The transaction was shown as being zero rated for GST purposes and provided for a deposit of \$100,000.

[239] Ortem was a company in which Mr Mayer’s wife, Rosalie was the sole director and was a 51% shareholder with the remainder of the shares being held by her mother Gorgonia Tagnipez.

[240] The loan application was sent to TEL in the name of Danae Farinha, the agreement for sale and purchase, a valuation from Roberts McEwan and Associates Limited, Mr Simon Turnbull’s preferred valuers, at \$4,010,000 supporting it. A copy of a deed of lease between Ms Farinha and North Star Holdings Limited guaranteed by Gorgonia Tagnipez, who purportedly signed the deed as guarantor even though she was not in New Zealand at the time, was also forwarded to TEL.

[241] The loan was approved by TEL who faxed a loan offer to Ms Farinha care of Mr Mayer. The letter was signed by her and returned confirming that the loan monies were to be used for the property purchase.

[242] At TEL’s request Ms Farinha had supplied income details to support her purchase of 31 Shaddock Street the subject of count 12. She was, under the letter Mr Mayer supplied, to commence employment at the end of January 2007 but the application she forwarded on 31 January, 2007 for the purchase the subject of this count, also the first day of her supposed employment with MDM, stated that her income as an administrator was now \$42,000, made up of the salary of \$30,000 referred to in Mr Mayer’s offer of employment and a bonus of \$12,000 apparently paid to her on the first day of her employment, an utterly implausible entry that should have alerted TEL to the fraudulent nature of the application.

[243] Ms Farinha's contribution to the purchase in the application was said to be \$800,000 and she was also said to have contributed another \$100,000 as a deposit. A loan of \$3,210,000 was sought for a purchase of \$4,000,000, it being represented to TEL that Ms Farinha had the balance as her equity. The internal assessment document noted that if approved the total exposure by TEL to Ms Farinha would be \$3,750,000, therefore under the cap and also illustrated how central Mr Mayer was to the whole process as under background comments TEL noted the application had been referred to them by Mr Mayer, and that after the purchase Ms Farinha would have net assets of \$1,176,000 when, in fact, she contributed nothing to the purchase and would, under the terms of the settlement agreement which would have been entered into, have been significantly indebted. A copy of that settlement deed was not available but Mr Mayer in his evidence said settlement deeds were entered into in all of the second category transactions.

[244] TEL believed that the entire mortgage advance was being used to purchase the property but \$765,067.12 was distributed to a bank account associated with Mr Turnbull. Again, given that a settlement deed was entered into, Mr Mayer would have had to know the exact details of the transaction to be able to calculate the amount that would be left in by way of mortgage. He also would have known that would not have been disclosed to TEL.

[245] Mr Mayer was central to this application although it was sent to TEL by Ms Farinha. He said he did not see the application or supporting documents but he entered into the agreement on behalf of Ortem, signing the document for the vendor, knew the letter he had provided to support Ms Farinha's income would be relied on by TEL when she never worked at MDM, referred the transaction to TEL, would have known that the real estate agent whose logo was shown on the agreement had not acted in the transaction, and would have known the sale and purchase agreement would have been forwarded to TEL to support Ms Farinha's application. He would have known the settlement deed would not have been disclosed to TEL, he instructed Ms Hart to act for Ortem on the sale and advised her that \$1,705,000 had been satisfied so that it was shown as a credit to the purchaser on her settlement statement. The balance on settlement for which the purchaser was required to settle was \$2,243,907 funded entirely by the TEL advance. The surplus was distributed by Mr Turnbull receiving \$765,067.12. A vendor mortgage of \$1,805,000 was left in, that

being the difference between the purchase price and the amount required to settle the transaction.

[246] Consequently Mr Mayer must have been involved in this transaction. He needed to know the details of the loan application to be able to calculate the vendor mortgage to Ortem, he had to play his part in the transaction by advising his solicitor that part of the purchase price had been satisfied, he recommended the purchaser to TEL and he signed the agreement for sale and purchase on behalf of Ortem, as its agent. He admitted knowing that the purchaser was not contributing anything to the purchase but knew from the way the scam operated that TEL would be told that she was and that the settlement deed would not be disclosed nor the liabilities that arose under it.

[247] I am satisfied to the required standard that Mr Mayer, together with Mr Turnbull, dishonestly used the loan application and the acceptance of TEL's loan offer to obtain a pecuniary advantage, for Mr Turnbull and for Ortem, in that it was to be paid interest on the mortgage, that the documents would be used dishonestly with the intention of obtaining that objective and therefore the nature of the transaction with critical documents concealed from TEL and with palpably false statements made to them meant that no claim of right defence exists so that Mr Mayer is guilty of this count.

#### **Count 14 - 15 Karaka Street**

[248] Count 14 involves the use of one agreement for sale and purchase dated 16 February, 2007 between MDM Holdings as vendor, signed by Mr Mayer, and Maria de Lourdes de Magalhaes with a purchase price of \$4,600,000. The agreement provided for payment of the deposit of \$400,000, which was never paid and had the logo of Focus Real Estate, plainly pasted onto the agreement, that firm not being involved in the transaction.

[249] The purchaser was Monica de Magalhaes's mother with the purchaser herself sending the loan application to TEL. Ms de Madgalhaes was then aged 70 years of age, and was employed by VHI Properties Limited, a Turnbull entity, as an office manager. The application sought a mortgage advance of \$3,450,000, the loan application showing an income of \$35,000 as personal income with the only asset

being the property to be purchased. The application represented that Ms de Magalheas would be contributing \$1,150,000 to the purchase. Again there was a deed of lease between MDM and North Star Holdings signed by Gorgonia Tagnipez, who was not in the country at the time, and which was used to support the application.

[250] TEL's internal assessment noted Mr Mayer had referred the application to them, that the property was purchased as a long term investment and that the current lease covered the annual interest costs and that the statement of position indicated net assets of \$1,641,000.

[251] The loan offer duly issued on 14 February, 2007 and it was sent to the applicant care of Mr Mayer. It included, as did all the other loan applications, the condition that the loan advance was to be used for the property purchase and was signed and returned by Ms de Magalhaes to TEL. In fact, following the usual pattern, Ms de Madgalhaes contributed no funds to the purchase, and for that matter neither did anyone else. Mr Turnbull through VHI Properties Limited received \$923,114.88 of the TEL loan. A vendor mortgage, not disclosed to TEL, in the sum of \$2,100,000 was recorded in a settlement deed which provided for interest to be paid at 9%.

[252] TEL was plainly misled. It did not know of the vendor mortgage. It believed Ms de Magalhaes had assets when she had none. It believed the whole of the mortgage advance was to be used to settle the purchase when in fact Mr Turnbull obtained a substantial part of it.

[253] Mr Mayer accepted that a lease was sent to TEL saying that it was "in there to tidy up the numbers" but denied signing the lease for MDM saying that if he had signed for them he would have also have signed for North Star Holdings and would not have added Gorgonia Tagnipez as the guarantor. I am quite certain that Mr Mayer was aware that the lease was going to be proffered to TEL to support the mortgage application. Whether he signed it or not is, therefore, to some extent not as significant as it otherwise might be given his overall involvement in the scheme.

[254] Mr Mayer at all times knew that Mr Turnbull was to be the end purchaser of this agreement and that Ms de Magalhaes was simply a nominee in the same way

that he used nominees to acquire properties in the earlier series of transactions. He had to know the detail of the transaction to be able to calculate the amount left in on mortgage, \$2,100,000. He knew the details of the vendor mortgage would not be disclosed to TEL, as if it were TEL would see the purported cash contribution for what it was, a fraud, and again, in signing an agreement for sale and purchase where the agent shown on the agreement had no involvement in the transaction and by instructing Ms Hart to act for MDM on the sale of the property he played a full part in the transaction. He advised her that \$1,700,000 was satisfied and the deposit had been paid so that the amount shown on her settlement statement to be paid by the purchaser's solicitor was \$2,502,606.87 which was satisfied from the TEL mortgage loan of \$3,450,000, and with \$923,114.88 of the balance paid to VHI Properties Limited, a Turnbull entity. Consequently he assisted in misleading TEL who believed that the whole mortgage advance was to be used in the purchase, he knew the cash contribution of \$1.15 million would not be paid by Ms de Magalhaes and he knew that the settlement deed would be hidden from TEL.

[255] He plainly played a significant role in this scam which could not have proceeded but for his involvement. He aided Mr Turnbull in the commission of the offence knowing that Mr Turnbull was a beneficial owner of the property and would retain a significant part of the mortgage proceeds. Knowing that he still referred Ms de Magalhaes to TEL and furthered the fraud by his instructions to MDM's solicitor.

[256] Consequently I find that the documents the subject of the particulars referred to in the count were used dishonestly and with the intention of obtaining a pecuniary advantage for Mr Turnbull, and indeed for MDM, in effect Mr Mayer, as interest had to be paid under the settlement deed. He knew at the time the documents were being used dishonestly and he aided their dishonest use so that he could not maintain a claim of right. Accordingly I am satisfied the Crown has proved all of the necessary elements of this count to the required standard and find Mr Mayer guilty of the same.

#### **Count 15 – 12 Karaka Street**

[257] Two agreements for sale and purchase were used in this transaction, the first an undated agreement between Marilou Domingo and Artizanz Limited with a sale price of \$2,600,000 and with a deposit of \$200,000 to be paid, and with settlement to be effected on 5 March, 2007. The second agreement was also undated and was

between Artizanz Limited, a Mayer entity, and Graca Zipfel with a sale price of \$2,350,000 and which Mr Mayer initialled and signed on behalf of the vendor. That agreement provided for a deposit of \$100,000, the agreement to be settled on 28 February, 2007. A false real estate logo was used, Focus Real Estate being shown as the agents acting in the transaction, but they were not involved.

[258] The application for mortgage finance itself was lodged with TEL by Ms Zipfel. Her contribution was said to be \$590,000. She was an aunt of Monica de Magalhaes, and like the rest of her relatives involved in the transactions, had no assets or prospects in Portugal. She was 70 years old at the time of the application and had only lived in New Zealand for one month prior to applying for \$1,760,000 of mortgage finance. As astonishing as it may seem TEL approved the application.

[259] The application represented that the purchase price was \$2,350,000 and that Ms Zipfel was contributing \$590,000. The only asset shown in the loan application form was the property being purchased and it was represented by that application that Ms Zipfel had a surplus of assets of \$883,400 over liabilities, and an income of \$50,000 as a manager of UND Investment Holdings.

[260] The TEL internal analysis again confirmed that Mr Mayer had referred the application to it. It noted her contribution to the purchase would be \$470,000, that a valuation had been obtained for \$2,340,000 so that the loan to value ratio sat at exactly 80% of the formula, that being the maximum available for a residential investment property.

[261] A loan offer issued on 28 February, 2007 for \$1,872,000, the offer stating that the loan advance was to be used for the property purchase. The loan offer was signed by Ms Zipfel and returned to TEL. Again the loan offer was directed to Ms Zipfel care of Mr Mayer.

[262] UND Investments Ltd was, in fact, a Turnbull entity with Simon Turnbull and Monica de Magalhaes being joint directors and equal shareholders in the company. To cover the possibility of TEL querying the likelihood of a 70 year emigrant being able to secure a general manager's role relating to property management of her employer's portfolio, an employment agreement dated 1 February, 2007 was supplied to TEL to support the application. It was noted that Ms Zipfel was to

commence employment on 12 February, 2007 and was to be paid \$50,000 per annum.

[263] Deeds of lease were also enclosed. They were between Artizanz Limited and a Mr Ho and Mr Samchad.

[264] Inevitably Ms Zipfel contributed no funds to the purchase nor were any funds contributed by any other party. TEL advanced the \$1,872,000 sought as a loan. Mr Mayer received \$1,400,127.59 and left in \$950,000 by way of vendor mortgage. Mr Turnbull received \$450,000 from the TEL loan. TEL were unaware of the settlement deed providing for a vendor mortgage or the payment to Mr Turnbull wrongly having been led to believe that all of the mortgage advance would be used to fund the purchase.

[265] Ms Hart acted on the sale for Artizanz Limited. Her settlement statement dated 5 March, 2007 sent to Ms Zipfel's solicitors again gave credit for a deposit of \$100,000, which was never paid, and recorded advice from her client, clearly Mr Mayer, of satisfaction of \$850,000 so that the balance to settle was \$1,400,127.59. That amount was paid from the proceeds of TEL's loan with the surplus distributed to Mr Turnbull in the way described.

[266] Mr Mayer signed the agreement for sale and purchase knowing it would be used to support Ms Zipfel's loan application to TEL. He knew that there would be no cash contribution from Ms Zipfel to the purchase, and he had to know that because he entered into a settlement deed with Mr Turnbull in respect of the property as with the other Category 2 properties and knew the amount that would be taken from the mortgage advance by Mr Turnbull as well as the amount that he would receive.

[267] Mr Mayer introduced the borrower to TEL, clearly as part of the overall scheme he entered into with Mr Turnbull, knew that the settlement deed would not be disclosed and knew, and accepted in evidence that he knew, that Mr Turnbull would be "over-borrowing", in other words receiving part of the loan advance. He clearly was a party to the offending which involved the dishonest use of the loan application and the agreement for sale and purchase as well as the signed loan approval form acknowledging that the loan advance was to be used entirely for the

funding of the purchase. Whether or not the leases were constructed to give effect to the scheme I cannot say. I accept the leases were in place before Artizanz Limited acquired the property from Ms Domingo, but that does not necessarily mean there was not a tenant paying the amounts recorded in the lease. However I am satisfied that the other particulars supporting the count evidenced the overall dishonesty and that Mr Mayer well knew that false documents would be provided to TEL with information relevant to the application excluded, namely the vendor mortgage and the fact that Mr Turnbull was obtaining a sum of money, that it was done dishonestly and for the purpose of obtaining a pecuniary advantage for Mr Turnbull and also for Artizanz Limited, a Mayor entity, through the payment of interest and ultimately possibly a share in the profit.

[268] Overall I am satisfied that the Crown has proved each of the elements necessary to support this count to the required standard and Mr Mayer is guilty in respect of the same.

#### **Count 16 – 11-13 Karaka Street**

[269] Count 16 represents the last of the second category of transactions and concerns the sale of 11-13 Karaka Street from Sage Holdings Limited to Andrea Farinha. The agreement for sale and purchase was dated 23 April, 2007 and was for a consideration of \$2,425,000 with a deposit of \$100,000 which, in keeping with the other transactions, was never paid. The agreement had the usual false detail of an agent's logo emblazoned on the bottom of the front page of the agreement although no agent was involved in the transaction. Vacant possession was not required as there was an existing lease to North Star Holdings Limited.

[270] The purchaser under the agreement was Karaka Street Trust but there was provision for the purchaser to nominate another purchaser, which was done under a deed of nomination dated 15 May, 2007 whereby Andrea Farinha became the purchaser. Ms Farinha was a niece of Mr Turnbull's wife.

[271] The loan application was lodged by Ms Farinha and was faxed to TEL on 4 May, 2007. There were indications on the facsimile copy that suggested the application had been faxed from Mr Turnbull's facsimile machine. The application contained the usual misleading information. It represented that Mrs Farinha's



contribution to the purchase was \$485,000, confirmed that Ms Farinha resided in Cascais, Portugal and was aged, at that time, 24 years of age. Her profession was given as an architect and she sought to borrow \$1,940,000. The only asset disclosed in the application was the property she was seeking to purchase. The application represented to TEL that if the purchase proceeded Ms Farinha would have a surplus of assets over liabilities of \$1,087,100, although the deposit, which is shown as \$500,000 seems to have been counted twice.

[272] The internal analysis of the transaction by TEL, prior to its approval, noted that the proposal was the applicant borrow 80% of the valuation figure of \$2,400,000, the maximum loan available under TEL's criteria for lending on residential investment property and which indicates a clear working knowledge of TEL's loan to value ratio requirements on the part of both Mr Turnbull and Mr Mayer.

[273] The internal assessment noted that, once again, the applicant had been referred to TEL by Malcolm Mayer. TEL considered the advance to be self-servicing from the lease income shown under the North Star Holdings lease. The loan was approved and the approval letter was issued to Ms Farinha care of Mr Mayer on 8 May, 2007 noting approval of a mortgage advance of \$1,920,000 which was to be used to effect the purchase of the subject property. The loan offer was accepted and signed by Ms Farinha with a facsimile copy of the signed acceptance returned to TEL.

[274] The transaction overall followed the usual procedure with an advance of \$1,920,000 made available to Ms Farinha. \$1,775,899.65 was paid to Mr Mayer who left in \$650,000 by way of a vendor mortgage. His evidence was that every transaction in this category of sales contained had a settlement deed. Mr Turnbull received \$133,372.69. Ms Farinha contributed nothing to the acquisition, and on Ms Monica de Magalhaes's evidence, had nothing to contribute in any event, and was in reality indebted under the deed of settlement to Sage Holdings Limited in the sum of \$650,000 and presumably paying interest of 9% if the deed followed the usual format.

[275] Again the settlement statement issued by the vendor's solicitor, once again Ms Hart, had to follow the usual format. Mr Mayer advised Ms Hart that the sum of

\$650,000 had been satisfied, the amount represented by the vendor mortgage, so that after apportionment the amount required to settle was \$1,775,899.65. Consequently, 'over-borrowings', as Mr Mayer described them, arose and were distributed in the way outlined.

[276] Mr Mayer's role was central to the offending. He introduced the client to TEL. He had to know that Ms Farinha was not contributing any cash to the transaction as he had to calculate the amount of the vendor mortgage. I am quite satisfied that this was central to the scam the men were perpetrating on TEL.

[277] He signed the agreement on behalf of the vendor as its agent. The Crown suggested that he could only sign that agreement under attorney and that a subsequent facsimile letter from Smith Mackie to Ms Hart's firm, Parnell Law, confirmed the agreement was not executed properly but that is not so. That facsimile related to the transfer, plainly different to the agreement. Anyone can sign an agreement for sale and purchase as agent for the principal provided they have authority to do so. However the transfer must be executed in accordance with the requirements of the Land Transfer Act.

[278] However in signing the agreement, Mr Mayer knew it was to be used to support an application for mortgage funding of the transaction by Ms Farinha as he introduced her to TEL specifically for that purpose. He clearly saw the application before it was faxed to TEL as his handwriting appears on the letter of 4 May, 2007. The lease between Karaka Street Trust and North Star Holdings Limited and dated 23 April, 2007 was clearly another sham document created to support the valuation and the borrowing. It was guaranteed by Gorgonia Tagnipez who purportedly signed it at a time when she was not in New Zealand and the lease represented to the valuer, and to TEL, that the premises generated \$172,000 of rental plus GST.

[279] As with other transactions where there was some indication that Mr Mayer had either signed an application or his handwriting appeared on the letter, he denied any knowledge of the documents that accompanied the application saying that it must have been simply "put under his nose" and that he relied on representations made to him by Simon Turnbull that everything was correct. I accept the lease was probably constructed by Simon Turnbull but do not accept Mr Mayer's explanation. He knew what documents would be needed to support the application, he had

referred the matter to TEL and he had an interest in the outcome as his vendor was to receive a substantial sum of money and there was to be a vendor mortgage back. A facsimile letter to him by Simon Turnbull concerning the purchase of 74-76 Upper Queen Street by Mr Turnbull's parents, the subject of count 9, shows the degree of interaction between the two men in ensuring that the documents submitted to TEL were likely to secure approval. Mr Mayer simply cannot distance himself from these transactions by adopting, what aficionados of the American comedy series *Hogan's Heroes* might describe as a 'Sergeant Schulz' defence. He was right at the centre of these frauds with Mr Turnbull. I am quite satisfied that he knew exactly what documents were being submitted to TEL, and would have seen them before they were forwarded as he would have wanted to ensure the application succeeded.

[280] I am satisfied to the required standard that Mr Mayer was a party to the offending the subject of this Court and his role was central in ensuring its success. He knew documents, which were quite false in their detail, were being submitted by Ms Farinha to be able to secure the mortgage advance and obtain a pecuniary advantage for both Mr Turnbull and himself in the context of Sage Holdings. He knew this was dishonest, he could hardly have known otherwise, and he knew he had no claim of right to do so. Accordingly I am satisfied to the required standard that the central elements of this count have been proved against Mr Mayer and he is accordingly guilty of the same.

### **Third category transactions**

[281] These transactions concern the counts in the indictment from 17 onwards. In respect of each transaction there are two counts, the second an alternative to the first which is of using forged documents. The alternative count is obtaining by deception.

[282] The plan, the Crown submitted was for Mr Mayer to locate properties for Mr Turnbull to purchase. Mr Mayer would first buy them and then sell them to Mr Turnbull for which Mr Turnbull would seek mortgage funding from TEL. Mr Mayer would make a profit on the transaction as the properties would be on-sold to Mr Turnbull at an increased price over that paid by Mr Mayer who again used his own nominated purchasers to effect the initial acquisition. Again some of the sale proceeds would be left in by way of an unregistered mortgage with Mr Mayer to share in the profit when the properties were sold later. Overall there were 10

properties involved, three of which were located for Mr Turnbull by Mr N A Rogers, an agent at Focus Real Estate. They were the properties at 11 Nikau Terrace, Unit 3B/47 St Paul Street and Unit 5A/47 St Paul Street, the subject of counts 19 and 20, 31 and 32 and 33 and 34. Further, three properties were sourced for Mr Turnbull by Mr Mayer but, for one reason or another, Mr Turnbull was unable or unwilling to settle and so it fell to Mr Mayer, using his nominated purchaser, to take ownership, for which he applied for funding to TEL in the name of the nominated purchaser, who unbeknown to TEL held the beneficial interest in the property for Mr Mayer.

[283] There was no dispute that the documents forwarded to TEL for all of the properties were false or forged documents. Mr Mayer accepted in his evidence that in all 10 of these transactions false sale and purchase agreements were used. Mr Mayer accepted in his evidence also that he stood to make substantial profits from sourcing the properties himself, acquiring them in the name of his nominated purchaser and then selling the properties to Mr Turnbull, the benefit to Mr Turnbull being that he did not have to pay the full settlement price for three years.

[284] Although Mr Mayer accepted that the agreements for sale and purchase submitted to TEL were forgeries he denied involved in the preparation of the applications to TEL which enclosed the false agreements.

[285] As for the agreements of sale and purchase themselves, with the exception of the agreement disclosed to TEL in respect of the purchase of 28-34 Robert Street, the subject of counts 17 and 18, the names of the vendors were no longer relatives of Mr Mayer's wife or of Ms de Magalhaes or of entities that could be identified as being associated with Mr Mayer or Mr Turnbull. Instead the name of the vendor was similar to the name of the registered proprietor as it appeared in the certificate of title for the property, a copy of which TEL would see when a valuation report was forwarded to it to support the loan application. The Crown's theory was that all counts from count 19 onwards involved transactions that occurred after 27 February, 2007, the date of the email from Ms Peebles to Ms Lewis referred to at para [52] herein. The Crown postulated that some enquiry must have been made of Mr Mayer as a result of that email and so the accused took steps to disguise their involvement in the subsequent transactions by using names of vendors similar to those that appeared in the certificates of title. The Crown's case against Mr Mayer was that he, either as a principal or as a party together with Mr Turnbull either created or used

these forged documents to obtain the necessary funds from TEL for the acquisition and development of the properties.

**Count 17 – 28-34 Robert Street**

[286] This was one of the three properties Mr Mayer purchased with the intention of selling it on to Mr Turnbull but when he failed to settle the transaction ultimately had to acquire it himself.

[287] The first agreement for the sale and purchase of the property was contained in a public tender document prepared by Bayleys Real Estate for the vendors Shih-Hsieh, Hsiu-Tsu Hsieh, Chang-Fa Kao and Bi-Hsia Li. Mr Mayer's company Artizanz Limited was successful in purchasing for \$5,100,000, settlement to be effected on 1 February, 2007.

[288] As the intention had been for this property to be acquired by Mr Turnbull, his preferred valuer, Roger Pheasant of Roberts McEwan undertook the valuation.

[289] Because it was intended Mr Turnbull would acquire this property he instructed the valuer and sent him a copy of an agreement for sale and purchase showing the genuine vendors, Hsieh *et al* and Champion Apartments Limited as the purchaser and a purchase price of \$7,700,000. Clearly he intended the valuer to use this agreement which Mr Mayer accepted was a false agreement, as part of the assessment of the value of the property. The property itself was formerly a motel, the intention being that it would be developed and the motel rooms let as individual accommodation. Champion Apartments Limited was a company of which Sho (Theresa) Chu, an employee of MDM and personal assistant to Mr Mayer, was a director and the sole shareholder. Mr Mayer was the other director. It was incorporated on 7 February, 2007 and Mr Mayer accepted Ms Chu was to hold the property in trust for him.

[290] Artizanz failed to settle the purchase of 28-34 Robert Street by 1 February, 2007 which supports Mr Mayer's contention that by then Mr Turnbull had become unwilling or unable to complete the transaction. In evidence Mr Mayer said he was unfazed by that. I have no doubt that he was. He had a well tried method of funding purchases using TEL. He simply created a new agreement for sale and purchase. I

do not believe Mr Turnbull had a hand in this as he was no longer interested in the Robert Street property. The agreement forwarded to TEL and dated 5 December 2006 between Hsieh *et al* and Champion Apartments Limited could only have been constructed by Mr Mayer. As he accepted it was a false document. The document varied in some particulars from that forwarded to Mr Turnbull's valuer but had the same parties shown on it. It included a clause providing for the transfer of a property in Vincent Street, which was owned by Ms Chu, who was the applicant on behalf of Champion Apartments Limited. The application was lodged with TEL by facsimile on 5 February, 2007 in the name of Champion Apartments Limited, which was yet to be incorporated. The finance was required by 8 February, 2007. This was undoubtedly a pressured application because Mr Turnbull had pulled out of the deal and left Mr Mayer with not much time to complete it. The original transaction was already overdue for settlement. Mr Mayer contacted TEL himself and emphasised the urgency of dealing with the application which was signed by Ms Chu.

[291] The agreement for sale and purchase forwarded to TEL noted a purchase price of \$7,700,000 with a deposit of \$500,000. The agreement was conditional on Champion Apartments Limited transferring to the vendors two units at 126 Vincent Street, Auckland, which, in fact, were owned by Ms Chu, at an agreed value of \$2,250,000.

[292] Some issues must have arisen over the valuation prepared by Mr McEwan as Mr Mayer wrote directly to Victoria Lewis on 8 February, 2007 confirming it was impossible to source sales evidence for any apartment complex approaching the scale of the subject property and that the valuer included sales evidence of motel complexes only in order to arrive at a sensible per unit value comparison. I accept that information was likely correct.

[293] The loan requested was \$4,000,000, Ms Chu's contribution being represented on the application form as \$3,700,000. The application also represented that a deposit of \$100,000 had been paid.

[294] The valuation from Robert McEwan Limited proffered in support attributed a value of \$7,500,000.

[295] The agreement for sale and purchase itself was, as I have noted, a false document. It was created from the copy of the agreement for sale and purchase submitted to the valuer by Mr Turnbull. In the documents found at Peace Tower was a version of that agreement from which Mr Turnbull's initials had been "twinked out" and with a clause concerning the transfer of the Vincent Street properties pasted over the top of a similar clause, but for properties at Flower Street.

[296] On Ms Hart's file was yet another version of an agreement for sale and purchase for the property, this with Artizanz as the vendor and Champion Apartments as the purchaser. Ms Chu's evidence was that she wrote out that agreement and signed it at Mr Mayer's request. Found on the file was a mortgage instrument, of which TEL was unaware, between Champion Apartments and Artizanz for \$2.5 million.

[297] A loan approval letter for a mortgage advance for \$4 million issued from TEL on 9 February, 2007 and had the usual condition that the advance of \$4,000,000 was to be used for the purchase of property. That loan document was signed by Ms Chu and returned to TEL to enable the advance to be made.

[298] Contrary to what TEL was led to believe in the application no monies at all were provided by Champion Apartments Limited for the purchase and neither were any properties transferred. The original agreement between the genuine vendors and Artizanz, plainly a *bona fide* document, contained provision for a deposit and \$255,000 was paid by Artizanz Limited. Further, \$650,000 was paid by Ortem to Ms Hart's firm's trust account as with the monies paid as the deposit, the mortgage advance and these monies the original purchase could be settled with \$4,586,042.66 eventually paid on 16 February, 2007. The overall effect of the transaction was that Mr Mayer received \$3,947,688.44 of the TEL loan, as the evidence of Ms Payne attests, and further a vendor mortgage of \$3,750,000. Some monies, in the sum of \$6,150.52 of the TEL loan were also paid into his personal account. TEL, as I have already said, were unaware of the vendor mortgage.

[299] The alterations to the agreement for sale and purchase had to have been made by Mr Mayer or alternatively by someone acting on his instructions. They must have occurred after he took over the transaction. Consequently I am satisfied that he, in instructing Ms Chu to make the application in the name of Champion Apartments

Limited, knew that a document that was to be used to support the application, namely the agreement for sale and purchase for the TEL, was forged. His intention in causing that document to be used was to obtain a pecuniary advantage in the form of a mortgage advance from TEL. He caused Ms Chu to use the agreement to support the application for mortgage finance. Ms Chu was well aware that she was not to be the beneficial owner of the property, it was to be Mr Mayer's. Mr Mayer said that he consented to the application being sent to TEL and that the mortgage application would go forward with his blessing. Knowing the document to be forged it is as good as any admission that might be obtained that he had caused another person to use the document, and also TEL to act upon it as if it were genuine.

[300] Overall I find all the elements the Crown are required to prove for this count proved to the required standard of proof and find Mr Mayer guilty of the same. He well knew what he was doing was dishonest. He also knew that he had no right to use these documents in this way, even if he genuinely believed there was an equity created by judicious purchasing, because he well knew that any borrowing against that "equity" could only be legitimate if TEL was truly aware of the situation and made an informed decision to lend accordingly. Because he was aware, through his occupation as an active property investor and developer, of the unlikelihood of this happening he, once again, reverted to forging documents and causing them to be used as if they were genuine and allowed TEL to rely upon them as if they were.

#### **Count 18 – Alternative count under s 228(b) of the Act**

[301] A verdict is not required in respect of this count by reason of my findings in relation to the preceding count.

#### **Count 19 – 11 Nikau Street**

[302] This is a property that was found for Mr Turnbull to purchase by Mr Rogers, the real estate agent. Three agreements for sale and purchase were used for this property, the first dated 30 March, 2007, a genuine agreement for sale and purchase, from the registered proprietors, Eden Accommodation Company Limited, to VHI Properties Trust, a Turnbull entity, with a purchase price of \$1,470,000.



[303] The next agreement for sale and purchase, a false one, was dated 2 April, 2007 and between Eden Accommodation Trust and/or nominee and Graca Zipfel. The name of the vendor was reasonably similar to that of the registered proprietor on the title. That agreement was for a purchase price of \$2,850,000 with a deposit of \$150,000 required. I am sure this agreement was not prepared by Mr Mayer. He would, with his extensive property experience, have seen immediately that it was unusual for a vendor to sell under a nominee. Either the vendor owns the property or he does not, and the actual registered proprietor must sign the agreement.

[304] The third agreement for sale and purchase was also dated 2 April, 2007 and was from Eden Accommodation Trust to Graca Zipfel, with the identical purchase price, namely \$2,850,000. The only difference between the second and third contracts was that the words “and/or nominee” have been removed although the signatures on the second and third agreements also appear to be different.

[305] The agreement that was actually submitted to TEL was the second agreement and it was accepted by Monica de Magalhaes that has her handwriting on the agreement.

[306] On 11 April, 2007 Ms Zipfel forwarded an application for mortgage funding to assist with the purchase supported by the second of the agreements for sale and purchase referred to above, a market valuation, the completed application and a residential tenancy agreement.

[307] In her application her contribution was said to be \$855,000. The valuation was from Roberts McEwan, Mr Turnbull’s preferred valuers and ascribed a value of \$2,850,000 to the property.

[308] TEL’s loan approval was faxed to Ms Zipfel care of Mr Mayer on 12 April, 2007. Although she signed the approval so that it could be faxed back to TEL Mr Mayer handwrote in on the form the words “property purchase” at that part of the form which required an indication as to what the loan advance was to be used for. Consequently it is clear that he saw the loan offer before it was returned to TEL and assisted in the completion of it.

[309] He accepted in evidence that he advised Ms Peebles of the settlement date, 16 April, 2007 and contacted Ms Zipfel's lawyers, Smith Mackie and Co by leaving a telephone message on 11 April, 2007.

[310] The mortgage monies were disbursed for the purpose of the purchase with TEL advancing \$1,995,000. After settlement of the purchase with Eden Accommodation Company Limited, \$1,472,019.53, a surplus of funds arose, all derived from the TEL mortgage advance, as Ms Zipfel made no contribution to the purchase contrary to the information provided to TEL. That "over-borrowing" was distributed by Mr Turnbull receiving \$480,000. He then paid Mr Mayer \$242,000 with Mr Mayer saying in evidence that was in respect of some other properties for which he was owed money.

[311] Mr Mayer was charged as a party to this offending, together with Mr Turnbull. Mr Mayer's fingerprints, figuratively, can be found in the transaction in the way I have outlined. The transaction was clearly part of a well practised deception on TEL. The agreement for sale and purchase forwarded to TEL was a forgery, as Mr Mayer must have known it would be, even if he did not see the document, which is unlikely. It is consistent with the way other transactions operated. Ms Payne's evidence was that the solicitors instructed to act on the 'dummy' transaction, Eden Accommodation Trust to Ms Zipfel, and where the purchase price was shown as \$2,850,000, were again told that \$750,000 had been satisfied by the client and a credit was given for a deposit of \$150,000 as if it were paid, when it had not been. Again this is another hallmark of Mr Mayer's well practised method of deception.

[312] Overall, although this was to be a Turnbull transaction Mr Mayer benefitted from it by receiving \$242,000, effectively from the TEL loan. Clearly it was part of the scam the two men had agreed to perpetuate on TEL. The agreement for sale and purchase was used by Ms Zipfel, effectively as an agent for Mr Turnbull, to obtain a pecuniary advantage, namely the mortgage advance and TEL were persuaded to act upon the advance if it were genuine, not only by the applicant, but by Mr Mayer referring the transaction to them, doubtlessly knowing that it would be a fraudulent transaction, his assistance in completing the loan offer and in dealing with the nominal purchaser's solicitors. Accordingly I am satisfied that he was a party to the offence as, together with Mr Turnbull, he dishonestly used the loan application and

acceptance of TEL's loan offer in the knowledge that a false document, an agreement for sale and purchase, would be used and also by being a party to representations that Ms Zipfel would own the property, when she was a mere agent, that she was making a cash contribution, when she was not and that the whole mortgage advance would be used in the purchase of the property which it was not.

[313] Accordingly I find Mr Mayer guilty of count 19 of the indictment.

**Count 20 – alternative count under s 228(b) of the Act**

[314] A verdict is not required in respect of this count by reason of my findings in relation to the preceding count.

**Count 21 – 57 Walters Road**

[315] This count, and its alternative companion count, count 22, concern the purchase of 57 Walters Road, Kingsland and involved the use of three agreements for sale and purchase.

[316] The first, the genuine agreement for sale and purchase, was entered into on 14 April, 2007 between the vendor, Heritage Healthcare Rentals Limited and Artizanz Limited, a Mayer controlled entity, for the sum of \$930,000. An agent was involved and a deposit of \$90,000 was required.

[317] The second agreement for sale and purchase was constructed on 18 May, 2007 for a sale price of \$2,440,000, a deposit of \$250,000 and for settlement on 27 May, 2007, the date for settlement of the first agreement. The vendor was Artizanz Limited and the purchaser Karaka Street Trust and/or nominee. It was plainly a false document and had the usual fake agent's logo displayed on the front page of the agreement. Mr Mayer signed the agreement on behalf of the vendor.

[318] The third agreement was dated 18 May, 2007 and was between Heritage Investment Trust and the Karaka Street Trust and/or nominee, for \$2,440,000 and provided for a deposit of \$250,000, settlement to be on 27 May, 2007, the date of settlement of the first genuine agreement. It also had the fake real estate agent's logo displayed on the front page of the agreement. The purchaser's signature on the

second and third agreements was that of Monica de Magalhaes as agent for the purchaser.

[319] The third agreement was the agreement forwarded to TEL save that the nomination was utilised and Andrea Farinha was nominated as the purchaser. Ms Farinha lodged the mortgage application. Her current address was still shown at an address in Cascais, Portugal. A valuation was obtained from Roberts McEwan with the property given a value of \$2,430,000. The mortgage application stated that Ms Farinha was to contribute \$485,000 to the purchase, and following the pattern of these transactions, she actually contributed nothing, although she was said to have paid a deposit of \$500,000. A lease was also enclosed to support the application. The lease was between Karaka Street Trust and North Star Holdings as the tenant and listed Ms Tagnipez as the guarantor. As the Crown noted, the lease was identical, other than for the date, to a lease used to support all the borrowings from TEL for the purchase of 11/13, Karaka Street, the subject of count 16 of the indictment.

[320] The internal assessment document of TEL noted that the application had been referred by Mr Mayer, an existing TEL client. The approval letter was faxed to Ms Farinha care of Mr Mayer. It was duly signed and faxed back to TEL indicating, in Mr Mayer's handwriting, that the money was being used for "property purchase".

[321] There was a settlement deed, not disclosed to TEL, between Mr Mayer, Mr Turnbull and Ms Farinha providing for a vendor loan of \$577,000. TEL were not aware of this deed.

[322] The usual outcome to the loan application followed. No funds were contributed by Ms Farinha, notwithstanding what was stated by her in the loan application, TEL lent \$1,945,000 and Mr Mayer received \$955,000 and an acknowledgement of indebtedness to him of \$577,000 with a right to call for a mortgage. Mr Turnbull received \$62,934.69. TEL had been led to believe all funds would be used to acquire the property.

[323] Mr Mayer and Mr Turnbull are charged both as principals and parties to the offending. This clearly was part of the overall plan between the two men for nominated purchasers, effectively agents of Mr Turnbull, to be put up to borrow

monies using false documents, in this case the agreement for sale and purchase, and providing false information. More money than was necessary to settle the purchase would be advanced by TEL under the mistaken impression that it was all to be used to fund the purchase but there would be “over-borrowings” for distribution between the two men. Mr Mayer was plainly involved with this transaction. He introduced the purchaser to TEL, helped complete the loan approval form for return to TEL so that the monies could be drawn down, was a party to a settlement deed which meant that he knew Ms Farinha was not introducing no funds and knew how the proceeds of the loan would ultimately be divided, and that it would not be disclosed to TEL.

[324] There is a false signature on the third sale and purchase agreement, a cut and paste job as it was described in the evidence, but Mr Mayer denied being responsible for it. His evidence as to how the vendor’s original signature came to be on the agreement for sale and purchase disclosed to TEL was that Mr Turnbull must have come into his office and taken it from his file.

[325] Mr Mayer’s protestations of innocence and lack of knowledge are simply not believable. He was an intimate part of this scam and knew that a false document, the agreement for sale and purchase, would be forwarded as part of the loan application. Indeed the transaction could not have proceeded had anything other than a false agreement been sent to TEL. Further, there was another version of the agreement for sale and purchase found at Peace Tower which had a signature and initials copy and pasted onto it, and with original signatures taken from the first genuine sale and purchase agreement. The backing sheet for that agreement for sale and purchase was found on Mr Mayer’s lawyer, Ms Hart’s file. That backing sheet had the details of the vendor and purchaser from the false sale and purchase agreement on it and plainly could not have come into Ms Hart’s possession unless it had been sent to her by Mr Mayer.

[326] Overall I am satisfied the document, the particular of which supported count 19 was a false document, namely the agreement for sale and purchase dated 2 April, 2007 between Eden Accommodation Trust and Graca Zipfel. I am satisfied Mr Mayer knew it to be so at the time and that Mr Turnbull who needed the vendor’s signature from the genuine or *bona fide* agreement for sale and purchase for use in the false agreement could only have obtained it if Mr Mayer gave him a copy of the agreement or of the signature. I simply do not accept Mr Mayer’s evidence that Mr

Turnbull went into his office, without his knowledge and/or authority and took it. Mr Mayer would have known that it was needed and would be used on the false agreement so that the fraud of which he was a willing participant, could be carried out.

[327] The count is proved because both Mr Mayer and Mr Turnbull used the document, the agreement for sale and purchase, and for that matter the plainly false lease between Karaka Street Trust and North Star Holdings, to obtain a pecuniary advantage, namely the mortgage advance to Mr Turnbull's agent, Ms Zipfel. Mr Mayer undertook acts that led TEL to act on the matter as if the document were genuine, for instance helping complete the loan approval form, and caused TEL to deal with and act upon the agreement as if it were genuine. The case against Mr Mayer, as with the other counts, is overwhelming and he is guilty in respect of this count in the indictment.

#### **Count 22 – alternative count under s 228(b) of the Act**

[328] A verdict is not required for this count by reason of my findings in relation to the preceding count.

#### **Count 23 – 59 Point Chevalier Road**

[329] Count 23 and in the alternative count under s 228(b) of the Act concern the acquisition of 59 Point Chevalier Road, Point Chevalier. The property was obtained by tender conducted by Barfoot and Thompson with Artizanz Limited, a Mayer controlled entity of which he was a director and 51% shareholder, the purchaser. The vendors, Messrs Rush and Kilgour, accepted Artizanz's tender of \$2,020,000 on 20 April, 2007. The transaction was scheduled for settlement on 24 June, 2007.

[330] The second agreement was entered into on 13 May, 2007 and was between Artizanz Limited as vendor and Lana Farinha, as purchaser. She was a niece of Monica de Magalhaes. The agreement provided for a purchase price of \$3,460,000, with a deposit of \$300,000 and for settlement on 13 June, 2007. Mr Mayer signed that agreement on behalf of Artizanz the purchaser.

[331] The third agreement was between Rushinn Trustees Company and Lana Magalhaes Farinha, with a purchase price of \$3,475,000 and was for settlement on 18 May, 2007. A deposit of \$350,000 was required to be paid. This agreement was a false document and had the logo of Focus Real Estate, which was not involved in the transaction, attached to the agreement.

[332] A loan application was forwarded in the name of Lana Farinha to TEL on 8 May, 2007. It was accompanied by a copy of the third agreement for sale and purchase with Rushinn Trustees Company. Ms Farinha was not in New Zealand at the time the agreement was signed or the application lodged with TEL.

[333] The application was supported by a valuation provided by Roberts McEwan and Associates Limited. It valued the property at \$3,460,000. Ms Farinha represented in the application that she was contributing \$685,000 when she was not contributing anything. The deposit was listed as \$400,000. A deed of lease between Ms Farinha and North Star Holdings, with Ms Tagnipez, once again as guarantor, was provided in support.

[334] As I have noted earlier in respect of this class of transaction, Mr Mayer accepted the agreement for sale and purchase forwarded to TEL was false. There was a different signature for the vendor on this agreement from that which appeared on the tender document.

[335] The internal assessment of TEL noted that the loan to value ratio was 80% for what was regarded as a residential investment, the maximum available and that it was self-servicing from the leasing income. Again the internal assessment noted that the application had been referred by Mr Mayer, an existing TEL client.

[336] A TEL approval letter issued on 15 May, 2007. The approval letter was signed, presumably by Ms Farinha, and was on 14 June, 2007 returned by facsimile to TEL by Mr Mayer. The loan offer had been sent to Ms Farinha care of him.

[337] Again there was a settlement deed which provided for a loan of \$855,000 for Mr Mayer and the deed was between him, Mr Turnbull and Ms Farinha. TEL were never told about this.

[338] TEL lent \$2,768,000, Mr Mayer received \$815,000 of the loan and also took a mortgage of \$855,000, which was not registered or disclosed to TEL. Mr Turnbull received \$152,769.42 of the loan proceeds.

[339] Mr Mayer accepted the agreement for sale and purchase was a false document. It was plainly provided to TEL to obtain a pecuniary advantage, namely the mortgage advance to which Ms Farinha would not have been entitled had the true position been known. TEL acted on the document as if it was genuine, which was always the intention on the part of Messrs Mayer and Turnbull and the steps Mr Mayer took, in particular referring Ms Farinha to TEL, returning the signed loan offer makes it plainly apparent that he was involved in the use of the documents and the false representations to TEL.

[340] Mr Mayer and Mr Turnbull were charged as parties to this offence. I am not able to say which of them prepared the false agreement for sale and purchase, but I accept that it was one of them, but clearly, as the transaction illustrates, it was done with the knowledge of the other and Mr Mayer provided considerable assistance in the use of the document, and obtained a substantial pecuniary advantage from TEL to which he was not entitled.

[341] For Mr Mayer to assert that he was not a party to this offending, and that the offending was carried out by Turnbull solely, simply is so at variance with the evidence and the truth has to be within the realm of absurdity. Consequently I am sure the Crown has proved each of the elements of the count involving the use of false documents, against Mr Mayer and he is accordingly guilty of the same.

#### **Count 24 – alternative count under s 228(b) of the Act**

[342] A verdict is not required in respect of this count by reason of my findings in relation to the preceding count.

#### **Count 25 – 82 Symonds Street**

[343] This count and its companion count, count 26, laid as an alternative, concern the acquisition of seven levels or floors, at 82 Symonds Street.



[344] This was another property which had been intended for purchase by Mr Turnbull, Mr Mayer having secured it through Ortem which entered into the initial genuine agreement with the registered proprietor. However he found he had to acquire the property as Mr Turnbull either would not or could not settle the transaction.

[345] The first agreement was dated 18 April, 2007. The vendor was Skycity Cinema Holdings Limited and Ortem, the purchaser, was a Mayer entity. His wife was the sole director and a 51% shareholder, and his mother-in-law Gorgonia Tagnipez held the balance of shares.

[346] The first agreement for sale and purchase was signed by Mr Mayer as the purchaser's agent. The first agreement provided for the sale of seven floors with Skycity Cinemas Limited leasing three of them together with 12 car parks.

[347] A second agreement was signed on 13 June, 2007 between Ortem as vendor and Marilou Domingo with a purchase price of \$3,200,000, but for only five of the seven floors. That agreement was for settlement on 15 June, 2007. Mr Mayer decided to retain two floors for his own use.

[348] The third agreement was dated 14 May, 2007 and was between Skycity Leisure Holdings Limited and was again a sale to Marilou Domingo, the purchase price being \$3,200,000, identical to that in the second agreement, and again for only five of the seven floors in the building. This was the agreement that was forwarded to TEL and relied on by TEL in its assessment and subsequent approval of a loan offer.

[349] That agreement was purportedly signed by Mr B P Morrin on behalf of Skycity Cinema Holdings Limited. Mr Morrin gave evidence that he signed the first agreement with Ortem on behalf of Skycity Cinema Holdings Limited as the vendor. He did not, however, sign the third agreement forwarded to TEL, although his signature, clearly a copy of that which appeared on the first agreement, appears on behalf of the vendor.

[350] Mr Mayer instructed the valuers, Roberts McEwan on 6 June, 2007, the valuation being for five floors and a value of \$3,200,000 was ascribed for them. Mr

Mayer used the valuation to support the application to TEL for mortgage finance faxing a copy to Ms Lewis on 13 June, 2007.

[351] Mr Mayer accepted that the third agreement was a false document. He denied forging the signature, and asserted Mr Turnbull must have done it. That makes no sense at all. The third agreement was one where Mr Mayer's in-law, Marilou Domingo was purchasing. Mr Turnbull had no interest in that transaction as, although he originally may have been the intended purchaser, he had disavowed it and the transaction was then to be undertaken using Mr Mayer's nominee Marilou Domingo. Only Mr Mayer would have an interest in forging Mr Morrin's signature as the false document was, effectively, a document in favour of one of his nominees. He was committed to the original transaction and had to raise funds from TEL to be able to settle it and so followed the well tried formula of using an agent, hiding his interest as the intended beneficiary, not disclosing the true agreement for sale and purchase, but instead presenting a false document at a higher purchase price so as to be able to secure the funds. I am quite satisfied that Mr Mayer, and Mr Mayer only, was responsible for the creation of the false document, namely the agreement for sale and purchase given as the particular to support count 25.

[352] Furthermore Mr Mayer forwarded the application form, which he signed, directly to TEL by facsimile on 12 June, 2007. The application was signed by Marilou Domingo but this was a Mayer transaction in every sense of the word.

[353] A handwritten version of the loan application was found at Peace Tower in Mr Mayer's handwriting. This was clearly a document used by Mr Mayer's wife, Rosalie Mayer to fill out the application form, as Mr Mayer gave evidence that she completed it. Also found among the documents in Peace Tower was a copy of the false agreement for sale and purchase, the third agreement, with the first page written out in pencil, as if it were a draft copy. There was a question mark placed on the draft in that part of the agreement where the agent's details were usually given.

[354] There was one further, unusual, aspect to this transaction that set it apart from the others in that TEL apparently required confirmation from Ms Domingo's lawyers, Parnell Law, who acted for Mr Mayer, that Ms Domingo held \$905,000 in their trust account so as to be able to complete the settlement at Symonds Street. A fax confirmation confirming this was sent to TEL by Mr Yan, a solicitor in the

employ of Ms Hart on 15 June, 2007 following a written instruction from Mr Mayer to transfer monies in that amount held by Artizanz Limited in an interest-bearing deposit trust account, to the credit of Ms Domingo. Mr Mayer received a commission from TEL for his role when acting as a broker. Overall TEL advanced \$2,000,000 by way of mortgage thinking that it was to be wholly used by Ms Domingo to purchase the property, the purchase price being the amount shown in the false agreement for sale and purchase. In actual fact Ms Domingo contributed nothing to the purchase. Artizanz paid \$905,000, as mentioned above, and other Mayer entities contributed \$1,210,391.94.

[355] Mr Mayer was central to the promotion and success of the application. TEL was misled by the application believing that there would actually be a contribution from Ms Domingo for the purchase price of the property. TEL, as any mortgagee does, had the right to know who the purchaser actually was and who it was advancing funds to. The use of Ms Domingo was a strategy devised by Mr Mayer to disguise this. TEL were led to believe Ms Domingo was contributing her own cash to the transaction, when she contributed nothing. Consequently I am satisfied that the agreement for sale and purchase, the particular nominated to support count 25 was a false document, and Mr Mayer knew it was so at the time it was created and that it would be used to obtain a pecuniary advantage, namely the mortgage advance to Ms Domingo. Further that he caused TEL to act upon the document as if it were genuine.

[356] Consequently I am satisfied all of the elements of the count have been proved to the required standard against Mr Mayer and he is guilty of the same.

#### **Count 26 – alternative count under s 228(b) of the Act**

[357] A verdict is not required for this count by reason of my findings in relation to the preceding count.

#### **Count 27 – 108 Market Road, Epsom**

[358] As with the other counts in the third category of transactions, count 27, being the count of using a forged document, is the main count with an alternative count under s 228(b) of dishonestly using a document.

[359] The first, and genuine, agreement was one entered into on 8 June, 2007 with the registered proprietors, Gabrielle Prince, Richard Prince and H and A Trustees (No.1) Limited with Artizanz Limited and/or nominee for the purchase of the property at a price of \$1,200,000, with a deposit of \$60,000 to be paid and with settlement on or before 30 August, 2007.

[360] The second agreement was dated 10 June, 2007 and was between Artizanz Limited and Parnell Trust and/or nominee, the purchase price being shown as \$2.4 million, and with a deposit of \$300,000 provided for and settlement on 12 July, 2007. The agreement had a real estate agent's branding on the front page but an agent was not involved. Mr Mayer signed both agreements for Artizanz Limited.

[361] The third agreement was dated 20 June, 2007, and was the agreement forwarded to TEL to support the mortgage application. That agreement was purportedly between Prince Trustees, and Jose Antonio Pardal, for a purchase price of \$2.4 million, provided for a deposit of \$250,000 and settlement on 5 July, 2007. Again it had the fake real estate's logo, that of Focus Real Estate, on the front page of the agreement. It was purportedly signed by Richard Prince as vendor. Mr Prince gave evidence, accepted the signature of Richard Prince on the bogus agreement for sale and purchase was his name, but said he did not sign that agreement, and in fact never signed his name as Richard Prince. Mr Mayer accepted the document was a false document.

[362] This was one of the properties intended for Mr Turnbull. Mr Pardal was a boyfriend of one of Monica de Magalhaes's nieces. The loan application was in his name. He was residing in Portugal at the date of the application on 27 June, 2007 but apparently signed the same. He was said to be contributing \$500,000 to the purchase, his only asset was the property to be purchased by him. A valuation was obtained which gave a value of \$2,350,000 to the property. TEL noted that the advance was self-servicing from the income that would be generated under a lease, although the surplus of income over the amount needed to pay the interest on the mortgage was only \$1,140. Again TEL's internal assessment of the proposal noted that the application had been referred by Mr Mayer, an existing TEL client. The tenant supposedly producing the income necessary to support the loan application was none other than North Star Holdings, with Gorgonia Tagnipez again as the

guarantor, and purportedly signed by her at a time when she was not in New Zealand.

[363] The loan approval letter was sent to Mr Pardal and was addressed care of Mr Mayer. A settlement deed was entered into between Artizanz, Mr Mayer's company, Mr Turnbull and Mr Pardal on 15 July, 2007. Mr Mayer signed for Artizanz and accepted that the settlement deed was not disclosed in the loan application to TEL, as if it had been, Mr Pardal's liability for \$1,095,000 would need to be disclosed and inevitably the application would be declined.

[364] As for the disbursement of funds from the advance of \$1,880,000, Mr Mayer received \$204,000. He also had the acknowledgement of debt contained in a settlement deed for which he was entitled to call for a mortgage. He also received \$9,400 as a commission from TEL. Mr Turnbull received \$556,816.44 of the TEL loan.

[365] On the loan application Mr Mayer handwrote Lauren Peebles, the name of the mortgage officer at TEL who was to deal with the matter and signed it as being "from Malcolm M." Consequently he was involved in the transaction. His explanation for that was that he merely signed the cover letter and failed to review the contents of the application but I reject that as not being credible as I have on the other occasions when it was raised. He was receiving a commission, had referred the application to TEL, forwarded the valuation to them, and had a pecuniary interest in ensuring that the matter succeeded, not only in the loan that was to be advanced by Artizanz for which interest was payable but in the funds to be received on settlement, and so must have known the structure of the arrangement.

[366] He knew the agreement for sale and purchase, the particular referred to as supporting the count, was a false document. He knew it would have to be shown to TEL to secure the pecuniary advantage, namely the mortgage advance. He knew that TEL would act on the forged document as if it were genuine, that after all was the intention in constructing it and forwarding it to TEL. Consequently Mr Mayer aided this offence by Mr Turnbull as well as being guilty as a principal himself. The elements of the offence have therefore been proved to the required standard and I find him guilty in respect of count 27.

**Count 28 – alternative count under s 228(b) of the Act**

[367] A verdict is not required for this count by reason of my findings in relation to the preceding count.

**Count 29 – 21 and 23 Walters Road, Kingsland**

[368] This count, and the companion count 29 concern the purchase of 21 and 23 Walters Road, Kingsland from Maureen Willets and Lynette Duncan as vendors and Yang Ling and/or nominee as the purchaser with the agreement dated 4 July, 2007 showing a purchase price of \$1,255,000. This was a genuine agreement. Mr Ling was a friend of Chu Sho.

[369] The second agreement was between Yang Ling and Jiang Yi Jiang. The purchase price was \$1,600,000 and the agreement was dated 18 July, 2007.

[370] The third agreement was dated 22 July, 2007 and was between Jiang Yi Jiang and Joao Peres. That agreement was for settlement on 8 August, 2007. Mr Peres was the boyfriend of another of Monica de Magalhaes's nieces.

[371] There was a fourth agreement also dated 20 July, 2007 between the Willets Trust, a name reasonably similar to that of the registered proprietors prior to the transactions settling and Joao Perez, the purchase price being \$2,850,000.

[372] Mr Mayer confirmed in his evidence that he organised the first agreement and paid the deposit of \$100,000. His reason for the subsequent agreement being entered into between Ling and Jiang was to create a chain through to the point where the property could be transferred to Mr Turnbull's nominee but where the original purchase price could be disguised as he did not want Mr Turnbull to know that he was making in excess of \$1,200,000 on the transaction.

[373] The loan application was duly sent to TEL under the signature of Mr Perez. Mr Mayer's handwriting again appears on the cover sheet. As for Mr Perez himself, he was, at the time the application was made resident in Portugal although he purportedly signed the application. The application disclosed that he had the deposit

of \$400,000 and a vehicle for \$35,000 and the only other asset was the properties to be purchased. He was said to be contributing \$600,000.

[374] The agreement for sale and purchase used to support the application, the fourth agreement was the subject of the particular supporting count 29. It was a false document. Mr Mayer accepted it was forged.

[375] Again to endeavour to convince TEL that the mortgage payments could be supported from income received from the property a lease was forwarded with the application. That lease was between Mr Peres and Stay Central Limited and was dated 23 July, 2007. Mr Mayer accepted in his evidence that Stay Central Limited was not a legal entity, as it was a trading name, and agreed the lease was “not worth the paper it’s written on.”

[376] The internal assessment of TEL noted the advance was self-servicing from lease income but the surplus of income over the monies needed to pay the mortgage on an annual basis was only \$295.00. Again the assessment noted that the application had been referred by Mr Mayer and that Mr Peres, a Portuguese citizen, was purchasing the property as a long term investment. TEL’s mortgage analyst recommended approval and in due course a loan offer issued care of Mr Mayer. It was duly signed and returned to TEL by facsimile by or at the direction of Mr Mayer and his handwriting, drawing the signed approval to Ms Peebles’ attention is on the document.

[377] Mr Mayer also advised TEL when settlement was to occur.

[378] Mr Peres contributed nothing to the purchase notwithstanding the loan application informing TEL that he would. \$100,000 was paid to the vendor by Mr Mayer on behalf of his agent, Mr Ling, who had entered into the contract. TEL lent \$2,270,000 and Mr Mayer received \$1,088,339.75 of those monies and entered into a settlement deed whereby the purchaser, Mr Peres, acknowledged a debt of \$910,000 for which Mr Mayer was entitled to call for a mortgage. He also received \$11,385 as a broker’s commission from TEL. Mr Turnbull received \$305,952.16 from the loan.

[379] The approval letter which was returned to TEL, and which Mr Mayer had clearly seen, as he drew it to the attention of Ms Peebles, confirmed to TEL that the mortgage advance was to be wholly used for the purchase.

[380] I accept the Crown's submission that this count is a further example of Mr Mayer and Mr Turnbull working together to defraud TEL. Mr Mayer had to play his part. He had to refer the client, as he did, to TEL and it is clear that he managed the process receiving the approval letter and returning it to TEL once it had been signed by Mr Peres. He admitted that Mr Peres was not making a contribution, nor had he paid a deposit as represented in the loan application. The arrangement whereby Mr Mayer secured a vendor mortgage was not disclosed, and Mr Mayer knew that would not occur, as that was at the heart of the scheme, and otherwise Mr Peres would need to show the mortgage as indebtedness and the application would be declined. He knew the false agreement for sale and purchase would be sent to TEL to support the application, it had to be or the application could not have proceeded. Consequently I find Mr Mayer assisted in the commission of the offence, managed the loan application, and did so for the purpose of aiding Mr Turnbull through the use of his nominee, Mr Peres, to enable the offence to be committed.

[381] He knew the agreement for sale and purchase was false and would be used by, in effect, both men through Mr Peres the applicant to obtain a pecuniary advantage namely a mortgage advance to which, had the true circumstances been known to TEL, would never have been obtained. In managing the process he caused TEL to deal and act with the false document, the agreement for sale and purchase, as if it were genuine.

[382] I am not convinced that Mr Mayer himself created the agreement for sale and purchase sent to TEL using the name Willets Family Trust as the vendor. It would have been easy enough for Mr Turnbull to do, if it was him who caused the document to be made and after checking the certificate of title to see who the registered proprietors were. However I am sure that Mr Mayer knew of the agreement at about the time it was created and that it would be used to obtain the mortgage advance which he clearly had an interest in obtaining given that he entered into a deed to share the proceeds with Mr Turnbull after the purchase was settled with the Willets at the original price. He clearly assisted in the commission of the offence by Turnbull.



[383] Accordingly Mr Mayer is guilty of this count.

**Count 30 – alternative count under s 228(b) of the Act**

[384] A verdict is not required for this count by reason of my findings in relation to the preceding count.

**Count 31 – 3b/47 St Pauls Street**

[385] Count 31 and the alternative count 32 involved the purchase of 3b, 47 St Pauls Street. Three agreements for sale and purchase were involved.

[386] The first was an undated agreement between Yi-Cheng Ho as vendor and the St Pauls Trust and/or its nominee as purchasers. Monica de Magalhaes and Simon Turnbull were shown on the agreement as the trustees of the purchasing trust.

[387] The purchase price was \$800,000 with a deposit of \$30,000. Settlement was to be effected on 31 August, 2007.

[388] The second agreement was dated 10 August, 2006 and was for a purchase price of \$1,200,000. The vendor was described as the St Pauls Trust and/or nominee, the purchaser being Joao Peres, the partner of Monica de Magalhaes's niece Andrea Farinha and seen earlier in the transactions involving the purchase of 21 and 23 Walters Road, the original agreement for which was entered into in July, 2007.

[389] The third agreement for sale and purchase was dated 9 August, 2007 and was between the Yi-Cheng Ho Property Trust as vendors, and Joao Peres, the purchase price being \$1,200,000. This was another example of the name of the vendor being sufficiently close to that of the registered proprietor and vendor under the first agreement for sale and purchase as amounting to an attempt to disguise the fraudulent nature of the transaction. Similarly, the agreement for sale and purchase had the logo of Focus Real Estate on the front page of the agreement when that firm did not act. The agreement for sale and purchase was a false document.

[390] The mortgage application was sent by facsimile to TEL on 14 August, 2007 and was purportedly signed by Mr Peres. Mr Mayer's handwriting appears on the

letter drawing the application to the attention of Lauren Peebles. He accepted the handwriting was his but advanced his defence of claiming he was unaware of the content of the supporting documents being the application itself, the agreement for sale and purchase, the valuation and a deed of lease between Mr Peres and Stay Central dated 1 December, 2007. The agreement, the third agreement, was a false document, in that it was a forgery. Mr Mayer accepted that as well as accepting the lease was also not a genuine document but said the transaction had nothing to do with him as the property was found by Mr Turnbull, Mr Rogers having acted as agent on the first transaction.

[391] The application contained the usual false representation as to the cash contribution to be used in the purchase. On 15 August, 2007 mortgage finance of \$936,000 was approved by TEL, the approval letter being sent to Mr Peres care of Mr Mayer. TEL's internal assessment noted that Mr Peres had been referred to them by Mr Mayer, an existing client and the loan offer of 15 August, 2007 was completed in Mr Mayer's handwriting advising TEL that the loan was to be used for a property purchase and, after it was signed, purportedly by Mr Peres it was returned to TEL so the advance could be made.

[392] Mr Peres did not contribute any funds to the purchase notwithstanding TEL having been advised on the application that he would, an advance of \$936,000 was made and Mr Mayer received a broker's commission of \$4,680. Mr Turnbull received \$237,737.58 of the loan.

[393] Mr Mayer was charged as a party to the offence, together with Mr Turnbull. The Crown's case is essentially based on the overall scheme or arrangement the two men entered into, this merely being one further example of their co-operation in deceiving TEL with Mr Mayer referring the client to TEL, receiving the loan approval, filling it out prior to it being signed and assisting Mr Turnbull to complete the fraud. Mr Mayer would have to know that an agreement for sale and purchase was being forwarded to TEL for them to use in their assessment of the transaction, and would also know from his own actions in relation to TEL and the scheme, which the facts relating to the various other counts illustrate, that the agreement would be a forgery or false document. That is the particular given in support of the count. He would also have known that the mortgage advance would not be used wholly in the purchase of the property and that some monies would be paid to Mr Turnbull, yet he

filled in the mortgage loan offer which confirmed to TEL that the mortgage advance was to be used for the property purchase. Understandably this would lead TEL to believe it was to be wholly used for this purpose.

[394] Overall, therefore, I am sure that Mr Mayer knew that a forged document would be used, in the nature of the agreement for sale and purchase submitted to TEL, and that it would be used to obtain a pecuniary advantage, namely the mortgage advance. He would have known from his previous dealings with TEL and Mr Turnbull, and from the overall scheme that he and Turnbull had agreed upon that Mr Turnbull was going to receive funds from the mortgage advance. He would also know that Mr Turnbull would be the real purchaser, but this would not be disclosed to TEL, as this was part of the scheme. Consequently he promoted the application to TEL by referring Mr Peres to them and assisted in the way I have described in aiding the commission of the offence by his co-accused.

[395] Consequently Mr Mayer is guilty of count 30.

#### **Count 32 – alternative count under s 228(b) of the Act**

[396] A verdict is not required for this count by reason of my findings in relation to the preceding count.

#### **Count 33 – 5A/47 St Pauls Street**

[397] This count, and the alternative count, count 34, concern the purchase of 5A/47 St Pauls Street. Once again three agreements for sale and purchase were used, the first, the genuine agreement for sale and purchase being between Ka Yin Chim, Nghiep Tran Trinh and Vincent Chi and Yin Tam as vendors and Monica de Magalhaes and Simon Turnbull as trustees for the St Pauls Trust or its nominee.

[398] The agreement was entered into on 20 August, 2007 and provided for a purchase price of \$800,000, a deposit of \$30,000 and settlement to be effected on 10 September, 2007. Mr Rogers of Focus Real Estate was involved in the transaction.

[399] The second agreement for sale and purchase was dated 17 August, 2007 and was between Carling Trustees Limited and Carlos Vieira, for a purchase price of

\$1,300,000 with a deposit of \$130,000 and for settlement on 31 August, 2007. The agreement had the manufactured logo of Focus Real Estate on the front page, although Focus Real Estate was not involved in this transaction. Mr Vieira was a partner or boyfriend of another of Ms de Magalhes's nieces, Danae Farinha, herself used previously as a "dummy" purchaser in purported transactions which secured a mortgage advance from TEL.

[400] The third agreement was dated 23 August, 2007, with the vendor shown as the Trinh Tam Trust, and oddly, its nominee, and Carlos Vieira as purchaser. The purchase price was again \$1,300,000 with the agreement identical to the second agreement save for the different names. Again this is an example of a name being used for the vendor on the forged agreement for sale and purchase sufficiently similar to the actual registered proprietor for anyone looking at the agreement to be led to believe it was likely a genuine agreement for sale and purchase. It was plainly a sham as the registered proprietor never contracted with Mr Vieira, and he himself had no intention of purchasing the property, simply allowing his name to be used, in fact he knew about the transaction at all, to hide the identity of the true purchaser, Mr Turnbull. This was the agreement disclosed to TEL.

[401] The application to TEL for funding for the purchase was sent by facsimile on 24 August, 2007. The covering letter, in the name of Mr Vieira was signed on his behalf by Monica de Magalhaes, acting under a power of attorney. Mr Mayer himself handwrote in the name of a mortgage manager at TEL, Tracey Souness, presumably because he had already indicated to her that the application was coming. Other than that Mr Mayer denied any knowledge of the content of the documents which accompanied the application. The usual documents were sent being an application form, market valuation, the false agreement for sale and purchase and a deed of lease. I have already rejected Mr Mayer's contention of lack of knowledge of the content of these documents in relation to an earlier count. Mr Mayer was right at the centre of these frauds and I do not accept his evidence that his involvement was limited to the particular piece of handwriting he accepted as his own, and nothing further.

[402] The mortgage application sought an advance of \$1,040,000. The application fee was split, presumably between TEL and Mr Mayer as the referer or broker. The general comments in TEL's internal assessment was that the application had been

referred to them by Mr Mayer and that following the purchase Mr Vieira would have net assets of \$554,600 and had funds of \$200,000 to complete the purchase.

[403] The loan offer was made on 28 August, 2007 in the amount sought, and by letter addressed to Mr Vieira care of Mr Mayer.

[404] Mr Mayer's evidence was that after receiving the loan offer he passed it directly to Mr Turnbull, it being a Turnbull transaction and had no further involvement with the matter.

[405] The terms of the loan approval required confirmation that the purchaser had paid a \$200,000 deposit. On 30 August, 2007 a letter on Focus Real Estate letterhead acknowledged receipt of the deposit from Mr Vieira for the purchase of the property. No amount was specified. The first, genuine agreement, provided for a deposit of \$30,000. The deposit under the bogus agreement was only \$130,000, the reference to \$200,000 arose from the loan application form where \$200,000 was nominated as the figure for the deposit in the assets of Mr Vieira. The only other asset was the property to be purchased. The property had been valued by Mr Turnbull's preferred valuer, Roberts McEwan at \$1,290,000.

[406] The transaction proceeded. The mortgage advance was used to settle the first agreement, for which the purchase price was \$800,000. The balance of the monies, unbeknown to TEL, were paid to Mr Turnbull. TEL was misled, clearly deliberately, as to who the true purchaser was. It was to be Mr Turnbull and neither he nor Mr Vieira contributed anything to the purchase, notwithstanding the representation in the loan offer. I believe the letter from the real estate agent was a false document as Mr Rogers, the agent who was involved in the original transaction between the Trinah Trust and the St Pauls Trust received the deposit of \$30,000, but no other, yet the letter refers to the deposit as having been paid by Mr Vieira. Mr Rogers was not asked whether he was the author of the letter, but I doubt if he was. He gave the impression of being an honest witness. When the letter was put to Mr Mayer he said that it seemed curious but clearly as Mr Mayer knew, but was not admitting in his evidence, the letter formed part of the overall deception of TEL.

[407] The particular given to support the count concerns the agreement for sale and purchase dated 23 August, 2007 between the Trin Tam Trust and Vieira. Mr Mayer

clearly saw the covering letter which was sent with the other documents including the false agreement for sale and purchase. To say that he was not aware of the content of the agreement for sale and purchase is palpably untrue. He was well aware that an agreement would have to be submitted and given the nature of the scam on TEL he well knew that it would not be a true document, but rather a manufactured document against which the borrower, Mr Vieira was attempting to borrow funds. I do not, therefore, accept that he did not see the agreement and know of the use of which it was to be put.

[408] By this time many transactions had gone to TEL with members of Ms de Magalhaes's family put up as purchasers, but where Mr Turnbull, and presumably Ms de Magalhaes his wife, were the underlying purchasers. Mr Mayer's help with a covering letter would not be needed by this point. His help was provided, I am satisfied, because he was a party with Mr Turnbull to the fraud on TEL. This transaction is consistent with the whole scheme of the fraud demonstrated by the other counts. Accordingly Mr Mayer, as a party to the offence, used the document, namely the agreement for sale and purchase, to obtain a pecuniary advantage, on this occasion the advantage being for Mr Turnbull and, by referring the transaction to TEL, when he would know at the time a fraud was to be perpetrated on it he caused TEL to deal with the agreement for sale and purchase as if it were genuine and consequently is guilty of this count.

#### **Count 34 – alternative count under s 228(b) of the Act**

[409] A verdict is not required for this count by reason of my findings in relation to the preceding count.

#### **Count 35 – 226 Greenlane Road**

[410] This count, and count 36, deal with mortgage funding provided by TEL in relation to the purchase of 226 Greenlane Road. This property was the third property that Mr Mayer was obliged to complete the purchase as Mr Turnbull was either unwilling or unable to proceed with the transaction.

[411] The first, and genuine, agreement for sale and purchase for this property was found at Peace Tower and was between 226 Greenlane Rental Limited as vendor

with Jingyi Jiang, an employee of Mr Mayer, as the purchaser. The purchase price was \$3,000,000. The deposit was \$200,000 and settlement was scheduled for 30 August, 2007. The agreement was dated 3 May, 2007.

[412] Mr Mayer's evidence was that Ms Jiang was the nominated purchaser, effectively his agent, as he intended to sell the property to Mr Turnbull. Roberts McEwan and Associates completed a valuation on 21 August, 2007 at \$5,280,000. Roberts McEwan were, as I have said, Mr Turnbull's preferred valuers and he instructed them, but Mr Mayer had to arrange access.

[413] At some point, probably in August, 2007, shortly before the agreement was to be settled Mr Mayer became aware that Mr Turnbull did not intend to settle and there was correspondence between Ms Hart, Mr Mayer's solicitor, and the genuine vendor's solicitor on 24 August, 2007 which proposed that a new agreement for sale and purchase be entered into with Zhau Si Yi in substitution for the existing agreement with Jiang. The only other adjustment in the new agreement was that the property was to be sold inclusive of GST, rather than additional, so that the purchase price became \$3,375,000.

[414] There were then subsequent agreements, with the final agreement dated 3 May, 2007 being the one sent to TEL, a false document in that it was forged, being between 226 Greenlane Rental Limited and Jiang Jing Yi with a purchase price of \$300,000, providing for a deposit of \$200,000 and a possession date of 30 August. The agreement had the false logo of Focus Real Estate attached to it.

[415] This agreement is the subject of the particular in the indictment supporting the count of use of a forged document. Mr Mayer, as I have said, accepted that the agreements for sale and purchase used to support the counts for the third category of transactions were forged documents,

[416] The loan application was forwarded to TEL on 27 August, 2007 by Mr Mayer in the name of the purchaser. The application represented to TEL that Ms Jiang was contributing \$2,500,000 to the purchase, but she was not, something Mr Mayer accepted in evidence was so. A lease between Ms Jiang and North Star Holdings Limited dated 29 August, 2007 was also used to support the application. Gorgonia

Tagnipez signed the lease as tenant, although she was not in New Zealand. The lease was plainly a fraudulent document.

[417] The TEL internal assessment noted that the application had been referred by Mr Mayer. The loan offer issued on 28 August, 2007 care of Mr Mayer, and was for \$2,800,000. The loan offer was signed and returned on 28 August, 2007, Mr Mayer completed part of the form prior to it being returned after signature by Ms Jiang to TEL, specifically that the loan advanced was to be used for the property purchase.

[418] Unsurprisingly TEL believed a contribution of \$2,500,000 was to be made which was not, as nothing was contributed by Ms Jiang. TEL believed she was purchasing the property, but Mr Mayer was to be the beneficial owner, and that was not disclosed to TEL. The evidence from Ms Payne indicated that the deposit on the original transaction was paid by Artizanz Limited through Parnell Law's trust account, and another contribution of \$396,898.52 was made via a bank account in the name of Siu Ming Luk. Mr Mayer received \$6,000 of the TEL loan and through his company MDM, a brokerage fee.

[419] Clearly Mr Mayer was responsible for the loan application. The application itself was effectively made at the last minute shortly before settlement of the first transaction when Mr Mayer needed to obtain mortgage funding urgently. He forwarded Ms Jiang's application to TEL with a handwritten cover note which clearly indicates he looked through it. Ms Jiang's evidence was that Mr Mayer gave her the details to fill out the loan application form, which she typed onto a pre-arranged form on a computer at their office. Mr Mayer's evidence was that the application was prepared by Simon Turnbull, but I do not accept that. Mr Turnbull was not going to complete the transaction and had no interest in it by the time the mortgage application was lodged. Mr Mayer, however, clearly utilised the valuation that Mr Turnbull had obtained. Further, Mr Mayer wrote the words "true and correct" on the approval form for return to TEL so that the mortgage monies could be distributed, prior to Ms Jiang signing it. Ms Jiang's evidence was she signed the loan application, the sale and purchase agreement, and the cover letter because Mr Mayer asked her to, and she was told that the money to buy the property would come from TEL. Consequently there was direct evidence from one of the purchasers used in the transactions to confirm Mr Mayer's involvement. Given the similarity of the application to all the other transactions the subject of the counts it is a compelling



piece of evidence illustrating how Mr Mayer, and for that matter, Mr Turnbull, carried out these frauds on TEL.

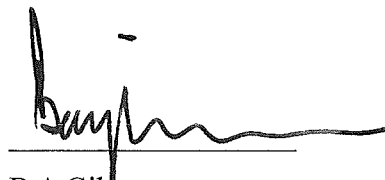
[420] While Mr Mayer denied giving Ms Jiang the figures I do not accept his evidence. She had no monies to contribute to the purchase and would have depended on Mr Mayer for the information. While I accept that the mortgage monies were used in the purchase TEL believed that the purchase was to be by Ms Jiang, and did not understand that they were funding the purchase for Mr Mayer, or for an amount far in excess of their loan to value ratio.

[421] In summary I am sure that Mr Mayer used the document, the agreement for sale and purchase, and for that matter, the other documents such as the lease and the false application, to obtain a pecuniary advantage, namely a mortgage advance, which would not have been provided but for the use of the forged documents. He was well aware that the document, the subject of the particular in the count, was a forgery. His employee Ms Jiang, in signing the agreement, plainly acted at his direction.

[422] I am satisfied the Crown has proved each of the elements of the count to the required standard against Mr Mayer and he is guilty of the same.

**Count 36 – alternate count under s 228(b) of the Act**

[423] A verdict is not required for this count by reason of my findings in relation to the preceding count.

A handwritten signature in black ink, appearing to read 'B A Gibson', written over a horizontal line.

B A Gibson  
**District Court Judge**

**Schedule of Verdicts returned – M D Mayer**

Count 1	6 Glenside Crescent	Guilty
Count 2	7A/2 St Martins Lane	Guilty
Count 3	5A/2 St Martins Lane	Guilty
Count 4	4B, 4C and 10B/2 St Martins Lane	Guilty
Count 5	1A/2 St Martins Lane	Guilty
Count 6	8C/2 St Martins Lane	Guilty
Count 7	6C/2 St Martins Lane	Guilty
Count 8	21 St Benedicts Street	Guilty
Count 9	74-76 Upper Queen Street	Guilty
Count 10	327 Karangahape Road	Guilty
Count 11	129 Grafton Road	Guilty
Count 12	31 Shaddock Street	Guilty
Count 13	44 St Benedict's Street	Guilty
Count 14	15 Karaka Street	Guilty
Count 15	12 Karaka Street	Guilty
Count 16	11-13 Karaka Street	Guilty
Count 17	28-34 Roberts Street	Guilty
Count 18	“ ”	Verdict not required
Count 19	11 Nikau Street	Guilty
Count 20	“ ”	Verdict not required
Count 21	57 Walters Road	Guilty
Count 22	“ ”	Verdict not required
Count 23	59 Pt Chevalier Road	Guilty
Count 24	“ ”	Verdict not required

Count 25	82 Symonds Street	Guilty
Count 26	“ ”	Verdict not required
Count 27	108 Market Road	Guilty
Count 28	“ ”	Verdict not required
Count 29	21 and 23 Walters Road	Guilty
Count 30	“ ”	Verdict not required
Count 31	3b/47 St Pauls Street	Guilty
Count 32	“ ”	Verdict not required
Count 33	5A/47 St Pauls Street	Guilty
Count 34	“ ”	Verdict not required
Count 35	226 Greenlane Road	Guilty
Count 36	“ ”	Verdict not required